

HIGH COURT OF CHHATTISGARH AT BILASPURWPL No.6422 of 2007

State of Chhattisgarh, Through its Secretary, Government of Chhattisgarh, Department of Water Resources, D.K.S. Bhawan, Mantralaya, Raipur (C.G.).

---Petitioner

Versus

1. Rathram S/o Bhagauram Patel, Caste Marar, R/o village Pisid, Police Station Kasdol, District Raipur (C.G.).
2. State Industrial Court, Through its Registrar, Raipur (C.G.).

---Respondents

For petitioner/State : Shri S.P.Kale, Dy. Advocate General.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

08/01/2018

1. Present petition has been filed assailing the order passed by the Labour Court, Raipur in case No.185/MPIR/95 dated 03/01/2003 so also the order passed by the Industrial Court affirming the order passed by the Labour Court in Civil Appeal No.46/MPIR/A-11/2003 dated 29/11/2004.
2. The facts of the case in brief is that, the respondent No.1 was appointed as a contingency labour on 01/01/1986 and who continued to work as a daily wage worker till 01/08/1986 when he was discontinued from the service of the State Government. This discontinuance from service was questioned in a proceeding under Section 31(3) of the MPIR Act, 1960 before the Labour Court where the case was registered as case No.185/MPIR/95. The Labour Court after considering the evidences which have come on record reached

to the conclusion that, before discontinuance of service of the respondent No.1, the authority have not complied with the statutory requirements under chapter 5 of the Industrial Dispute Act in as much as no notice has been served before the retrenchment or a compensation against the said retrenchment has been paid whatsoever. Neither was any show cause notice issued or salary in view of the notice issued given to the respondent No.1 and finding the discontinuance to be a case of illegal termination, ordered for reinstatement without backwages vide order dated 03/01/2003. This order dated 03/01/2003 of the Labour Court was put to challenge in an appeal under Section 65 of the CGIR Act, 1960 before the Industrial Court where the case was registered as a Civil Appeal No.46/MPIR/A-11/2003. The Industrial Court also after considering the facts and circumstances of the case, particularly, taking note of the evidence which have come on record, dismissed the appeal of the department and upheld the award passed by the Labour Court.

3. It is noteworthy to mention that, though the order of the Industrial Court dated 29/11/2004 affirmed the order of the Labour Court dated 03/01/2003, the present Writ Petition was filed after about more than 3 years time i.e. in October-2007 before the High Court. As such there is a huge unexplained delay on the part of the State Government in assailing these two orders passed by the Labour Court as well as by the Industrial Court.

4. Another aspect which is worth to take note is of the fact that, the respondent No.1 in the instant case had in due course of time reinstated by the petitioner and since then he is continuously in employment of the

petitioner and till date, he is put in more than 10 years of service continuously after reinstatement.

5. Perusal of the record would show that, the witness examined on behalf of the department Shri J.K.Sharma, the sub-divisional officer has in his cross-examination accepted the fact that, the worker in the instant case had worked continuously for a period of more than 240 days in a calender year. The service part thus stands proved on the evidence of the department itself.

6. Given the fact that the respondent No.1 had worked for a considerable period of time continuously with the petitioner establishment, the mandatory provision under chapter 5 of the Industrial Dispute Act ought to have been followed by the petitioner. Once when there is a categorical finding of the fact of the Labour Court on the basis of the evidence of the witness of the department that, the worker involved in the case have worked for more than 240 days, the finding of the Labour Court as also the finding of the Industrial Court cannot be said to be either perverse or contrary to the evidences which have come on record.

7. It is also a settled position of law that under the writ jurisdiction, this Court would not interfere with the order passed by the Labour Court as if sitting as an Appellate Authority particularly in a case under I.D. Act. The interference would be only to a limited extent whether there is perversity in the finding arrived at by the Court below or the Court has exercised its jurisdiction beyond the powers conferred upon it. The High Court can interfere with factual aspect only when it is convinced that the Labour Court

has made patent mistakes in admitting evidence illegally or the Court has committed a grave error in law in coming to its conclusions.

8. The jurisdiction under Article 226 of the Constitution of India in examining the correctness of the order of the Labour Court was confined to errors in the decision making process and not on the merits of the decision itself. This Court does not find any infirmity in the decision making process warranting interference.

9. The Supreme Court in the case of **Harjinder Singh v. Punjab State Warehousing Corporation** [2010 (3) SCC 192] held as under:-

“21. 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 others similar legislative instruments are social welfare 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:

'10. 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. Workers of Gold Mines [AIR 1958 SC 923], AIR p.928, para 10.)”

This view has further been reiterated in the case of **Bhuvnesh Kumar Dwivedi v. Hindalco Industries Limited [2014 (11) SCC 85]**.

10. The Petitioner through the present writ petition have failed to show either there being any perversity in the finding or the Court below having exceeded its jurisdiction. In the absence of the two, the finding arrived at by the Labour Court has to be accepted to be proper, legal and justified.

11. This Court is also reluctant to set aside the impugned order of the Labour Court for the reason that pursuant to the award, the petitioner/State Government reinstated the respondent in service in the year 2007 and since then he has been continuously working. As such, he has by now put in service for almost 10 years after the award was passed.

12. In this view of the matter, this Court does not find any strong case on behalf of the petitioner made out calling for an interference with the impugned order of the Labour Court as well as of the Industrial Court and the petition thus being devoid of merits deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
JUDGE