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HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (L) No. 73 of 2018**

The District Manager, Food Corporation of India, District Office,
Kutchery Chowk Raipur, at present address Vidhan Sabha Road Kapa
Raipur, District Raipur, Chhattisgarh

---- Petitioner**Versus**

Kartik Ram Sahoo S/o Shri Sudhram Sahu, R/o village Amasivni,
G.S.I. Mandhar, Raipur, District Raipur, Chhattisgarh

---- Respondents

For Petitioner : Shri R. S. Patel, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****06/03/2018**

By way of present writ petition under Article 226 of the Constitution of India the petitioner has challenged the award dated 21.04.2017 passed by the Central Government Industrial Tribunal – cum - Labour Court, Jabalpur in Case No. CGIT/LC/R/160-A/2000. Vide the impugned award, the Labour Court in a reference pertaining to the termination of services of the respondent has awarded a lump sum compensation of Rs.75,000/- towards non-compliance of the provisions of the Industrial Disputes Act while retrenching the respondent in lieu of reinstatement.

2. Facts of the case in brief are that the respondent Kartik Ram Sahoo is said to have been engaged by the petitioner w.e.f. 20.06.1996. The nature of work assigned to the respondent was that of driving a vehicle belonging to the petitioner Management. According to the respondent, he worked with the petitioner Management continuously till 31.12.1998 when abruptly his services were discontinued by the petitioner. The respondent immediately raised an

industrial dispute by way of conciliation which ultimately resulted in a failure and a reference was made by the Central Government to the Labour Court with the following terms of reference:

“Whether Shri Kartik Ram Sahu claiming himself to be a Driver is a workman under Section 2(s) of the ID Act, 1947? If so, whether his termination by the management of Food Corporation of India w.e.f. 31.12.98 is justified? If not, to what relief the workman is entitled?”

3. Both the parties before the Labour Court entered appearance and submitted their respective statement of claim and written statement and thereafter the evidences were also recorded. The respondent worker had also filed an affidavit to which he was also cross-examined. So far as the petitioner Management is concerned, on their behalf one Shri B. P. Singh was examined. The Tribunal finally vide the impugned award held that the discontinuance of services of the respondent amounted to illegal termination. Since the worker has not been able to establish whether there was any sanctioned vacant post of driver available, the Labour Court, in lieu of reinstatement, awarded a lump sum compensation of Rs.75,000/- to be deposited within within a period of 30 days failing which the same would carry interest @ 9%.

4. It is this award which is under challenge in the present writ petition.

5. Contention of Shri R. S. Patel, counsel appearing for the petitioner is that the Labour Court has erred in not appreciating the fact that there was no employer employee relationship between the petitioner and the respondent. According to him, the respondent was allegedly an employee of a contractor namely M/s Pandey Security Services who was given a contract of security by the petitioner Management and for all practical purpose, the respondent was a Security Guard under M/s Pandey Security Services. It was contended that even if the version of the respondent is accepted, even then he would not have any substantive right in his favour as his basic appointment was not in

accordance with any constitutional scheme framed by the Management nor was following any of the recruitment Rules envisaged under the Rules and Regulations governing the petitioner Management. Thus, prayed for setting aside of the award.

6. However, perusal of the record would show that the respondent worker in the instant case had entered appearance before the Labour Court and adduced evidence showing documentary proof in respect of his engagement as a driver. He had shown documents in respect of the vehicle which he was operating and the details of the vehicle and other incidental documents which a driver of any vehicle is supposed to be maintained to establish that he was discharging the duties of a driver under the petitioner establishment. Moreover, the petitioner has not been able to adduce sufficient documentary proof in order to show that the respondent's service was a security guard under M/s Pandey Security Services. In addition, the contractor or the witness of the contractor M/s Pandey Security Services has also not been examined who could have entered appearance before the Tribunal and could have stated that the respondent was an employee of M/s Pandey Security Services and he was working as a Guard under them and that his salary and other service benefits were being provided by the contractor M/s Pandey Security Services.

7. In the absence of any such strong evidence by the petitioner if the Labour Court has taken the evidence of the worker which is supported by documentary proof filed by him and which was also accepted during the course of the evidence, the finding of the Labour Court cannot be said to be either erroneous or contrary to the evidence brought on record. Moreover, what also goes in favour of the respondent is that there is evidence produced by the respondent to show that he was discharging the duty of the petitioner's establishment.

8. In the given facts and circumstances of the case, this Court does not find any strong case made out by the petitioner for interfering with the impugned award. Even otherwise, the Labour Court taking into consideration the entire factual matrix of the case has not granted the relief of reinstatement rather a relief of only a lump sum compensation has been awarded.

9. The opinion of this Court stands fortified from the judgment of the Supreme Court in the case of **Bharat Sanchar Nigam Limited v. Bhurumal, 2014 (7) SCC 177**. 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. In the absence of any of the aforesaid illegalities, the writ Court cannot convert itself into an appellate forum. The writ Court would not threadbare go into the facts and evidences thrashed out by the Labour Court, for reaching to a different conclusion.

10. 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.

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

12. The Petitioner through the present writ petition has 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. Thus, the writ petition being devoid of merit deserves to be and is accordingly dismissed.

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

Bhola

¹ AIR 1958 SC 923