

HIGH COURT OF CHHATTISGARH AT BILASPURWPL No. 7692 of 2007

Chhattisgarh State Civil Supplies Corporation Limited, Through its District Manager, Civil Supplies Corporation Office, Subhash chowk, Akaltara Road, Janjgir, District Janjgir Champa (C.G.).

---Petitioner

Versus

1. Labour Court, through its Presiding Officer under Industrial Disputes Act, Bilaspur (C.G.).
2. Omprakash Sharma S/o Ganpat Ram Sharma, aged about 40 years, Ex.Chowkidar, Civil Supplies Corporation, R/o Netaji Chowk, Janjgir, District Janjgir-Champa (C.G.).

---Respondents

For petitioner	:	Shri V.R.Tiwari, Advocate.
For respondent No.2	:	Shri Himanshu Kumar Sharma on behalf of Shri Shailendra Dubey, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

05/02/2018

1. Present Writ Petition under Article 226-227 of the Constitution of India has been filed assailing the award dated 29/08/2007, annexure-P/1, passed by the learned Labour Court, Bilaspur in case No.07/I.D.A.2005 (Ref.).
2. Vide the said impugned award, the Tribunal has granted relief to the respondent No.1 of reinstatement in service.
3. The contention of the counsel for the petitioner assailing the impugned award is that, the learned Labour Court has erred in as much as not appreciating the fact that, the status of the respondent was that of a daily wage worker and as such he would not have any substantial right on the

said post and therefore the order of reinstatement is bad in law. He further contended that, it is a case where the daily wage employee were engaged as and when there was availability of work and the moment the availability of work was over, the nature of engagement also stood automatically discontinued. It was further contended that, the worker involved in the instant case have not been able to establish before the Labour Court that, he has worked with the petitioner for a continuous period of more than 240 days in a calender year so as to establish his claim under chapter 5 of the Industrial Dispute Act (In short "ID Act"). Lastly it was contended that, given the factual matrix of the case considering the status of the respondent to be that of a daily wage worker and that he being in employment only by virtue of compliance under Section 17-B of ID Act, this Court may consider grant of compensation in view of the reinstatement to the respondent.

4. The counsel for the respondent however opposing the appeal submits that, there is no merits whatsoever in the Writ Petition. He contended that, the learned Labour Court as such has passed a well speaking order taking into consideration the entire evidence which have come on record. He further contended that, since, the finding of the Labour Court is based on the evidence which have come on record, it amounts to a finding of facts and finding of facts may not be interfered lightly by this Court under Article 226 of the Constitution of India. He further submits that, there is nothing on record produced by the petitioner to show that, the finding of the Labour Court was either perverse or contrary to the evidence and therefore the petition being devoid of merits deserves to be rejected.

5. Having heard the contentions put forth on either side and on perusal of record what is relevant at this juncture to take note is that, vide order dated 29/12/2005, the State Government had made the following reference for adjudication before the learned Labour Court, Bilaspur :-

“Whether the termination of service of Omprakash Sharma was legal and valid? If not, to what relief he is entitled for and what directions can be given to the respondent in this regard?”

6. The said terms of reference was registered as case No.07/I.D.A.2005(Ref.) and the worker involved in the instant case namely Omprakash Sharma got himself examined who had specifically pleaded and given the evidence stating that, he was engaged by the petitioner corporation in November-1997 as a daily wage worker and he was asked to discharge the work of Choukidaar. He continued to work on the said post till 31/12/2003. It was also pleaded and deposed by the worker before the Labour Court that, the services of the respondent stood discontinued with effect from 01/01/2004 onwards that is when, the dispute was raised and the reference was made to the Labour Court.

7. So far as the witness on behalf of the petitioner corporation is concerned, initially they had filed an affidavit under order 18 Rule 4 CPC of one R.B.Shukla, District Manager, District Janjgir-Champa, but the said witness could not be cross examined on account of his getting transferred and therefore he has not appeared as a witness before the Labour Court. Subsequently, the management of the petitioner corporation got examined

another witness namely Bacchulal Dewangan, Assistant Manager of the corporation based at Raigarh.

8. Perusal of the evidence of Bacchulal Dewangan, the witness of the petitioner corporation, it has been specifically admitted by the said witness of the engagement of the respondent as a Choukidaar on daily wage basis. Further in his cross examination the said witness has also admitted the discontinuance of service of the respondent/employee. The provision of Section 5 of the ID Act has not been complied with. He admits that, neither any notice was issued in respect of retrenchment nor any compensation paid to the respondent.

9. From the aforesaid factual matrix of the case what admittedly stands proved before the Labour Court is the initial engagement of the respondent as a daily wage worker in 1997 who continued to work till 31/12/2003. Further what also stands established is that before discontinuance of service, there was no compensation paid to the worker, neither was he issued with any notice or wages paid to him in lieu of notice.

10. It is by now well settled principle of law that, in case where the worker has proved himself by leading sufficient evidence of having worked for 240 days and the subsequent discontinuance without paying compensation or notice being served would amount to an illegal termination. It would also be a case of violation of provision of Section 25-F of the ID Act. Under both the circumstances, the natural consequence is the termination being declared illegal and the worker being entitled for the relief of reinstatement in service.

11. In the instant case, the worker was discontinued with effect from 01/01/2004 and he immediately raised the industrial dispute for which the terms and order of reference was made in 2005 and finally the impugned award was passed as early as on 29/08/2007. The petitioner corporation had immediately reinstated the respondent towards compliance under Section 17-B while filing the present Writ Petition. Since 2007, the worker is working with the petitioner corporation and he continues to work even today. As such after the order of the Labour Court, the worker herein i.e. the respondent has put in about 10 years of continuous service.

12. Given the facts and circumstances of the case so also keeping in view the observations of the Hon'ble Supreme Court in the case of **Harjinder Singh Vs. Punjab State Warehousing Corporation [2010 AIR SCW 1357]** wherein the Supreme Court in paragraph 17 has held as under:-

“17. 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 other similar 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 “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. Worker of Gold Mines*, AIR 1958 SC 923.”

13. In the landmark judgment of the Supreme Court in the case of **Surya Dev Rai Vs. Ram Chander Rai and others** [2003 AIR SCW 3872], this Court while concluding the following observation, the relevant portion of the conclusion so far as the present case is concerned is reproduced herein under:

“While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.”

14. Similar view has further being taken by the Supreme Court in the case of **Anoop Sharma Vs. Executive Engineer, Public Health Division No.1, Panipat (Haryana) [2010 5 SCC 497]** wherein again the Supreme Court in paragraph 17 and 18 has held as under:

“17. This Court has repeatedly held that Sections 25-F(a) and (b) of the Act are mandatory and non-compliance therewith renders the retrenchment of an employee nullity - State of Bombay v. Hospital Mazdoor Sabha [AIR 1960 SC 610], Bombay Union of Journalists v. State of Bombay [AIR 1964 SC 1617 : 1964 6 SCR 22], SBI v. N.Sundara Money [1976 1 SCC 822 : 1976 SCC (L&S) 132], Santosh Gupta v. State Bank of Patiala [1980 3 SCC 340 : 1980 SCC (L&S) 409], Mohan Lal v. Bharat Electronics Ltd. [1981 3 SCC 225 : 1981 SCC (L&S) 478], L.Robert D'Souza v. Southern Railway [1982 1 SCC 645 : 1982 SCC (L&S) 124], Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court [1980 4 SCC 443 : 1981 SCC (L&S) 16], Gammon India Ltd. v. Niranjana Dass [1984 1 SCC 509 : 1984 SCC (L&S) 144], Gurmail Singh v. State of Punjab [1991 1 SCC 189 : 1991 SCC (L&S) 147] and Pramod Jha v. State of Bihar [2003 4 SCC (L&S) 545].

18. This Court has used different expressions for describing the consequence of terminating a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25-F of the

Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometimes as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Sections 25-F(a) and (b) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his service was not terminated.”

15. In view of the aforesaid authoritative decisions of the Supreme Court, this Court has no hesitation in reaching to the conclusion that, in the instant case also, the petitioner corporation have not complied with the mandatory requirement as required under chapter 5 of the ID Act, more particularly, under Section 25-F of the ID Act, in the absence of which the discontinuance of the respondent from employment would amount to be declared as illegal and it would also amount to illegal termination and the natural consequence of which would be reinstatement in service.

16. Under the circumstances, this Court does not find any strong case made out by the counsel for the petitioner corporation calling for an interference with the impugned award so also with the finding of the Labour Court on the ground that, subsequent to the award having being passed, the worker has been reinstated and he has been working with the petitioner corporation for about 10 years.

17. The Writ Petition thus fails deserves to be and is accordingly rejected.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit