

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION (L) No. 2399 of 2009**

State of Chhattisgarh, through: Divisional Forest Officer, Forest Division-Kawardha (Kabirdham) (CG)

... Petitioner**versus**

1. Bhulauram Yadav, S/o Parma Ram Yadav, through Shri C.N. Jha, Advocate, Sheetla Ward, Kawardha (Kabirdham) (CG)
2. The Labour Court, Rajnandgaon (CG)

... Respondents

For Petitioner	:	Mr. Chandresh Shrivastava, Dy. A.G.
For Respondent No.1	:	Mr. Dharmesh Shrivastava, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****05/08/2019**

1. Since the respondent no.1-worker is already represented through his lawyer, Shri Dharmesh Shrivastava, the issuance of notice part stands dispensed with.
2. With the consent of the parties, heard the matter finally.
3. Challenge in the present writ petition is to the award dated 20.12.2007 (Annexure P-1) passed by the Labour Court, under the Industrial Disputes Act, Rajnandgaon in Case No. 15/I.D. Act/2005 (Ref.).
4. Vide the said award, the Labour Court has held that the discontinuance of work of the respondent-worker by the petitioner from 21.1.2000 was bad in law and also illegal in the light of the breaches committed by the petitioner under the Industrial Disputes Act. The Labour Court as a consequence granted the relief of reinstatement of service of the respondent-worker without back-wages.
5. The award under challenge is dated 20.12.2007. The writ petition has been filed after more than 1½ years on 11.4.2009. Annexure P-1 of the writ petition would show that as early as in March, 2008 itself, the respondent-worker stands reinstated in service in compliance of the order of the Labour Court.
6. In view of the fact that the respondent-worker has been reinstated from March, 2008 and he is still continuing in service i.e. for well over a period of 11

years, prima facie, this Court is not inclined to entertain the writ petition at this juncture on this ground.

7. Now coming to the merits of the case, the counsel for the respondent-worker submitted that the respondent has been engaged by the petitioner in the year 1990 and he continued to remain in service till 21.1.2000 when his services have been abruptly discontinued by the petitioner. It was the contention of the respondent-worker that before discontinuing the services he was not paid with the retrenchment compensation as is otherwise envisaged under Chapter V of the Industrial Disputes Act. The respondent-worker submits that he has been paid certain retrenchment compensation much after the discontinuation of the service was made. The discontinuation of the respondent worker was only on the ground that he was engaged after 31.12.1988. Thus, for all the aforesaid reasons, he had prayed for reinstatement in service with consequential benefits.

8. The petitioner-State Government however appearing before the Labour Court denied the claim of the respondent-worker and submitted that that the engagement of the respondent was purely as a daily wage employee and he used to be engaged as and when there was availability of work. It was also the contention of the State Government that since the initial appointment of the respondent-worker was subsequent to 31.12.1988, as per the policy decision of the State Government his services were discontinued. Further contention of the State Government was that the respondent-worker has not put in more than 240 days of service in a calendar year which would entail him for the benefits of retrenchment compensation.

9. Having gone through the contentions put forth from both side and on perusal of record, what is admitted from the fact that the respondent-worker appeared before the Labour Court and gave his statement and in which he has categorically stated to have worked between January, 1990 to 2000.

10. This fact has not been rebutted by the State Government by any cogent evidence to disprove the same. At the same time, there is a statement of a witness on behalf of the department, namely, Shri B.R. Khunte, who has been

examined and who has accepted the engagement of the respondent-worker as a daily wage employee. He has also accepted the fact that the services of the respondent-worker were discontinued as he was initially engaged on 31.12.1988. He has also accepted the fact that he has not produced any documentary proof so far as the engagement of the respondent-worker is concerned before the Labour Court. Thus, the Labour Court drawn an inference against the State Government while passing an award of reinstatement without back-wages.

11. Admittedly, the respondent-worker at the time of his discontinuance was not paid retrenchment compensation that he was entitled for, which of-course has been paid to him later on after about 3-4 months. The requirement of law in this regard is that the compensation should be paid at the time of discontinuation itself. In the absence of the compensation being paid at the time of discontinuation, the action of discontinuance becomes bad in law.

12. The Hon'ble 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]**.

¹ AIR 1958 SC 923

13. In paragraph 17 of **Hari Nandan Prasad and Another v. Employer I/R to Management of Food Corporation of India & Another [2014 (7) SCC 190]**, 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 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.....”

14. Applying the same analogy and again reiterating the same in the case of **Bharat Sanchar Nigam Limited vs. Bhurumal, [2014] (7) SCC 177**], 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.”

15. In view of the aforesaid legal position as it stands, the award passed by the Labour Court does not warrant any interference at this juncture. Moreover, as has been earlier held by this Court in the preceding paragraphs, this Court is also not inclined to interfere with the award passed by the Labour Court for the reason that the department had complied with the award and reinstated the service of the respondent-worker in March, 2008 itself, i.e., more than an year before the writ petition is filed before the High Court and by virtue of the order of reinstatement the respondent-worker has put in about 11 years of service.

16. The writ petition thus fails and is dismissed accordingly.

Sd/-
(P. Sam Koshy)
JUDGE

/sharad/