

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 7874 of 2018

Ghanshayam Prasad Tiwari S/o Late Sukhdev Prasad Aged About 48 Years R/o Village Changurda, Post- Itar, Thana- Gatapar, Tahsil Khairagarh, District Rajnandgaon Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Forest, Mahanadi Bhawan, New Mantralaya, Raipur Chhattisgarh
2. Principle Chief Conservator Of Forest Head Quarter Jail Road Raipur Chhattisgarh.
3. Chief Conservator Of Forest Durg Circle Durg, District Durg Chhattisgarh.
4. Divisional Forest Officer Khairagarh District Rajnandgaon Chhattisgarh.
5. Sub- Divisional Forest Officer Sub- Forest Division Khairagarh/ Chairman Scrutiny Committee Khairagarh, District Rajnandgaon Chhattisgarh.

---Respondents

For Petitioner	:	Mr. F.S. Khare, Advocate
For State	:	Mr. R.N. Pusty, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

01/12/2018

1. The challenge in the present writ petition is to the order Annexure P/1 dated 05.10.2008, whereby the claim of the petitioner for regularization has been rejected.
2. The rejection was on the ground that the petitioner has not worked continuously between the period 1989 to 1997 and there was a very short period of employment rendered by the petitioner as a daily wage employee and therefore he would not be entitled for the benefits arising out of the circular dated 05.03.2008.
3. Perusal of the record would show that the petitioner had been initially working as a daily wage employee as a Chowkidar with the respondents

from 1989 to May, 2007. In May, 2007 the services of the petitioner stood discontinued.

4. The petitioner immediately raised a dispute before the Conciliation officer and the matter was referred to the Labour Court, Rajnandgaon vide case No. 42/I.D.Act/Reference/2008. The Labour Court vide its award dated 30.05.2012 held the discontinuance of the services of the petitioner from May, 2007 to be bad in law and accordingly ordered for reinstatement in service without back wages.
5. Perusal of the finding of the Labour Court would also reveal that before the Labour Court there has been a positive evidence led by the petitioner that he has been continuously working with the department since 1989 to May, 2007. There were also certain documents in support of his contentions that he has produced before the Labour Court. The contention of the petitioner was not sufficiently rebutted by the respondents and the Labour Court finally vide its award reached to the conclusion that the petitioner has worked between 1989 to 2007 and the discontinuance was in non-compliance of the mandatory requirement under the provisions of Industrial Disputes Act and held the discontinuance to be bad.
6. What is also relevant is that the award of the Labour Court dated 30.05.2012 has not been challenged by the respondents and in due course, the same has attained its finality. The award of the Labour Court has also been complied with in as much as the petitioner has been reinstated in service and he continues to work with the department. Thus, the petitioner in accordance with the findings of the Labour Court has to be presumed to be in continuous employment right from 1989 onwards.

7. The said view stands fortified by the judgment of this Court in the case of “***Tukaram v. State of Chhattisgarh***” WPS No. 1703/2015, decided on 16.05.2017. Once when there is a categorical finding of the Labour Court, the authorities in the department cannot, unless the award is set-aside, sit over the finding of the Labour Court and take a different view. Once when there is an order of holding the petitioner to be in continuous employment from 1989 onwards, the authorities have to presume the fact that the petitioner is in continuous employment from 1989 till 1997. Thus, this Court has no hesitation in holding that the finding of the authority while rejecting the claim for regularization of the petitioner to be bad in law.
8. Given the said facts, the impugned order Annexure P/1 dated 05.10.2018 is held to be bad in law, arbitrary and deserves to be and is accordingly set-aside.
9. It is directed that the respondents shall reconsider the case of the petitioner for regularization in the light of the award of the Labour Court dated 30.05.2012 as also the order of the Division Bench of this High Court in the case of “***Tukaram***” (supra) and pass a fresh order strictly in accordance with the observations made in the preceding paragraphs within a period of 90 days from the date of receipt of the copy of this order.
10. The writ petition accordingly stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge