

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPL No. 100 of 2012**

1. State Of Chhattisgarh, through the Secretary, Department of Water Resources, D.K.S. Bhawan, Mantralaya, Raipur, Chhattisgarh
2. The Sub-Divisional Officer, Balamdehi and Kantara Survey Sub Division Kasdol, Tahsil Kasdol, District Raipur Chhattisgarh (Now District Baloda Bazar-Bhatapara)

---- Petitioners**Versus**

Moolchand Sahu S/o Shri Santuram Sahu R/o Village Khapari, P.O. Pakariya (Jhulan), P.S. Pamgarh, District Janjgir-Champa, Chhattisgarh

---- Respondent

For Petitioners/State	:	Mr. S.P. Kale, Dy. A.G.
For Respondent	:	Mr. Vinod Deshmukh, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****07/02/2018**

1. Present is a writ petition under Article 226 of the Constitution of India preferred by the State Government assailing the award passed by the Labour Court No.2, Raipur, Chhattisgarh under the provisions of Industrial Dispute Act on 16.02.2012, in case No.28/2011/I.D.Act/ (Ref.).
2. Brief fact of the case is that the respondent in the instant case i.e. the worker was engaged by the petitioners as a daily wage employee in the year 1992, on which post he continued to work till 1995 and thereafter he was discontinued from service. The worker raised an Industrial Dispute Act challenging his illegal termination, which was referred by the State Government to the Labour Court for deciding the issue as to "whether the termination of service of the respondent Moolchand Sahu was legal and proper, if not, what direction could be issued to the employer-the petitioners?"

3. The Labour Court vide the impugned order decided the case in favour of the worker granting the relief of reinstatement without back-wages, it is this award, which is under challenge in the present writ petition. One of the grounds, which has been raised by the State Government in the instant case, is that of the reference being raised at a belated stage before the Labour Court and as such the Labour Court ought to have rejected the claim application on the ground of delay and laches.
4. It was further contended that the finding of the Labour Court is also bad in law for the reason that undisputedly the respondent was a daily wage worker, who does not have a substantial right to hold a post. That his engagement was on the availability of work and after each days of work, his services stood automatically discontinued. Therefore there cannot be a case of termination in respect of a daily wage worker.
5. Per contra, Mr. Deshmukh, Advocate appearing for the respondents opposing the petition submits that the plain reading of the impugned award itself would show that the finding of the Labour Court is in accordance with the evidence which have come on record and that there is no perversity in the finding of the Labour Court. Further, as regards the issue of delay, the counsel for the worker submits that no such issue was raised by the State Government before the Labour Court nor was any evidence led in this regard adduced by the State Government to substantiate the delay part. Moreover, according to the counsel for the worker on the date of dismissal of the petitioner so also when the dispute was raised, the Industrial Dispute Act did not have a period of limitation prescribed for raising a

dispute and this issue has been laid to rest by a catena of decisions of the Hon'ble Supreme Court starting from ***"Ajaib Singh vs. Sirhind Cooperative Marketing-cum-processing Service Society Limited and another"*** reported in ***(1999) 6 SCC 82*** up till ***(2010) 14 SCC 176*** i.e. in the case of ***"Kuldeep Singh vs. General Manager, Instrument Design Development and Facilities Centre and another"***. He submits that identical petitions filed against the identical award passed in respect of similarly placed worker have already been dismissed by this Court in two writ petitions i.e. WPL Nos. 98/2012 and 99/2012 on 05.03.2014 and of which in one of the cases, the department has already regularized to the said worker.

6. It was further contended by the counsel for the worker that the perusal of the award itself would show that the witness examined on behalf of the department, himself has accepted before the Labour Court that the worker involved in the dispute was working with the petitioners for a considerable period of time and that he had worked continuously for more than 240 days in a calendar year and the nature of work which was being performed by the respondent was still available with the petitioners.
7. In view of the same, the finding of the Labour Court becomes finding of fact and the same should not be interfered with by this Court and prayed for the rejection of the writ petition.
8. Having heard the contentions put forth on either side and on perusal of record, what is clearly reflected is that the issue of delay in raising of the dispute stands squarely covered by the judgment of the Hon'ble Supreme Court referred to in the preceding paragraphs in the case of Ajaib Singh (supra) so also in the case of Kuldeep Singh

(supra). Thus, the issue of delay cannot be agitated by the State Government in a petition under Article 226 of the Constitution of India for the first time. Moreover, the law also did not prescribe any period of limitation at the relevant point of time.

9. Further, so far as the merits part is concerned, once when we look into the evidence of the departmental witness-Mr. K.K. Mishra, the Sub-Divisional Officer, there appears to be a categorical admission on his part so far as the continuous employment of the respondent-worker is concerned.
10. In the given factual matrix of the case, if the Labour Court passes an order of reinstatement without back-wages, the same cannot be said to be either perverse or contrary to law, neither can the same be said to be erroneous.
11. It is settled position of law that under Article 226 this Court would not sit as an Appellate Court over an award passed by the Labour Court. This Court would only interfere with the finding of the Labour Court in the event, if there is an apparent perversity in the findings arrived at or in case, if there is any jurisdictional error committed by the Labour Court. In the instant case the petitioners have not been able to show any jurisdictional error on the part of the Labour Court, nor have they been able to establish any perversity in the finding. Thus, this Court does not find any strong case made out by the petitioners calling for an interference with the impugned award.
12. At this juncture, it would be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of **Harjinder Singh v. Punjab State Warehousing Corporation [2010 (3) SCC 192]** which is 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 vs. Workers of Gold Mines, AIR 1958 SC 928, para 10)”

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

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

13. What is also relevant at this juncture to note is that subsequent to the award passed by the Labour Court, the department has reinstated the respondent in the department and he continues to work with the department till date. On this ground also this Court is reluctant to interfere with the finding of reinstatement without back wages by the Labour Court.
14. The writ petition thus being devoid of merit deserves to be and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge