

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (L) No. 7048 of 2010**

1. State of Chhattisgarh through Secretary, Water Resources Department, Mantralaya Bhawan, Raipur, CG

(Petitioner No.1 was not a party before the learned Labour Court, but has been impleaded as petitioner no.1 herein as it is necessary to implead the State Govt. through the Secretary of concerned Department.)

2. Water Resources Department, through the Executive Engineer, Kharang Water Resources Division, Bilaspur, CG
3. Water Resources Department, through the Sub Divisional Officer, Kharang Water Resources Sub Division, Bilaspur, CG

---- Petitioners**Versus**

1. Mathura Prasad Rajak S/o Panchram Rajak, R/o Torwa, near Primary School, Bilaspur, CG
2. The Presiding Officer, Labour Court, Bilaspur, CG

---- Respondents

For State/Petitioners	:	Shri Anand Dadariya, Dy. Govt. Advocate
For Respondent no.1	:	Shri K. P. S. Gandhi, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****03/01/2018**

Present writ petition has been filed assailing the order dated 01.10.2008 passed by the Labour Court, Bilaspur in Case No.16/ID Act/2005(Ref.). Vide the impugned order, the Labour Court has passed an award holding that the discontinuance of employment of respondent no.1 was

contrary to the provisions of the Industrial disputes Act and has ordered for reinstatement without back-wages.

2. The challenge is on the ground that the workman involved in the dispute has not been able to establish the fact that he has worked continuously for a period of 240 days in a calendar year and therefore, the finding of the Labour Court is bad in law, moreover, the same is also bad in law in the light of the judgment of the Supreme Court in the case of Secretary, State of Karnataka and others Vs. Umadevi (3) and others reported in (2006) 4 SCC 1.

3. However, a perusal of the award would show that Ex. P-1 is an experience certificate which has been exhibited before the Court below by respondent no.1. On behalf of the petitioners who were the second party before the Labour Court, one S. K. Berman, non-applicant witness no.1 was examined who has admitted the issuance of Ex. P-1 which certifies that the workman in the instant case had worked from 01.10.1990 to 19.03.1995. This admission on the part of the witness of the State Government itself is sufficient proof to establish that there was a continuous employment of more than 240 days in a calendar year. Thus, the finding of the Labour Court is a finding of fact arrived at purely on the basis of the evidences which have come on record. Further, from the evidence of the witness of the petitioner State Government it clearly reflects that the condition necessary for retrenching the worker after having put him a continuous employment of more than 5 years was not followed. The very fact that there was a non-compliance of the statutory provisions of Chapter 5 of the Industrial Disputes Act stood established. Thus, this Court has no hesitation in reaching to the conclusion that the finding of the Labour Court cannot be said to be either perverse or contrary to law or to the evidence on record.

4. It is also a settled position of law that under the writ jurisdiction, this Court would not interfere with the order passed by the Labour Court as if sitting

as an Appellate Authority particularly in a case under I.D. Act. The interference would be only to a limited extent whether there is perversity in the finding arrived at by the Court below or the Court has exercised its jurisdiction beyond the powers conferred upon it. The High Court can interfere with factual aspect only when it is convinced that the Labour Court has made patent mistakes in admitting evidence illegally or the Court has committed a grave error in law in coming to its conclusions.

5. The jurisdiction under Article 226 of the Constitution of India in examining the correctness of the order of the Labour Court was confined to errors in the decision making process and not on the merits of the decision itself. This Court does not find any infirmity in the decision making process warranting interference.

6. The Supreme Court in the case of **Harjinder Singh v. Punjab State Warehousing Corporation [2010 (3) SCC 192]** held as under:-

“21. Before concluding, we consider it necessary to observe that while exercising jurisdiction under Articles 226 and /or 227 of the Constitution in matters like the present one, the High Courts are duty-bound to keep in mind that the Industrial Disputes Act and others similar legislative instruments are social welfare legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the Preamble of the Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43-A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to subserve the common good and also ensure that the workers get their dues. More than 41 years ago, Gajendragadkar, J. opined that:

'10. The concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State.'

(State of Mysore v. Workers of Gold Mines¹, AIR p.928, para 10.)”

This view has further been reiterated in the case of **Bhuvnesh Kumar**

¹ AIR 1958 SC 923

Dwivedi v. Hindalco Industries Limited [2014 (11) SCC 85].

7. The Petitioners through the present writ petition have failed to show either there being any perversity in the finding or the Court below having exceeded its jurisdiction. In the absence of the two, the finding arrived at by the Labour Court has to be accepted to be proper, legal and justified.

8. This Court is also reluctant to set aside the impugned order of the Labour Court for the reason that pursuant to the award, the petitioner State Govt. reinstated the respondent in service in the year 2010 and since then he has been continuously working. As such, he has by now put in service for almost 8 years after the award was passed.

9. In this view of the matter, this Court does not find any strong case on behalf of the petitioners made out calling for interference with the impugned order of the Labour Court and the petition being devoid of merits, the same is accordingly dismissed.

**Sd/-
(P. Sam Koshy)
JUDGE**