

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 8320 of 2018**

Radheshyam Kewat S/o Late Kirtan Lal Kewat Aged About 55 Years
Occupation Supervisor (Daily Wages), Water Resources, Sub Division
Pantora Tahsil And District Janjgir Champa Chhattisgarh, R/o Irrigation
Colony Pantora, Tahsil And District Janjgir Champa Chhattisgarh., District :
Janjgir-Champa, Chhattisgarh

---- **Petitioner**

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Water Resources
Mantralaya, Mahanadi Bhawan Naya Raipur, Police Station Abhanpur
District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Chief Engineer Water Resource Department Sihawa Bhawan, Raipur
District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- **Respondents**

For petitioner	:	Shri Atul Pandey, Advocate.
For State	:	Shri Majid Ali, Dy. GA

Hon'ble Shri Justice P. Sam Koshy

Order on Board

14/12/2018

1. The relief sought for by the petitioner in this writ petition is for direction to the respondents considering his case for regularization.
2. Learned counsel for the petitioner submits that so far as the service of the petitioner is concerned, there is an order in his favour by the labour Court, Rajnandgaon dated 9.11.2011 wherein, it has been categorically held that the petitioner was working as Time Keeper from 1/1/1985 to 28/2/1995 and he was apparently discontinued. The discontinuance was subjected to challenge in the labour Court. The labour Court held that the discontinuance is bad in law, and have ordered for reinstatement in service on his previous post.
3. Pursuant to the award dated 9.11.2011, the petitioner has been reinstated in service. According to the counsel for the petitioner the said award of the labour Court has been challenged by the respondents before this Court in WPL No. 63/2012, this Court had dismissed the same on 8/10/2015. Counsel for the petitioner further submits that in the light of the judgment of Division Bench of this Court in the case of **Tukaram Vs. State of Chhattisgarh, WPS No. 1703/2015 and others**, analogous writ petitions decided on 16.05.2017, the petitioner has to

be given the advantage of counting his service from the date of his initial appointment till date and the entire intervening period has to be treated as continuous service and thereby the case of the petitioner should have been considered, in the light of the circular dated 05.03.2008.

4. The State counsel however opposing the petitioner, submits that the petitioner would not be entitled for any relief as sought. State counsel further submits that it is a case where the petitioner has raised a claim before the labour Court after about 10 years and therefore that intervening 10 years period cannot be counted. He further refers to the judgment of Tukaram (Supra) wherein he submits that judgment would also state that it is the period during which the petitioner was litigating before the labour Court that would also be counted for continuity in service, not for the date during which he had not raised the industrial dispute.

5. Given the aforesaid facts and the circumstances of the case, it would be relevant at this juncture to refer to the paragraph 26 of the judgment of Tukaram (Supra). For ready reference, it has been reproduce herein under :-

“26. Accordingly, these Writ Petitions are allowed. The question of law discussed earlier to be decided in these petitions is answered in the affirmative in favour of the petitioners-workers holding that they would not fall in the category of litigious worker and that they would be entitled for continuity of service for the period they were out of employment while they were litigating before the Labour Court.”

6. From the aforesaid observations, it is apparently clear that this Court's decision was clear on this count that it is the litigating period for which the petitioner would be entitled for the benefit. Facts of the present case when considered from the judgment of the labour Court, it appears that he has worked between 1985 to 1995 thereafter he was removed. Thereafter, he has been reinstated. The dispute was raised by the petitioner for the first time in the year 2011, when the reference was made to the labour Court. Keeping in view the judgment of the Division Bench in the case of Tukaram (Supra), it is only from 2011 onwards, the petitioner would be deemed to be again in continuous service. In the aforesaid factual back drop the total length of service so far as the petitioner is concerned, would be between 1/1/1985 to 28/2/1995 and from the year 2011 till date. As he has since been reinstated after the award of the labour Court, if we take the said two periods that is from 1985 to 1995 and 2011 to 2018 apparently the petitioner has put in more than 10 years of service and the initial appointment of the petitioner was prior to 31.12.1997, therefore, the respondent

authorities would have to accordingly reconsider the case of the petitioner and pass a fresh order, so far as his claim for regularization is concerned keeping in view the circular dated 05.03.2008.

7. The writ petition accordingly stands disposed off. Let a fresh order be passed by the respondent authorities within a period of 90 days from the date of receipt of copy of this order.

Sd/-

(P. Sam Koshy)
JUDGE

Rohit