

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (L) No. 7096 of 2011**

State of Chhattisgarh, Through: the Executive Engineer, Public Works Department, Khairagarh, District Rajnandgaon, Chhattisgarh

Represented through : Shri H.R. Dhruw, aged about 48 years, S/o. Shri Dhruw, presently posted as Executive Engineer, Public Works Department, Khairagarh, District Rajnandgaon (CG) and OIC of the case for petitioner/State

---- Petitioner

Versus

Duwasram, S/o Sukhram, aged about 23 years, R/o. Village Chindari, Post Chuikhadan Tahsil Chuikhadan, District Rajnandgaon (CG), R/o. C/o. Through Shri Navjeet Kumar Raman, Advocate, 25/12, Nehru Nagar (West) Bhilai, District Durg (CG)

---- Respondent

And**Writ Petition (L) No. 7347 of 2011**

State of Chhattisgarh, Through: the Executive Engineer, Public Works Department, Khairagarh, District Rajnandgaon, Chhattisgarh

Represented through : Shri H.R. Dhruw, aged about 48 years, S/o. Shri Dhruw, presently posted as Executive Engineer, Public Works Department, Khairagarh, District Rajnandgaon (CG) and OIC of the case for petitioner/State

---- Petitioner

Versus

Suresh, S/o Sukhram, R/o. Village Chindari, Post Chuikhadan Tahsil Chuikhadan, District Rajnandgaon (CG), R/o. C/o. Through Shri Navjeet Kumar Raman, Advocate, 25/12, Nehru Nagar (West) Bhilai, District Durg (CG)

---- Respondent

For Petitioner/State	: Mr.P.K.Bhaduri, Govt.Advocate
For Respondents	: Mr.Basant Dewangan, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

01/08/2018

1. This batch of writ petitions is directed against the award passed by the Labour Court directing reinstatement along with 50% back-wages and further directing regularisation of the respondents/workmen, which has been affirmed by the Industrial Court.

2. Mr. P.K.Bhaduri, Learned Government Advocate appearing for the petitioner/State, in this batch of writ petitions, would submit that order directing reinstatement and regularization is bad and unsustainable in law.

3. Mr. Basant Dewangan, learned counsel appearing for the respondents, would support the impugned order.

4. I have heard learned counsel appearing for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.

5. At this stage, it would be appropriate to notice Section 25-B, 25-F & 25-G of the Industrial Disputes Act, 1947 (henceforth "ID Act, 1947"), which state as under:-

"25-B. Definition of continuous service.- For the purpose of this chapter.-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or

a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period or twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case."

25-F. Condition precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the

appropriate Government [or such authority as may be specified by the appropriate Government by notification in the official Gazette].

25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

6. Onus to prove 240 days' continuous service, lies on workman
(See *State of M.P. Vs. Arjunlal Rajak*¹).

7. Burden to prove that workman worked for continuous period of 240 days in a year lies on the workman so as to entitle him to benefit of Section 25-F of the ID Act, 1947 (See *Krishna Bhagya Jal Nigam Ltd. v. Mohd. Rafi*²).

8. The Supreme Court in the matter of State of Punjab Vs. Bhag Singh³ has held as under:-

“6. Even in respect of administrative orders, Lord Denning, M.R. in *Breen v. Amalgamated Engg. Union*⁴ observed: The giving of reasons is one of the fundamentals of good administration.” In *Alexander Machinery (Dudley Ltd. v. Crabtree*⁵ it was observed: “Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision -taker to the controversy in question and the decision or conclusion arrived at.” Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the “inscrutable face of the sphinx”, it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reasons is an indispensable

1 (2006) 2 SCC 711

2 (2006) 9 SCC 697

3 (2004) 1 SCC 547

4 (1971) 1 All ER 1148

5 1974 ICR 120 (NIRC)

part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other word, a speaking-out. The “inscrutable fact of a sphinx” is ordinarily incongruous with a judicial or quasi-judicial performance.”

9. Very recently, the Supreme Court in the matter of **Mohd. Ali v. State of H.P. and others**⁶ dealing the similar issue emphasized the need for working 240 days in one calendar year preceding the date of termination held as under:-

“9. It is a well known fact that the Industrial Disputes Act is a welfare legislation. The intention behind the enactment of this Act was to protect the employees from arbitrary retrenchments. For this reason only, in a case of retrenchment of an employee who has worked for a year or more, Section 25F provides a safeguard in the form of giving one month’s prior notice indicating the reasons for retrenchment to the employee and also provides for wages for the period of notice. Section 25B of the Act provides that when a person can be said to have worked for one year and the very reading of the said provisions makes it clear that if a person has worked for a period of 240 days in the last preceding year, he is deemed to have worked for a year. The theory of 240 days for continuous service is that a workman is deemed to be in continuous service for a period of one year, if he, during the period of twelve calendar months preceding the date of retrenchment has actually worked under the employer for not less than 240 days.

12. Further, it is an admitted position that though the appellant worked as such till 1991 under different work/schemes i.e. Rabi and Kharif and completed 240 days in a calendar year only during the years 1980, 1981, 1982 and 1986 to 1989 but he worked only for 195 days in the year

6 2018(5) SCALE 717

1990 and 19.5 days in the immediate preceding year of his dismissal which is below the required 240 days of working in the period of 12 calendar months preceding the date of dismissal, therefore, he is not entitled to take the benefits of the provisions of Section 25F of the Act and Division Bench of the High Court was right in dismissing the appeal of the present appellant. ”

10. The Labour Court has clearly recorded a finding that the respondent/workman has worked for continuous period of 240 days in one calendar year preceding the date of termination, which is finding of fact based on material available on record. I do not find any illegality or perversity in the said part of order.

11. So far as order directing regularisation is concerned, Mr.Bhaduri would rely upon the judgment of the Supreme Court in the matter of **Secretary, State of Karnataka and others v. Umadevi (3) and others**⁷ and submit that the Labour Court has no jurisdiction to direct regularisation when the workman has not been appointed in accordance with the constitutional scheme. Therefore, order directing regularisation deserves to be quashed.

12. The Supreme Court in **State of Karnataka** (supra) has clearly held that daily wagers have no fundamental right to be absorbed in service as they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution of India. The decision in **State of Karnataka** (supra) has been followed recently by the Supreme Court in the matter of

⁷ (2006) 4 SCC 1

State of Tamil Nadu Through Secretary to Government, Commercial Taxes and Registration Department, Secretariat and another v. A. Singamuthu⁸ in which in paragraph 15, Their Lordships of the Supreme Court observed as under: -

“15. In a similar issue, concerning part-time sweepers, the State of Tamil Nadu has filed an appeal before this Court, and those appeals were allowed by this Court by judgment dated 21-2-2014 in School Education Deptt., State of T.N. v. R. Govindaswamy. After referring to various judgments on this issue, in paras 5 to 7, this Court held as under: (SCC pp. 770-71)

“5. The issue involved here remains restricted as to whether the services of the part-time sweepers could have been directed by the High Court to be regularised. There is no more *res integra*.

6. In *State of Karnataka v. Umadevi* (3) (*supra*) this Court held as under: (SCC p.40, para 48)

'48. ... There is no fundamental right in those who have been employed on daily-wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily-wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules.'

7. In *Union of India v. A.S. Pillai*⁹ this Court dealt with the issue of regularisation of part-time employees and the Court refused the relief on the ground that part-timers are free to get themselves engaged elsewhere and they are not restrained from working elsewhere when they are not working for the authority/employer. Being the part-time employees, they are not subject to service rules or other regulations which govern and control the regularly appointed staff of the department. Therefore, the question of giving them equal pay for equal work or considering their case for regularisation would not arise.”

13. Admittedly, the respondent's appointment is not in accordance with the constitutional scheme by regular advertisement and he is merely a daily-wager who has been directed to be regularised by the Labour Court. The order of the Labour Court runs contrary to the decision of the Supreme Court in **State of Karnataka** (supra) followed in **A. Singamuthu's** case (supra).

14. In view of above-stated legal position, the writ petitions are allowed in part. Order directing regularisation is set aside, whereas order directing reinstatement along with 50% back-wages is affirmed. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-