

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (L) No. 4306 of 2011**

Manoj Kumar Dubey, S/o Shri Devi Prasad Dubey, aged about 43 years, R/o
Thana Road, Ratanpur, Distt. Bilaspur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through- Secretary, Agriculture Department, D.K.S. Bawan, Raipur (C.G.)
2. C.G. State Krishi Vipanani Mandi Board, through- Deputy Director, Bilaspur (C.G.)
3. President/Secretary, Krishi Vipani Mandi Samiti, Kota, Distt. Bilaspur (C.G.)

---- Respondents

For Petitioner	:	Mr. Vinod Deshmukh, Advocate.
For Respondent No. 1/State:	:	Mr. B.L. Sahu, Advocate.
For Respondents No. 2 & 3 :	:	Mr. Ratan Pusty, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

07/05/2018

(1) Appropriate Government has made a reference to the Labour Court on 6.10.2001 to decide as to whether the dismissal of the petitioner from services is valid and proper.

(2) The Labour Court, by its order dated 29.03.2006, dismissed the said reference stating that the petitioner has failed to appear in the proceedings and application for restoration made on behalf of the petitioner has been rejected by the impugned order, against which instant writ petition has been filed by the petitioner questioning the same.

(3) Learned counsel appearing on behalf of the petitioner would submit that reference petition could not have been dismissed in default in view of the decision rendered by this Court in the matter of **Hemant Kumar Nayak Vs. State of Chhattisgarh & others**¹.

(4) Learned counsel for the State would support the impugned order.

(5) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and gone through the record with utmost circumspection.

(6) This Court, in the matter of **Hemant Kumar Nayak** (supra), has considered a question whether the Labour Court has power and jurisdiction to dismiss the reference validly made by the appropriate Government under Section 10(1) of the Industrial Disputes Act, 1947 in default and answered the same in paragraphs 12 & 13 of the aforesaid judgment, which read as under:-

“12. In the matter of **Sital Sukhram v. Central Government Industrial Tribunal-cum-Labour Court, Jabalpur**², the Madhya Pradesh High Court has held that the Labour Court has no jurisdiction to dismiss the reference petition for default by holding as under:-

“9. The main question for consideration is whether the Tribunal could, as it did in this case, accept an amicable settlement between the parties which “did not specify the manner in which the dispute have been settled” and make an award in terms of that settlement because “there now remains nothing for

¹ WPL No. 6 of 2012, decided on 28.10.2015

² 1969 MPLJ 33

adjudication” by the tribunal so far as these five specific demands are concerned. We are clearly of opinion that the Tribunal could not act in that way without disregarding the provisions of the Act. The word “award” as defined in clause (b) of Section 2 of the Act means “an interim or final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10-A”. We think that the word “determination” used in the definition implies adjudication upon relevant material by the Labour Court of the Tribunal. So, it has been held that, once a reference has been made under Section 10(1) of the Act, it cannot be rescinded or cancelled: State of Bihar Vs. Ganguli, (1958) II J LJ 834 (SC). It cannot also be dismissed for default because that would amount to putting an end to the proceedings otherwise than by adjudicating upon the dispute.”

(13) Thus, it is limpid that once a valid reference is made by the appropriate Government exercising the jurisdiction vested in it, the Labour Court has no authority and jurisdiction to dismiss the reference and the Labour Court is obliged to answer the reference *ex parte* in absence of defaulting parties.”

(7) It is not in dispute the reference validly made by appropriate Government was dismissed in default on 29.03.2006 without deciding the reference on merits, which is in teeth of decision rendered by this Court in the matter of **Hemant Kumar Nayak** (supra).

(8) In view of above, the impugned order is liable to be and is hereby set aside.

The reference is restored to the original file of Labour Court and same shall be considered and decided expeditiously preferably within a period of three months from the date of receipt of certified copy of this order.

(9) The writ petition is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

