

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 2170 of 2015

Yashwant Kumar Lohiya S/o Shri Laxminarayan Lohiya, aged about 49 years, R/o Behind Indira Aawas, Uslapur, Kantkhar, Post Sakri, Police Station Chakarbhata, Civil and Revenue District Bilaspur (C.G.).

---Petitioner

Versus

1. State Of Chhattisgarh, Through- Secretary, Department of Water Resources, Secretariat, Mahanadi Bhawan, New Raipur, P.S. and Post Rakhi, District Raipur (C.G.).
2. Chief Engineer, Water Resources Department, Near Collectorate Office, Police Station Civil Line, Bilaspur, Civil and Revenue District, Bilaspur (C.G.).
3. Executive Engineer, Water Resources Department, Janjgir Branch, Hasdeo Canal, Water Management, Sub-Division-2, Janjgir, Police Station Janjgir, Civil and Revenue District Janjgir-Champa (C.G.).
4. Sub Divisional Officer, Water Resources Department, Janjgir Bench Kenal, Water Management, Sub-Division-2, Janjgir, Police Station Janjgir, Civil and Revenue District Janjgir-Champa (C.G.).

---Respondents

For petitioner	:	Shri Abhishek Pandey, Advocate.
For State	:	Ms. Sunita Jain, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

10/10/2018

1. The challenge in the present Writ Petition is to the order Annexure-P/5 dated 18/03/2015 whereby the services of the petitioner as a Daily Wage Employee has been abruptly discontinued giving him one month notice.
2. The brief facts which led to the filing of the present Writ Petition is that, the petitioner was initially appointed as a Daily Wage Employee against the post of Time Keeper in the year 1989 under the erst-while State of Madhya

Pradesh at the Hasdeo Canal, Sub-Division-2, District Mahasamund (C.G.).

He continued to work on the said post up till 1995 and in 1996, the services of the petitioner was terminated without compliance of any of the provisions as is envisaged under chapter 5 of the Industrial Dispute Act, 1947 (In short "ID Act").

3. The petitioner subsequently raised a dispute and which was referred to before the Labour Court vide case No. 43/IDA/2005 (REF).

4. The Labour Court vide award dated 14/10/2011 hold that the discontinuance of the petitioner was illegal, bad in law and in violation of the provisions of the ID Act particularly the provision of chapter 25(F)(G)(H) of the ID Act and setting aside the decision of discontinuance of the petitioner ordered for re-instatement without backwages.

5. The said award dated 14/10/2011 passed by the Labour Court, Bilaspur was subjected to challenge before the High Court vide Writ Petition (L) No. 68/2012 and the High Court vide its order dated 04/03/2014 did not find any jurisdictional illegality in the order of the learned Labour Court and accordingly dismissed the Writ Petition preferred by the State Government so far as the challenge to the award dated 14/10/2011 passed by the Labour Court is concerned.

6. After the judgment of the Labour Court, the services of the petitioner was reinstated and he continued to work with the department till the impugned notice dated 18/03/2015 was passed.

7. It would be relevant at this juncture to refer to the contents of the said impugned notice dated 18/03/2015 from which it reflects that the only observation made by the department was that the services of the petitioner is no longer required and therefore giving him 1 month notice, it was ordered that his services would stand discontinued after one month.

8. It is this order dated 18/03/2015 which is under challenge in the instant case.

9. At this juncture, the counsel for the petitioner referred to the Annexure-P/7 which is a document dated 20/04/2015 which has been issued by the Sub Divisional Officer posted under the respondents intimating that there is a need for engagement of a worker for the post of Helper in the Jarway Control Room. The said Sub Divisional Officer infact had recommended for the engagement of the petitioner.

10. From the reading of the subject matter of the said impugned notice it appears that the impugned notice has been issued pursuant to the decision rendered by the High Court in WPL No. 68/2012. Infact, WPL No. 68/2012 was preferred by the State Government challenging the award of the Labour Court dated 14/10/2011 whereby there was an order of reinstatement without backwages.

11. From perusal of the contents of the impugned notice it reflect that the said impugned order has been passed either misconceiving the orders passed by this Court in WPL No. 68/2012 or has been passed with an

intention of victimizing the petitioner by issuing an order of discontinuance of service circumventing the two judicial orders in favour of the petitioner.

12. Moreover, what is pertinent to take note of is the fact that, the Labour Court while allowing the claim of the petitioner at the first instance had categorically reached to the conclusion that the discontinuance in the year 1996 was bad in law for the reason of non-compliance of the mandatory provision of section 25 (F)(G)(H) of the ID Act.

13. It appears that again the respondents without compliance of the very same provision and without complying with the said requirement and under the circumstances, the discontinuance of the petitioner again suffers from same illegality for which the earlier discontinuance was set-aside by the Labour Court while passing the award dated 14/10/2011 and which stood affirmed by the High Court.

14. At this juncture, the State counsel raises an objection as to the availability of an alternative remedy to the petitioner by approaching the Labour Court.

15. The present Writ Petition was admitted in the year 2015. Now after 4 years, if the present Writ Petition is now disposed off or dismissed on the ground that the petitioner has an alternative remedy would be too inequitable a relief or a decision to be taken by this Court. What all the more weighs in the mind of the Court is the status of the petitioner.

16. Undoubtedly, he was working as a Daily Wage Employee. He with a great hope had approached the High Court for ventilating his grievance and

this Court had entertained the Writ Petition at the first instance in the year 2015 itself.

17. In the given facts, this Court is of the opinion that, the plea of an alternative remedy raised by the State counsel at this juncture would be too harsh a stand to be taken and the same therefore stands negated.

18. The fact that the petitioner subsequently has again been discontinued is in total contravention to the observation made by the learned Labour Court while passing the award dated 14/10/2011 per-se establishes the impugned order Annexure-P/5 to be illegal and in violation of the statutory provisions.

19. So far as the plea of the State counsel that the status of the petitioner was purely casual in nature and was engaged as and when there was availability of work, the said would not come to the aid of the State counsel for the reason that, the authorities if they intended to discontinue the services of the petitioner, the least that was expected from the State Government was to keep in mind the order of the Labour Court dated 14/10/2011 and only after due compliance of the provisions envisaged therein, the services of the petitioner could have been discontinued.

20. For the aforesaid reasons, this Court is of the opinion that, the impugned order Annexure-P/5 is not sustainable and the same deserve to be and is accordingly set-aside/quashed.

21. Considering the status of the petitioner to be that of a Daily Wage Employee and the fact that he has during the intervening period has not worked, he would not be entitled for any backwages for the said period.

22. It is directed that the petitioner should be taken back in service forthwith.

23. The Writ Petition accordingly stands allowed and disposed off.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit