

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition No.3905 of 2003

(Arising out of order dated 22-9-2003 in Appeal No.615/M.P.I.R. Act/96 of the learned Industrial Court, Chhattisgarh, Raipur)

1. Managing Director, Bhilai Steel Plant, Bhilai.

2. Manager Sports, Bhilai Steel Plant, Bhilai.

---- Petitioners

Versus

1. President, State Industrial Court, Chhattisgarh, Raipur.

2. Presiding Officer, Labour Court, Durg.

3. Bhaskar Harpal, S/o Senapati, Rajiv Gandhi Nagar, Ward No.45, Raipur Naka, Durg.

---- Respondents

For Petitioners: Dr. N.K. Shukla, Senior Advocate with Mr. Vikram Sharma, Advocate.

For Respondents: None present.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

10/07/2018

1. The respondent employee filed an application under Section 31(3) read with Section 61 and 64 of the M.P. Industrial Relations Act, 1960 (for short, 'the Act of 1960') seeking relief that his termination is bad and he be reinstated along with back-wages which was opposed by the petitioner Bhilai Steel Plant. The learned Labour Court clearly held that respondent No.3 is employee within the meaning of Section 2(13) of the Act of 1960 and directed for reinstatement along with 70% back-wages which was affirmed by the Industrial Court in appeal against which this writ petition has been filed.

2. Dr. N.K. Shukla, learned Senior Counsel appearing for the petitioners, would submit that the impugned order is unsustainable and bad in law, as respondent No.3 has failed to prove that he is employee within the meaning of Section 2(13) of the Act of 1960.
3. None present for respondent No.3.
4. I have heard learned counsel for the petitioners and went through the record with utmost circumspection.
5. The Labour Court has clearly recorded a finding that respondent No.3 comes within the meaning of employee under Section 2(13) of the Act of 1960 and he was found to be working as a Ground-man in Sport Department of Bhilai Steel Plant which has been affirmed by the Industrial Court. Concurrent findings recorded by the two courts below are based on material available on record. It is neither perverse nor contrary to record. I do not find any merit in the writ petition.
6. Next question is of back-wages. Back-wages to the extent of 70% awarded by the Labour Court has been affirmed by the Industrial Court.
7. Respondent No.3 though averred in the application that he was not gainfully employed, but has not brought any material on record to hold that during the period in question, he was not gainfully employed anywhere. The normal rule is a workman whose service has been illegally terminated would be entitled to full back-wages except to the extent during the enforced idleness. (See M/s. Hindustan Tin Works Pvt. Ltd. v. The Employees of M/s. Hindustan Tin Works Pvt. Ltd. and others¹.) Thereafter, in the

1 (1979) 2 SCC 80

matter of M/s. Reetu Marbles v. Prabhakant Shukla², Their Lordships of the Supreme Court have emphasized the need for enquiry/material with regard to gainful employment before directing full back-wages particularly when the order is being modified and Their Lordships awarded only 50% of back-wages from the date of termination of service till reinstatement. Following the law laid down in this regard and considering the facts and circumstances of the case, I deem it appropriate to award only 50% back-wages to respondent No.3 from the date of termination till he is reinstated in service, however, he will be entitled for other service benefits as per law.

8. Therefore, in the light of the aforesaid decisions of the Supreme Court, back-wages awarded to respondent No.3 is modified to 50%.
9. The writ petition is partly allowed only to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma