

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION (L) NO. 6361 OF 2010**

Ayodhaya, aged 45 years, S/o Rupelal, R/o Village Lafinkhurd, District Mahasamund.

... Petitioner

versus

1. Engineer-in-Chief, Mahanadi Godawari Basin, Raipur.
2. Executive Engineer, Kodar Project, Mahasamund.
3. Sub Divisional Officer, Kodar Canal, Mahasamund.

... Respondents

WRIT PETITION (L) NO. 6613 OF 2010

Beldeo Ram Sahu, aged 50 years, S/o Ramu, Gram Bhaleshar, Post Kanekera, District Mahasamund.

... Petitioner

versus

1. Engineer-in-Chief, Mahanadi Gowari Basin, Raipur.
2. Executive Engineer, Kodar Project, Mahasamund.
3. Sub Divisional Officer, Kodar Canal, Mahasamund.
4. Labour Court Under Industrial Disputes Act, 1947, Anand Nagar, Raipur.

... Respondents

WRIT PETITION (L) NO. 6364 OF 2010

Sukhram, aged 39 years, S/o Shri Baisakhu, R/o Village & Post Bamhani, Tah. & Distt. Mahasamund.

... Petitioner

versus

1. Engineer-in-Chief, Mahanadi Godawari Basin, Raipur.
2. Executive Engineer, Kodar Project, Mahasamund.
3. Sub Divisional Officer, Kodar Canal, Mahasamund.

... Respondents

WRIT PETITION (L) NO. 6363 OF 2010

Makhan, age 45 years, S/o Shri Latel Ram, R/o Village- Lafinkhurd, District Mahasamund.

... Petitioner

versus

1. Engineer-in-Chief, Mahanadi Godawari Basin, Raipur.
2. Executive Engineer, Kodar Project, Mahasamund.
3. Sub Divisional Officer, Kodar Canal, Mahasamund.

... Respondents

WRIT PETITION (L) NO. 6616 OF 2010

Ashok Kumar Sinha, aged 39 years, S/o Punitram Sinha, R/o Village Bhaleshar, Post, Tah. & Distt. Mahasamund.

... Petitioner

versus

1. Engineer-in-Chief, Mahanadi Godawari Basin, Raipur.
2. Executive Engineer, Kodar Project, Mahasamund.
3. Sub Divisional Officer, Kodar Canal, Mahasamund.

4. Labour Court under Industrial Disputes Act, 1947, Anand Nagar, Raipur.

... Respondents

WRIT PETITION (L) NO. 6615 OF 2010

Ashok Kumar Sahu, aged 45 years, S/o Khubiram, R/o Village Lafinkhurd, Tah. & Distt. Mahasamund.

... Petitioner

versus

1. Engineer-in-Chief, Mahanadi Godawari Basin, Raipur.
2. Executive Engineer, Kodar Project, Mahasamund.
3. Sub Divisional Officer, Kodar Canal, Mahasamund.
4. Labour Court under Industrial Disputes Act, 1947, Anand Nagar, Raipur.

... Respondents

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- Mr. Sudeep Johari, Advocate, for the Petitioners.
 - Mr. Gary Mukhopadhyay, Government Advocate, for the Respondents.
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Hon'ble Shri Justice P. Sam Koshy

Order on Board

12/01/2018

1. These are six writ petitions filed by the respective petitioners assailing the award passed by the Labour Court, Raipur. For convenience sake, particulars of the case/award is being shown in the table given below:

S.L.	WPL No.	Parties Name	Award	Reference Case No.
1	6361/2010	Ayodhaya Vs. Engineer-in-Chief & Others	4.3.2009	21/2004/I.D.Act/Ref.
2	6613/2010	Beldeo Ram Sahu Vs. Engineer-in-Chief & Others	6.5.2009	A-19/2004/I.D.Act/Ref.
3	6364/2010	Sukhram Vs. Engineer-in-Chief & Others	12.3.2009	17/2004(I.D.Act/Ref.
4	6363/2010	Makhan Vs. Engineer-in-Chief & Others	12.3.2009	42/2005/I.D.Act/Ref.
5	6616/2010	Ashok Kumar Sinha Vs. Engineer-in-Chief & Others	6.5.2009	A-20/2004/I.D.Act/Ref.
6	6615/2010	Ashok Kumar Sahu Vs. Engineer-in-Chief & Others	4.3.2009	Cat.I/18/2004/I.D.Act/Ref.

2. Vide the order of reference, in June-August, 2004, the office of the Labour Commissioner, State of Chhattisgarh, had made a reference to the Labour Court, Raipur for adjudication of dispute on the following two terms of reference:

“1. Whether the dispute raised after 7 years from the date of termination of services is maintainable?

2. If yes, then whether the termination of services of the respective workers was legal and proper? If not, to what relief they are entitled for?”

3. Brief facts relevant for adjudication of the case are that the workers involved in the instant case were working as a daily wage worker in the Water Resources Department of the State of Chhattisgarh in Kodar Project at Mahasamund. It is said that these workers were working on daily wage basis between 1985 to 1995 when abruptly without any intimation, notice, show cause or compensation or salary in lieu of notice, their services were discontinued. It was the contentions of the petitioner-workers in their statement of claim that they were paid an amount of Rs.549/- per month when they were discontinued from service.

4. Each of the references were registered as an independent reference before the Labour Court and where the Court proceeded to decide the case on merits. Each of the workers filed their respective statement of claim stating that they had put in about 10 years of continuous service and that they had worked for more than 240 days in a calendar year but the authorities concerned abruptly in the year 1995 discontinued their services. It was further contended that before discontinuance of service, the petitioner-workers have not been paid any compensation whatsoever neither were they issued with any notice or salary in lieu of notice. It was also their contention that discontinuance of service is in contravention to the provisions of Chapter-V of the Industrial Disputes Act inasmuch as they were entitled for retrenchment compensation before being discontinued from services and as such there is a clear violation of Section 25-F of the Industrial Disputes Act.

5. Respondents *i.e.* the second party before the Labour Court also filed their respective written statement denying the contentions of the workers in the statement of claim and it was the specific averment by the respondents before the Labour Court that the petitioner-workers had never worked continuously and they were only engaged as and when there was availability of work and their substantive status was that of a daily wage worker. It was the specific plea of the respondents that the moment there was non-availability of work, the services of the petitioners stood automatically discontinued.

6. The Labour Court after considering the evidence which were on record finally vide impugned award in each of the cases has answered the reference no.2 against the workers, holding that since it has not been conclusively established by the workers that they had worked continuously for a period of 240 days in a calendar year, discontinuance of their services would not amount to illegal termination, and the reference was thus rejected. However, reference no.1 as regards the issue of whether the dispute could be raised after seven years from the date of termination, the same was answered in the affirmative holding that it could be raised.

7. It is this award which is under challenge in the present writ petitions.

8. Contention of the learned counsel for the petitioner-workers is that the petitioners have led sufficient evidence before the Court below by recording the statement of each of the workers categorically stating that they have put in about 10 years of services from 1985 to 1995 and thus it clearly reflects that they had put in more than 240 days work in a calendar year which would make them entitled for the benefits which they were otherwise entitled for under Chapter-V of the Industrial Disputes Act before removal.

9. Learned counsel for the petitioner-workers referring to the evidence of the workers submits that the statement of the workers itself proves that they had worked continuously for 240 days and there is also no substantive proof produced by the management to disprove the contentions of the workers and thus non-granting of proper compensation at the time of discontinuance of services amounts to illegal termination and the workers are thus entitled for reinstatement with consequential relief.

10. In support of his contentions, learned counsel for the petitioners has relied upon the following decisions:

1. *R. M. Yellati v. Assistant Executive Engineer*, 2006 Lab. I.C. 143.
2. *State of Haryana v. Dilbagh Singh*, 2006 Lab. I.C. 4283.
3. *Director, Fisheries Terminal Department v. Bhikubhai Meghajibhai Chavda*, 2010 (1) SCC 47.
4. *Ramesh Kumar v. State of Haryana*, 2010 (2) SCC 543.
5. *Harjinder Singh v. Punjab State Warehousing Corporation*, 2010 (3) SCC 192.
6. *Anoop Sharma v. Executive Engineer, Public Health Division No.1, Panipat (Haryana)*, 2010 (5) SCC 497.
7. *Ajaypal Singh v. Haryana Warehousing Corporation*, 2015 (6) SCC 321.
8. *Correspondent, Anaikar Oriental (Arabic) Higher Secondary School & Anr. v. A. Haroon & Anr.*, 2017 (2) SCC 510.

11. Learned counsel for the State however submits that it is a case where the workers have miserably failed before the Labour Court to establish their case entitling them for any relief. He submits that it is a case where firstly there was a huge unexplained delay in raising of the dispute and secondly the substantive status of the workers was of a daily wage worker and therefore the finding of the Labour Court does not warrant any interference. He further submits that it is a case where the petitioners have not established the fact that they had worked continuously before discontinuance of their services for a period of 240 days under the respondents, and thus prayed for the rejection of the writ petitions. He has also relied upon a decision of the Hon'ble Supreme Court in the case of

Bhavnagar Municipal Corporation & Anr. v. Jadeja Govubha Chhanubha & Anr., 2014 (16) SCC 130.

12. Having considered the contentions put forth on either side and on perusal of records, what clearly reflects is that the workers involved in the case in their respective statement of claim have specifically pleaded of having worked as daily wage workers between 1985 to 1995. That the State Government on the other hand in their written statement has admitted the fact that as and when there was requirement of work, the workers involved were engaged by them though there is a denial to the continuous employment of the workers between 1985 to 1995. Likewise, again in the evidence which has been given by the respective workers before the Tribunal, they have categorically reiterated the stand that they have taken in their statement of claim and the period during which they had worked and in each of the cases the workers have categorically stated of having worked continuously for a considerable period of time and in most of the cases it is about 10 years time.

13. At the same time, when we look into the evidence led by the State authorities *i.e.* the witness on behalf of the respondents, again it would reflect that there is no dispute so far as the engagement of these workers as daily wage workers and from the records it also appears that they were in periodical engagement with the respondents. The witness has also accepted the fact that before discontinuance, the department did not take any steps for payment of retrenchment compensation nor was any notice given before discontinuing their services.

14. Further, from the documents enclosed with the writ petition particularly which have been obtained under the Right to Information Act, reveal the engagement of these workers and the period during which they had worked and from the evidence of the department it also reveals that

the witness of the department had produced the muster-roll only of a certain period and the other muster-rolls for the entire period for reasons best known were not produced but he has admitted the fact of employment of these workers between 1982 to 1995 the same cannot be ascertained without looking into the records, which by itself means that he has not looked into the records before coming to lead evidence and his deposition was confined to the limited records that he had brought with him. Thus, an adverse inference has to be drawn from the said evidence of the department.

15. If we read the entire evidence of the departmental witness we can safely reach to the conclusion that these workers were engaged at the Kodar project and all of them had worked between 1982 to 1995, the periods being different in the case of each of the workers. It is also proved that no retrenchment compensation was paid to any of these workers neither was any notice given to these workers before discontinuance of their services.

16. The Hon'ble Supreme Court in the case of **Ajaypal Singh v. Haryana Warehousing Corporation, 2015 (6) SCC 321**, in paragraph 19, has held as follows:

“19. Section 25-F of the Industrial Disputes Act, 1947 stipulates conditions precedent to retrenchment of workmen. A workman employed in any industry who has been in continuous service for not less than one year under an employer is entitled to benefit under the said provision if the employer retrenches the workman. Such a workman cannot be retrenched until he/she is 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 apart from 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. It also mandates the employer to serve a notice in the prescribed manner on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette. If any part of the provisions of Section 25-F is violated and the employer thereby, resorts to unfair trade practice with the object to deprive the workman with the privilege as provided under the Act, the employer cannot justify such an action by taking a plea that the initial appointment of the

employee was in violation of Articles 14 and 16 of the constitution of India.”

17. In the case of **R.M. Yellati v. Assistant Executive Engineer, 2006**

(1) SCC 106, so far as the recourse of the daily wage workers is concerned, in paragraph 19, the Hon'ble Supreme Court had made the following observations:

“**19.** Before concluding, we would like to make an observation with regard to cases concerning retrenchment/termination of services of daily waged earners, particularly those who are appointed to work in Government departments. Daily waged earners are not regular employees. They are not given letters of appointments. They are not given letters of termination. They are not given any written document which they could produce as proof of receipt of wages. Their muster rolls are maintained in loose sheets. Even in cases, where registers are maintained by the Government departments, the officers/clerks making entries do not put their signatures. Even where signatures of clerks appear, the entries are not countersigned or certified by the appointing authorities. In such cases, we are of the view that the State Governments should take steps to maintain proper records of the services rendered by the daily wagers; that these records should be signed by the competent designated officers and that at the time of termination, the concerned designated officers should give certificates of the number of days which the labourer/daily wager has worked. This system will obviate litigations and pecuniary liability for the Government.”

18. In the light of the aforesaid observations, if we look into the evidence of the department it clearly reflects that the officers of the department have not produced the entire records to establish that there was a break in service and, under the circumstances, an adverse inference has to be drawn.

19. The Hon'ble Supreme Court in the case of **Anoop Sharma v. Executive Engineer, Public Health Division, Haryana, 2010 (5) SCC 497**, in paragraph 18, has held as under:

“**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 Section 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.”

Again in paragraph 22 in the said judgment it has been held that:

“**22.** If the workman is retrenched by an oral order or communication or he is simply asked not to come for duty, the employer will be required to lead tangible and substantive evidence to prove compliance of clauses (a) and (b) of Section 25-F of the Act.”

20. Again in **2010 (1) SCC 47** in the case of **Director, Fisheries Terminal Department v. Bhikubhai Meghajibhai Chavda**, the Hon'ble Supreme Court in paragraph 17 has casted the burden upon the employer to prove that the worker has not worked for 240 days in a calendar year. Again in paragraphs 19 and 20 of the same judgment it has been held as follows:

“**19.** It has also been observed by the High Court that the muster roll for 1986-87 was not completely produced. The appellant has inexplicably failed to produce the complete records and muster rolls from 1985 to 1991, in spite of the direction issued by the Labour Court to produce the same. In fact there has been practically no challenge to the deposition of the respondent during cross-examination. In this regard, it would be pertinent to mention the observation of three-Judge Bench of this Court in *Municipal Corporation, Faridabad Vs. Siri Niwas* [(2004) 8 SCC 195], wherein it is observed:

“**15.** A Court of Law even in a case where provisions of the Indian Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against his contentions. The matter, however, would be different where despite direction by a court the evidence is withheld.”

20. It is not in dispute that the respondent's service was terminated without complying with the provisions of Section 25-F of Industrial Disputes Act. Section 25-G of the Act provides for the procedure for retrenchment. The section reads:

“**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.”

21. Given the aforesaid facts and circumstances of the case, this Court is of the opinion that the finding of the Labour Court while answering the reference refusing to grant any relief to the workers is not proper, legal and justified and the same would definitely amount to illegal retrenchment amounting to illegal termination.

22. Now coming to the question of relief which could be granted to each of the workers, if we look into the facts of the case it would reveal that the claim of the workers is that they have worked between 1982 to 1996 and that from 1996 to till date, that is, for almost 22 years the workers have been out of employment. Another aspect which cannot be lost sight of is that, all the workers raised the dispute after about 8-9 years from the date of their discontinuance, which again definitely is a lapse on the part of the workers. Under the circumstances, keeping in view the catena of decisions in the recent past by the Hon'ble Supreme Court starting from the case of **Bharat Sanchar Nigam Limited v. Man Singh, 2012 (1) SCC 558**, to the case of **Assistant Engineer, Rajasthan Development Corporation & Anr. v. Gitam Singh, 2013 (5) SCC 136**, this Court is of the opinion that it would not be proper for ordering for reinstatement at this juncture, though the discontinuance or illegal retrenchment amounts to illegal termination and the natural consequence of which is reinstatement. However, in view of the considerable gap from the date of discontinuance till now it would not be proper to grant relief of reinstatement to the workers and instead they would be entitled for some compensation in lieu of reinstatement.

23. This Court in the aforesaid facts and circumstances holds that the petitioner-workers involved in each of these writ petitions were illegally terminated, inasmuch as there was a clear violation of Section 25-F of the Industrial Disputes Act. However, for the reasons stated in the preceding paragraphs, they cannot be granted the benefit of reinstatement at this

juncture. In lieu of reinstatement, this Court considering the facts and circumstances of the case, thinks it proper to grant monetary compensation which would serve the ends of justice.

24. It is thus ordered that each of the workers in these writ petitions shall be entitled for a lump sum compensation of Rs.50,000/- (Fifty Thousand only) each. The said payment shall be made within a period of four weeks from the date each of the workers submit a representation along with a copy of this order before the concerned authority. If the State authorities fail to pay the said amount promptly on receipt of such representation from the workers, the said amount shall also carry interest at the rate of 9% per annum from the date of award of the Labour Court.

25. The writ petitions thus stand allowed in part.

Sd/-
(P. Sam Koshy)
Judge