

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION NO. 6092 OF 2005**

Gopikrishna Upadhyay, S/o Gangaram Upadhyay, aged about 55 years,
Ex-Conductor, R/o Village- Saida, District- Bilaspur (CG)

... Petitioner**versus**

1. Chhattisgarh Infrastructure Development Corporation, DKS Bhawan, Raipur (CG)
2. Industrial Court, Raipur (CG)
3. Labour Court, Bilaspur (CG)

... Respondents

For Petitioner	:	None.
For Respondents	:	None.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****26/09/2018**

1. None appeared for the petitioner when the matter was called out.
2. Considering the fact that the writ petition is of the year 2013, this Court is deciding the matter taking into consideration the contents available on record.
3. The writ petition has been filed by the petitioner for grant of back wages from the date of termination to the date of reinstatement.
4. Facts of the case in nutshell are that the petitioner was terminated by the respondents on account of a misconduct of unauthorized absence. The petitioner immediately had raised an industrial dispute under Section 31(3) of the C.G.I.R. Act, 1960 before the Labour Court, Ambikapur vide Case No. 61/M.P.I.R.Act/2001. The said case finally stood allowed vide order dated 10.4.2003 and the Labour Court granted the relief of reinstatement without back wages to the petitioner.
5. The said order was put to challenge by the management as well as by the employee before the Industrial Court, Raipur, under Section 65 of the C.G.I.R. Act, vide Civil Appeal No. 145/M.P.I.R.Act/A-II/2003 and Civil

Appeal No. 123/M.P.I.R.Act/A-II/2003 respectively. The management had challenged the order of reinstatement and the employee had challenged the order of non-granting of back wages.

6. On due consideration of the contentions of the parties, the learned Industrial Court i.e. the appellate Court, vide order dated 19.9.2005 dismissed the two appeals i.e. the appeal preferred by the management against the reinstatement and the appeal preferred by the employee against the non granting of back wages.

7. Pursuant to the order of the Labour Court, the petitioner has been reinstated in service on 15.3.2004.

8. The issue revolves upon granting of back wages from 24.7.2000, i.e., the date of termination, till 15.3.2004, i.e., the date of reinstatement/joining provided by the respondents in the light of the order of the Labour Court.

9. So far as the granting of back wages is concerned, it has been repeatedly held by the Hon'ble Supreme Court as well as by the High Court that the back wages would not be automatic. It would depend upon the facts and circumstances of each case. In the instant case, if we take into account the contents of the reply, it would reveal that it is not a case where the petitioner had been for the first time punished by the respondents. But, it is a case where in the past the petitioner had been punished on multiple occasions. Admittedly, during the period of termination the petitioner had not worked with the respondents and this fact was taken note of by the Labour Court while deciding the original claim applying the principles of 'no work no pay'. This Court thus does not find any strong case to be made out by the petitioner for the granting of back wages for the intervening period.

10. Very recently the Hon'ble Supreme Court in the case of **Rajasthan State Road Transport Corporation, Jaipur v. Shri Phool Chand (dead) through LRs**, in **Civil Appeal No. 1756 of 2010**, decided on 20.9.2018, dealing with the issue of back wages in paragraphs 11 to 14 held as under:

“11. In our considered opinion, the Courts below completely failed to see that the back wages could not be awarded by the Court as of right to the workman consequent upon setting aside of his dismissal/termination order. In other words, a workman has no right to claim back wages from his employer as of right only because the Court has set aside his dismissal order in his favour and directed his reinstatement in service.

12. It is necessary for the workman in such cases to plead and prove with the aid of evidence that after his dismissal from the service, he was not gainfully employed anywhere and had no earning to maintain himself or/and his family. The employer is also entitled to prove it otherwise against the employee, namely, that the employee was gainfully employed during the relevant period and hence not entitled to claim any back wages. Initial burden is, however, on the employee.

13. In some cases, the Court may decline to award the back wages in its entirety whereas in some cases, it may award partial depending upon the facts of each case by exercising its judicial discretion in the light of the facts and evidence. The questions, how the back wages is required to be decided, what are the factors to be taken into consideration awarding back wages, on whom the initial burden lies etc. were elaborately discussed in several cases by this Court wherein the law on these questions has been settled. Indeed, it is no longer res integra. These cases are, M.P. State Electricity Board vs. Jarina Bee(Smt.), (2003) 6 SCC 141, G.M. Haryana Roadways vs. Rudhan Singh, (2005) 5 SCC 591, U.P. State Brassware Corporation vs. Uday Narain Pandey, (2006) 1 SCC 479, J.K. Synthetics Ltd. vs. K.P. Agrawal & Anr., (2007) 2 SCC 433, Metropolitan Transport Corporation vs. V. Venkatesan, (2009) 9 SCC 601, Jagbir Singh vs. Haryana State Agriculture Marketing Board & Anr., (2009) 15 SCC 327) and Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya(D.Ed.) & Ors., (2013) 10 SCC 324.

14. The Court is, therefore, required to keep in consideration several factors, which are set out in the aforementioned cases, and then to record a finding as to whether it is a fit case for award of the back wages and, if so, to what extent.”

11. This Court also had an occasion of dealing with the issue of back wages in W.P.L. No. 7101/2011 (State of Chhattisgarh Vs. Suklal), decided

on 7.12.2015, wherein in paragraph 8 referring to the earlier decisions of the Hon'ble Supreme Court it has been held that as under:

“8. Taking into consideration the overall facts and circumstances, this Court is of the opinion that granting of the back wages by the Labour Court is definitely not desirable as the petitioner was not a regular employee but was only a daily wager and the principle of no work no pay would be applicable and the same is therefore bad in law and the impugned order of the Labour Court which is also upheld by the Industrial Court, is modified to the extent that his reinstatement in service is maintained however, he would not be entitled for back wages on the principle of “no work no pay”.

The fact that the respondent/workman shall not be entitled for back wages is fortified by the judgment of the Hon'ble Supreme Court in 2002 (6) SCC 41 (Hindustan Motors Ltd. vs. Tapan Kumar Bhattacharya & Another), 2005 (5) SCC 100 (Manager, Reserve Bank of India, Bangalore vs. S. Mani and Others), 2003 (10) SCC 92 (Chief Conservator of Forests And Another vs. Rahmat Ullah) and 2003 (6) SCC 141 (M.P. State Electricity Board vs. Jarina Bee [Smt]) wherein in all the aforesaid judgments, the Hon'ble Supreme Court has clearly held that payment of back wages is not to be awarded in a straight jacket formula in cases where the award of reinstatement is granted. There should be a specific finding to be recorded by the Labour Court while awarding back wages. If no finding has been recorded, no back wages can be awarded.”

12. In the light of the factual matrix of the case and legal position as it stands, this Court does not find any illegality or irregularity in the order of the Labour Court as well as Industrial Court in refusing back wages to the petitioner.

13. The writ petition thus fails and is accordingly dismissed being devoid of merits.

14. Registry is directed to ensure that the record is sent back to the concerned Court below.

Sd/-
(P. Sam Koshy)
Judge