

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**Writ Petition (L) No.4870 of 2007**

Joginder Singh S/o Surajram, R/o Post Mawlipara, Tehsil Narharpur,
District Kanker (CG).

----Petitioner

Versus

Divisional Forest Officer (General), Kondagaon, District Bastar (CG).

---- Respondent

Writ Petition (L) No.4868 of 2007

Satyanarayan S/o Maniram Bhardwaj, R/o Post Vishrampuri, Tahsil
Keshkal, District Bastar (CG).

----Petitioner

Versus

Divisional Forest Officer (General), North Forest Division,
Kondagaon, District Bastar (CG).

---- Respondent

Writ Petition (L) No.4869 of 2007

Girdhar Pandey, S/o Shivanand Pandey, R/o village Surdonger, Post
Keshkal, District Bastar (CG).

----Petitioner

Versus

Divisional Forest Officer (General), Kondagaon, District Bastar (CG).

---- Respondent

Writ Petition (L) No.4853 of 2007

Ghanshyam S/o Chatur Yadav, R/o Post and Tahsil Keshkal, District
Bastar (CG).

---Petitioner

Versus

Divisional Forest Officer (General), North Forest Division,
Kondagaon, District Bastar (CG).

---- Respondent

For Petitioners	:	Shri HB Agrawal, Sr. Advocate along with Shri Pankaj Agrawal, Advocate.
For State	:	Shri SP Kale, Dy. Advocate General.

SB: Hon'ble Shri Justice P. Sam Koshy**Order on Board**

24.01.2018

1. These are four writ petitions assailing the separate award passed on 30.04.2007 by the Labour Court, Jagdalpur, in Civil Case Nos.11/ID (Ref.)/04, 10/ID (Ref.)/04, 26/ID (Ref.)/04 and 03/ID (Ref.)/04 respectively.
2. The brief facts of the case is that, the State Govt. had made a reference to the Labour Court in the year, 2004 under the provisions of Industrial Disputes Act, 1947, for adjudication of the terms of the reference. This court, for convenient sake, reproduce the terms of reference in one of the leading case i.e. Writ Petition (L) No.4870 of 2007, where the terms of reference was as under :

“Whether the termination of service of Joginder Singh S/o Surajmal was legal and proper? If not, to what relief he is entitled for, and what directions should be issued to the employer in this regard.”

Similar terms of reference were also made in other cases also.

3. The parties to the dispute i.e. workmen and the department entered into before the Labour Court and submitted their respective statement of claim and written statements. The Labour Court vide the impugned award answered the terms of reference in the affirmative holding the termination of services was legal and proper and that the workers involved in the dispute were not entitled for any relief. It is these awards which are under challenge in these petitions.
4. The contention of counsel for the petitioners are that, the finding of Labour court is perverse and is in contravention to the provisions of the Industrial Disputes Act. In all these cases, before termination of the service of the workmen, the department has not taken

appropriate steps as they were supposed to take under the Act inasmuch as no notice have been issued, neither is there any compensation in lieu of notice period or any retrenchment compensation paid to the workers. It was further submitted by the petitioners that even otherwise the workers involved in the case had moved notice to admit document vide Ex. P/5 before the Labour Court which also was rejected by the Labour Court which was not proper. On the contrary, the Labour Court should have taken an adverse inference against the department and should have held that the employment part of the workers stood proved, so also the mandatory statutory requirement under Chapter-V was not complied with, therefore the relief of reinstatement with full back wages ought to have been awarded.

5. On the other hand, Shri SP Kale, learned Deputy Advocate General appearing for the State opposing the petitions submits that it is a well reasoned award passed by the Labour Court and there is no scope of any interference. He further submits that it is a case where there was a specific denial of the State at the first instance itself that the workers have not worked continuously for 240 days in a calender year. The workers have not led any cogent evidence before the Labour Court to substantiate the employment, much less continuous employment of 240 days. Further, the State counsel also drew the attention of the court to the findings of the Labour Court where the witnesses of the State Govt. has stated that the workers were given notice before discontinuance and that they were also paid gratuity

amount at the time of discontinuance. Thus, for all these reasons, the findings of the Labour Court seems to be fair and reasonable and does not warrant any interference.

6. Undoubtedly, these are petitions under Article 226/227 of the Constitution of India. It is well settled law that this court in exercise of its writ jurisdiction would not sit as an appellate authority to the award passed by the Labour Court. This court would not conduct a roving inquiry or would go threadbare into the evidence which have come on record. This court would in exercise of writ jurisdiction try to find whether there has been any perverse finding arrived at by the Labour Court while passing the award or the order is in blatant contravention to the legal position, as also whether there was any jurisdictional error on the part of the Labour Court in deciding the matters.
7. All the arguments which have been stressed upon by the counsel for the petitioners are all findings of fact which have been duly dealt with by the Labour Court while deciding the matters. The another hard fact which cannot be lost sight of is the fact that the workers in dispute have admitted of they being daily wage workers engaged by the State Govt. The status of daily wage employee has been elaborately discussed by the Supreme Court in case of Secretary, State of Karnataka and Ors. Vs. Umadevi (3) and Others, 2006(4) SCC-1.
8. It is a settled position of law that a daily wager as such would not have any substantive right, particularly when their initial appointment itself is in contravention to the recruitment rules, much less, the constitutional scheme of the State Govt.. In the instant case, most of

the workers claimed themselves to be working as either Barrier Assistant, Assistant Clerk-cum-Chowkidar or Wireless Operator. These are the posts which are available in the cadre and where there is specific recruitment rules available for recruitment to be made on these posts. All these factors were not kept in mind while the petitioners were engaged on the said posts. The witness of department has stated that the workers were engaged as and when work was available and that they were never appointed against sanctioned vacant posts of Barrier Assistant, Assistant Clerk-cum-Chowkidar or Wireless Operator.

9. Given the aforesaid facts and circumstances of the case and also the fact that the workers involved in dispute have not been able to produce before the Labour Court any sufficient cogent evidence to establish their claim, this court is of the opinion that no strong case is made out for interference with the impugned awards.
10. Thus, all the writ petitions deserve to be and are accordingly rejected.

Sd/-
(P.Sam Koshy)
Judge