

HIGH COURT OF CHHATTISGARH, BILASPUR**WPL No. 4182 of 2011**

1. State of Chhattisgarh, Through : the Secretary, Department of Forest, D.K.S. Bhawan, Mantralaya Raipur (CG)

(The petitioner No.1 was not a party before the learned Labour Court but has been impleaded as petitioner No.1 in the instant petition as the proper course is to implead the State Government through the Secretary of the concerned department).

2. Divisional Forest Officer, Khairagarh, Tahsil Khairagarh, District Rajnandgaon (C.G.)

---- Petitioner

Versus

- Gulabdas Lodhi S/o Jogram Lodhi, R/o Village Antaria, Tahsil Chuikhadan, District Rajnandgaon, CG

---- Respondent

For Petitioners/State : Ms. Akanksha Jain, PL

For Respondent : Shri Abhishek Pandey, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board**

13/11/2019

1. Heard.
2. Challenge in this petition is to the award dated 01.07.2008 passed by the Labour Court, Rajnandgaon in a reference under the Industrial Disputes Act, 1947 (for short 'the Act, 1947') bearing No.114/I.D./2007 (Ref.). The respondent filed the statement of claim on a reference being made under Section 10 (1) of the Act, 1947. It was pleaded in the statement of claim that he was appointed in the year 1990 in the Gandai Forest Division as a Guard on the vacant post. It is

stated that he worked continuously, however, by an oral order dated 17.02.2000 without assigning any reason the services of the respondent were dispensed with. It was further contended that the respondent has worked for 240 days and more and had worked for 26 days continuously in each month. All the documents of attendance, payment register are in the possession of the department and before the services were terminated, no departmental enquiry was held and without any reason, the services were terminated. It was further pleaded that before the termination of the services, no compliance of Section 25 F of the Act, 1947 was made and neither the notice was given nor compensation in lieu of the notice was also given to the petitioner. Therefore, the termination of the services of the respondent amounts to principles of hire and fire. Consequently, he claimed for reinstatement and back wages.

3. Per contra learned counsel appeared in the statement of claim denied the averments of the statement of claim and stated that the respondent was never appointed on the vacant post of guard and according to the exigency of work his services were obtained on daily wage basis and he did not work for continuous period of 240 days. It was stated that as and when the need accrued, the services of the respondent were availed, consequently, the provisions of Section 25 F of the Act, 1947 would not be applicable.
4. On the basis of the pleading, the Labour Court framed issues. On behalf of the workman his statement was recorded. On behalf of the State no evidence was led. During the evidence, the workman exhibited certain documents to prove that he worked with the department for a continuous period. However, no documentary evidence or any oral evidence was led by the department. Eventually, the award dated 01.07.2008 was passed, which is under challenge.

5. Learned counsel for the State/petitioner would submit that the Labour Court failed to take into notice the fact that the engagement of the respondent was on a daily wage basis. It was further stated that the said appointment was not on a sanctioned vacant post and the appointment was not made after the due advertisement. It is further contended that though the alleged disengagement was on 17.02.2000, however, the reference was made with inordinate delay of 7 years. It is further contended that the retrenchment compensation was paid to the respondent, therefore, it would be within the ambit of Section 25 F of the Act, 1947, consequently, the award dated 01.07.2008 is illegal and is required to be set aside.
6. Per contra, learned counsel for the respondent would submit that the award passed by the Labour Court is well merited and reasoned. It is further contended that the Labour Court has given due reasons and appreciated the evidence led, therefore this court in exercise of power under Article 227 of the Constitution of India normally do not interfere unless and until perversity is writ large on the face of it. He further submits that the petitioners have failed to establish any perversity or illegality which is apparent on the face of the order which warrants any interference.
7. I have heard learned counsel for the parties and perused the records. So far as delay is concerned in making reference this point has been settled by the catena of decisions by the Supreme Court starting from the case of Ajaib Singh Vs. Sirhind Cooperative Marketing-cum- processing Service Society Limited and another reported in (1999) 6 SCC 82, Gurmail Singh Vs. Principal, Govt. College of Education and others reported in (2000) 9 SCC 496 and Kuldeep Singh Vs. General Manager, Instrument Design Development and Facilities

Centre and another reported in (2010) 14 SCC 176.

8. Law is settled that in cases of the reference under the Industrial Disputes Act, 1947 the time cannot act as a rider. Accordingly, the law of limitation would not apply. It is also obvious that if the termination is illegal and the reference is made then the cause of action would be continuous. Consequently, the delay if any cannot be made a ground for dismissal. In a result, finding of the Labour Court in condoning the delay do not appear to be perverse.
9. The petitioner contends that there has been compliance of Section 25 F of the Act, 1947 after the disengagement of the service was made. There is no evidence led on behalf of the petitioner department.
10. For the sake of brevity Section 25(F) of the Industrial Disputes Act, 1947 is reproduced herein below:-

“25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until--

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay ² [for every completed year of continuous service] or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government ¹ [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].”

11. Reading of Section 25 F of the Act, 1947 would submit that it is condition precedent that once the retrenchment is effected subsequently it cannot be cured even if certain payment is made. In absence of any evidence it cannot be presumed that before the retrenchment was made, the compliance of Section

25 F was made.

12. Likewise Section 25(B) of the Industrial Disputes Act, 1947 defines the continuous service which reads as under:-

“25B. Definition of continuous service.- For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case;
 - (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - (i) ninety- five days, in the case of a workman employed below ground in a mine; and
 - (ii) one hundred and twenty days, in any other case. Explanation.- For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-
 - (i) he has been laid- off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;
 - (ii) he has been on leave with full wages, earned in the previous years;
 - (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
 - (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.]”

13. Reading of the judgment of the Labour Court would show that the respondent

workman examined himself and contended that in the year 1990 he was appointed to the post of Guard, his services were dispensed with on 17.02.2000. He further contended that in a month he worked for 26 days and in a year he worked for more than 240 days and without any notice served to him, his services were dispensed with. The document Ex. P-1 to P-5 was filed. There is nothing on record to hold that what was the actual payment made or whether actually any payment was made in compliance of Section 25 F of the Act, 1947. The petitioner department was very much within their right to prove the respective payment made in compliance of Section 25 F of the Act, 1947. In absence of any document to this effect, the inference cannot be drawn and in alternate though the document was in possession of the petitioner department having not been produced therefore the adverse inference is required to draw. Therefore, the necessary inference would be that no compliance was made in respect of the Section 25 F of the Act, 1947.

14. 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 Authority 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 admitting evidence illegally or the Court has committed a grave error in law in coming to its conclusions.

15. 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.

16. 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 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 Mines (AIR 1958 SC 923) 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]

17. 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.
18. This Court is also reluctant to set aside the impugned order of the Labour Court for the reason that pursuant to the award, the petitioner State Govt. reinstated the respondent in service in the year 2008 and since then he has been continuously working. As such, he has by now put in service for almost 11 years after the award was passed.

19. In this view of the matter, this Court does not find any strong case on behalf of the petitioners made out calling for interference with the impugned award of the Labour Court and the petition being devoid of merits, the same is accordingly dismissed.

Sd/-

Goutam Bhaduri
Judge

Ashu