

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA. No. 342 of 2016**

1. The Divisional Forest Officer Khairagarh, Post & Tahsil Khairagarh, District Rajnandgaon Chhattisgarh.
2. The Circle Officer, Office Of Circle Officer, Gandai Circle, District Rajnandgaon Chhattisgarh.

---- Appellants**Versus**

1. Shri Shankar S/o Shiv Prasad Patel, Aged About 35 Years R/o Village Bhaji Dongari, Post Salhewar, District Rajnandgaon Chhattisgarh.
2. The Principal Judge, Under The Industrial Dispute Act, Labour Court, Rajnandgaon Chhattisgarh.

---- Respondents

For Appellants	:	Shri Yashwant Singh Thakur, Additional Advocate General
For State	:	Shri Pawan Kesarwani, Advocate

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice**Hon'ble Shri Justice Parth Prateem Sahu****Order on Board****Per Ajay Kumar Tripathi, Chief Justice****12.09.2018**

1. Heard, learned Additional Advocate General for the appellants and learned counsel representing the private respondents.
2. The writ application was preferred by the private respondent against the order of the Labour Court, who even though held the retrenchment to be illegal, but still refused to grant the benefit of back wages for the period of termination.
3. Learned Single Judge after examining the facts and the various principles relating to such issues clearly recorded that there were no evidence brought about by the appellants either before the Labour Court or the Learned Single Judge to show that the private respondent was gainfully employed during the period of his retrenchment/termination.

4. Since the onus is upon the employer to establish that the employee or the workmen cannot be compensated, since he had been otherwise gainfully employed during that period. On failure the back wages have to be ordered especially when the decision for such retrenchment or termination was found to be illegal *per se*.
5. Since the learned Single Judge has taken note of various decisions governing such issues especially the decisions rendered by the Hon'ble Apex Court in relation to grant of back wages and the facts being squarely covered by those principles, no case is made out to interfere with the order of the learned Single Judge dated 15.10.2015.
6. Since the appeal has no merits, it is dismissed. As the private respondent has been reinstated, the Appellant Authorities are directed to pay him his back wages in terms of the direction of the learned Single Judge within a period of 60 days from the date of production of a copy of this order.

Sd /-

(Ajay Kumar Tripathi)

Chief Justice

Sd /-

(Parth Prateem Sahu)

Judge