

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 434 of 2015***(Arising out of order dated 07.08.2014 passed by the learned Single Judge in WPS No. 5600 of 2010)*

- Hari Lal Yadav S/o Shri Netram Yadav, Aged About 35 Years R/o Village Janji, P.S. Seepat, District Bilaspur Chhattisgarh

---- Appellant**Versus**

1. State of Chhattisgarh Water Resources Dept. Secreary, Department Of Water Resources, Mahanadi Bhawan Mantralaya, Naya Raipur, District Raipur Chhattisgarh
2. Engineer In Chief, Office of Engineer In Chief, Water Resources Department, Sihawa Bhawan Raipur Chhattisgarh
3. Chief Engineer, Hasdeo Kachar Water Resources, Division, Bilaspur Chhattisgarh
4. Executive Engineer, Office of Executive Engineer, Kharang Water Resources Division, Bilaspur Chhattisgarh

---- Respondents

For Appellant	:	Shri S.P. Kale and Shri K.P.S. Gandhi Advocates
For Respondents/State	:	Shri Gagan Tiwari, Deputy Government Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Sanjay K. Agrawal, Judge****Judgment on Board****Sanjay K. Agrawal, J.****24-06-2019**

1. This writ appeal is directed against the order passed by the learned Single Judge dismissing the writ petition filed by the Petitioner questioning the order dated 22.09.2010 by which the Petitioner's service on the post of "Amin" was terminated stating to be in compliance of order dated 29.03.2010 passed by this Court in Writ Petition No. 2948 of 2003, preferred by the Petitioner herein.
2. Shri S.P. Kale, learned counsel for the Appellant would submit that the learned Single Judge was absolutely unjustified in dismissing the writ petition as the order of regularization dated 12.09.2008 on the post of Amin was on account of the exercise by the State Government pursuant to the Notification dated 05.03.2008 and merely on the dismissal of the earlier writ petition which was

subject to the order of writ appeal and without recalling or reconsidering his order of regularization dated 12.09.2008, his writ petition has been dismissed which deserves to be set aside and consequently the order dated 22.09.2010 be set aside and he be reinstated in service.

3. Shri Gagan Tiwari, learned Deputy Government Advocate would support the impugned order and submits that the learned Single Judge was absolutely justified in dismissing the writ petition in view of the fact that the Petitioner's substantive petition filed under Section 31(3) of the Chhattisgarh Industrial Relations Act, 1960 (hereinafter referred to as 'the Act, 1960'), which was granted by the Labour Court, was set aside in appeal by the Industrial Court and which was upheld by the writ Court in Writ Petition No. 2948 of 2003 on 29.03.2010. Therefore, the writ appeal having no merit deserves to be dismissed.
4. We have heard the learned counsel for the parties, considered the rival contentions and went through the record with utmost circumspection.
5. The Petitioner was appointed on the post of Amin in the year 1988, which he was terminated on 06.10.1996 against which he filed an application under Section 31(3) of the Act, 1960 claiming that his termination is violative of Section 11(b) of the Standing Orders and the provisions of retrenchment has not been followed, therefore, termination be set aside, which the learned Labour Court found favour with and directed the Petitioner to be reinstated holding the termination to be illegal but on the appeal filed by the Respondent State, the Industrial Court interfered with the order of the Labour Court and set aside the order of the Labour Court dated 05.09.2003. When the petitioner preferred writ petition against the said order on 16.09.2003 which

came to be heard on 22.09.2003, an interim order was also passed in favour of the Petitioner, thereafter, during pendency of the writ petition, the Petitioner was regularised on 12.09.2008 on the post of Amin in lightt of the notification dated 05.03.2008 issued by the State Government and on the basis of recommendation made by the Scrutiny Committee and due approval by the Competent Authority, but on 29.03.2010, the Petitioner's writ petition, questioning the order of Industrial Court, finally came to be dismissed, meaning thereby the order of the Industrial Court came into force which the Petitioner assailed in the Writ Appeal No. 322 of 2010, in which liberty was granted in favour of the Petitioner that the order of regularization was passed on 12.09.2008, therefore, he can prefer a separate writ petition, if any.

6. Thereafter, writ petition was preferred by Petitioner questioning the order dated 29.03.2010 in which the learned Single Judge has declined to interfere with on the ground that the Petitioner's substantive writ petition has been dismissed and the Petitioner's regularization dated 12.09.2008 would not have the Petitioner's aid which could amount encouragement in litigious appointment, which has been questioned in the writ appeal. It is pertinent to mention here that the first writ petition was filed by the Petitioner, questioning his termination, only on the ground of non-compliance of the provisions relating to retrenchment which this Court held that he is not entitled for and his termination is justified. Though by the order of Industrial Court, interim order was granted in favour of the Petitioner, but the fact remains that regularization of the Petitioner on the post of Amin on 12.09.2008 vide Annexure-P/5 was pursuant to the Notification dated 05.03.2008. It was considered by the authorities of the State Government independent of the interim order of this Court and the Petitioner was found fulfilling the

requirement of Notification dated 05.03.2008 and for regularization on the said post and on the recommendation of the Scrutiny Committee and after approval of the Competent Authority, he was regularized on the said post.

7. It is no where mentioned in the order of regularization (Annexure-P/5) as pursuant from the interim order that Appellant's case was considered and was regularized. Not only the Petitioner, but also seven other persons were considered vide order dated 12.09.2008 and they all have been regularized. True it is that the Petitioner's substantive writ petition was dismissed thereafter upholding order of the Industrial Court. But, the fact remains that the order dated 22.09.2010 by which he was terminated, nowhere recalled or withdrawn the order regularizing him on the post of Amin. It is not a case of the State that after order of the writ Court, dismissing the writ petition filed by the Petitioner, the order of regularization was also reconsidered and he was not found fit to be regularized and therefore, his services were terminated. The Respondent/State while terminating the services ought to have followed the relevant rules and regulations for terminating the services of the Petitioner as he was a regular employee on the date of passing of order of termination and without cancelling, withdrawing or reviewing the order of regularization, the order of termination straightway would not have been passed and even otherwise regular employee cannot be dismissed from service without holding departmental proceeding against him and that too without affording an opportunity of being heard.
8. We are satisfied that the order passed by the competent authority, terminating the services of the Petitioner is in breach of the relevant rules and regulations governing the services of regular employee and without holding departmental enquiry. Consequently, we feel no hesitation to hold that the

order of learned Single Judge as well as the order (Annexure-P/1) terminating the services of the Petitioner, deserve to be and are accordingly set aside and the Petitioner is directed to be reinstated in service. But, looking to the facts and circumstances of the case, he will not be entitled for back-wages on the principle of No work No Pay. Even otherwise the petitioner has not pleaded that he was not gainfully employed during this period nor he claimed back-wages in this writ petition, however his case for grant of seniority shall be considered by Competent Authority in accordance with law.

9. The Petition is allowed to the extent as stated herein above. Parties shall bear their own costs.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Sanjay K. Agrawal)
Judge