

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPL No. 592 of 2009

1. Chief Medical & Health Officer, Dhamtari, Chhattisgarh
2. District Malaria Officer, Mahasamund, Chhattisgarh

---- Petitioners

Versus

Harishchand Sahu, S/o. Devlal Sahu, Aged about 25 years, R/o. Rakhi, Post Bhatgaon, Tahsil Kurud, District Dhamtari, Chhattisgarh

---Respondent

For Petitioners/State	:	Mr. Arvind Dubey, Panel Lawyer
For Respondent	:	Mr. Atul Pandey, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

25/06/2019

1. The present writ petition has been filed assailing the award passed by the Labour Court, Raipur dated 22.08.2008, passed in Case No. 57/2005/I.D.Act (Ref.). By the said impugned award, the Labour Court Raipur has awarded the benefit of reinstatement without back wages in favour of the respondent.
2. The brief facts relevant for the adjudication of the present writ petition is that the as per the respondent, he has been appointed by the District Malaria Officer, Mahasamund vide order dated 29.09.2002 as a Field Worker on remuneration at the rate fixed by the Collector. The respondent uninterruptedly worked with the petitioners till 17.06.2004, whereby the services of the respondent was abruptly discontinued. According to the respondent, before discontinuing the services of the respondent, no notice whatsoever was issued, neither was he given any salary in lieu of notice and in addition the respondent was also not granted any retrenchment compensation before discontinuance of his service. It was also the pleading of the respondent that before his discontinuance from service, he had put in

continuous 240 days of service with the petitioners and as such the respondent could not have been discontinued without following the mandatory requirement as is required under Chapter 5 of the Industrial Disputes Act and thus prayed for setting aside of the order of termination.

3. The stand taken by the petitioners/State is that the impugned order is per se bad in law for the reason that the authorities concerned failed to establish the fact that the status of the respondent all along was that of the daily wage employee, who was engaged purely on the availability of work and in the absence of any work, the services of the respondent automatically stands discontinued and therefore he would not have been entitled for the benefit which is provided under the provisions of the Industrial Disputes Act and thus prayed for allowing of the writ petition.
4. The State counsel further submitted that the Court below failed to establish the fact that the worker has not been able to establish the fact that he had worked for more than 240 days in a Calendar year and that he had never been issued with a formal order of appointment as a regular government employee enabling him any protection under the Industrial Disputes Act and thus prayed for the award to be set-aside and the writ petition be allowed accordingly.
5. Having heard the contentions put forth on either side and on perusal of record, what clearly reflects is that undisputedly the respondent was engaged as a Field Worker by the District Malaria Officer, Mahasamund as early as on 29.09.2002. The respondent continued to work on the said post till he was abruptly discontinued on 17.06.2004. The respondent immediately had challenged the same by raising an Industrial dispute, which got referred to the Labour Court, Raipur and the case was registered as

Case No. 57/2005/I.D.Act (Ref). The Labour Court finally passed an award of reinstatement without back wages on 22.08.2008.

6. The counsel for the respondent submits that pursuant to the order dated 22.08.2008, the petitioners have ordered for taking back the respondent/worker in employment, which is established from Annexure R/4 dated 26.02.2009. In view of the fact that the respondent had already been reinstated in employment way back in February, 2009. Today in the year 2019, the respondent has definitely put in more than 10 years of service. At this juncture, having worked with the respondents for a period of more than 10 years, this Court is of the opinion that equity also goes in favour of the respondent and this Court is therefore reluctant to interfere with the findings of the Labour Court on this ground.
7. So far as the merits of the case is concerned, the plain reading of the award passed by the Labour Court particularly paragraph 11 , it clearly reflects that the witness on behalf of the petitioners/establishment had categorically admitted in his cross examination, so far as the appointment and discontinuance of the services of the petitioner is concerned. The Management's witness also has accepted the fact that before discontinuing the services of the petitioner, no show cause notice or salary in lieu of notice or retrenchment compensation was paid to the respondent/worker.
8. The Management's witness has also admitted the fact that the services of the respondent had been satisfactory and at the same time, the Management's witness has also stated that after the discontinuance of the respondent/worker, they had engaged other person for similar nature of work. All these facts, which have been admitted by the Management's witness makes the finding of the Labour Court based on the evidence which has been brought on record.

9. All the aforesaid factual matrix would clearly reveal that the finding of the labour Court was based on the evidence which has come on record led by either side. Thus, it is a finding of the fact.
10. It has been repeatedly held by the Supreme Court as also by the High Courts that finding of fact of the labour Court's should not be interfered with the High Court while exercising writ jurisdiction. In exercise of writ jurisdiction this Court has only to see whether there is any perversity in the finding of the labour Court or whether the finding arrived at is contrary to the evidence on record. In the instant case there is no ground that the finding is a perverse finding so far as the finding which has been provided and discussed it clearly reflects that it is a finding of fact based on the evidence which has been adduced by the parties in dispute.
11. It is also a settled position of law that under the writ jurisdiction, this Court would not interfere with the order passed by the Labour Court as if sitting as an Appellate Court particularly in a case under I.D. Act. The interference would be only to a limited extent whether there is perversity in the finding arrived at by the Court below or the Court has exercised its jurisdiction beyond the powers conferred upon it. The High Court can interfere with factual aspect only when it is convinced that the Labour Court has made patent mistakes in appreciating the evidence or the Court has committed a grave error in law in coming to its conclusions.
12. The jurisdiction under Article 226 of the Constitution of India in examining the correctness of the order of the Labour Court was confined to errors in the decision making process and not on the merits of the decision itself. This Court does not find any infirmity in the decision making process warranting interference.

13. The Supreme Court in the case of **Harjinder Singh v. Punjab State Warehousing Corporation [2010 (3) SCC 192]** held as under:-

“21. Before concluding, we consider it necessary to observe that while exercising jurisdiction under Articles 226 and /or 227 of the Constitution in matters like the present one, the High Courts are duty-bound to keep in mind that the Industrial Disputes Act and others similar legislative instruments are social welfare legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the Preamble of the Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43-A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to subserve the common good and also ensure that the workers get their dues. More than 41 years ago, Gajendragadkar, J. opined that:

'10. The concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State.'

(State of Mysore v. Workers of Gold Mines¹, AIR p.928, para 10.)”

This view has further been reiterated in the case of **Bhuvnesh Kumar Dwivedi v. Hindalco Industries Limited [2014 (11) SCC 85]**.

14. The Petitioners through the present writ petition have failed to show either there being any perversity in the finding or the Court below having exceeded its jurisdiction. In the absence of the two, the finding arrived at by the Labour Court has to be accepted to be proper, legal and justified.
15. In para 17 of (2014) 7 Supreme Court Cases, 190 (Hari Nandan Prasad and Another vs. Employer I/R to Management of Food Corporation of India & Another), it has been held as under:-

“17.....At the time of their disengagement even when they had continuous service for more than 240 days (in fact about 3 years) they

¹AIR 1958 SC 923

were not given any notice or pay in lieu of notice as well as retrenchment compensation. Thus, the mandatory precondition of retrenchment I paying the aforesaid dues in accordance with Section 25-F of the ID Act was not complied with. That is sufficient to render the termination as illegal. Even the High Court in the impugned judgment has accepted this position and there was no quarrel on this aspect before us as well.....”

Applying the same analogy and again reiterating the same in the case of (2014) 7 Supreme Court Cases 177 (Bharat Sanchar Nigam Limited vs. Bhurumal), it has been held in paragraph- 27 as under:-

“27.....In any case, the award is passed on the basis that the respondent had worked for 240 days in the preceding 12 months’ period prior to his termination and therefore it is a clear case of violation of Section 25-F of the Industrial Disputes Act. The termination is, thus, rightly held to be illegal. We do not find any perversity in this outcome.”

16. Given the said facts and also taking note of the fact that the worker has since been taken back in service and thereafter also he has put in more than 10 years of service, this Court does not find any strong case made out by the petitioner calling for an interference with the impugned order.
17. The writ petition accordingly stands dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved