

HIGH COURT OF CHHATTISGARH, BILASPUR

WPL No. 5678 of 2011

State Of Chhattisgarh Through the Divisional Forest Officer, Forest Division,
District Kabirdham (C.G.)

---- Petitioner

Versus

Suresh Yadav S/o Jagannath Yadav, R/o Sahaspur Lohara, Tahsil & District
Kabirdham, (C.G.)

---Respondents

For Petitioner : Ms. Akanksha Jain, Dy.G.A.

For Respondent : Shri Rakesh Thakur, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

06/11/2019

Heard.

1. Challenge in this petition is to the award dated 28/09/2010 passed by the Labour Court, Rajnandgaon under the Industrial Disputes Act in a reference No.111/ID Act/Reference/2008. The reference was made by the Assistant Labour Commissioner, Chhattisgarh vide its letter 2564 dated 12/05/2008 wherein the case was registered by the Labour Court under the Industrial Disputes Act. The respondent Suresh Yadav had filed the statement of claim that he had worked in the forest department and worked as a guard from 1992 to 1999 on a clear vacancy post and the job was continuous. It is stated that on 31/12/1999 he was dismissed from the services. The respondent further pleaded that in the Lohara Circle of forest at Aklama Barrier he worked from 1992 to December, 1992. Thereafter at Bano Barrier he worked from 1993 to 1994. Thereafter at ANR 176 forest he worked from 1995 to 1996 and thereafter at ANR forest 175 he worked from 1996 to 1997. Thereafter he worked from 28/07/1997 to 31/12/1999 at Sahaspur Lohara Depot. Thereby his

presence in the job was more than 26 days in a month and more than 325 days in a year. He further pleaded that his work was satisfactory for which certificate was issued to him and all of a sudden he was removed from the service without compliance of section 25 (F) of the Industrial Disputes Act, 1947.

2. In reply to the statement of claim the averments were denied and it is contended that only five years muster roll were kept. Thereafter, the respondent also engaged in the gainful job. Consequently, he was not entitled for any relief.
3. On the basis of the reference made and the statement of claim filed the issues were framed and parties adduced their evidence.
4. On behalf of the respondent/employee he examined himself alongwith one G.S. Parihar and Pardeshi Singh Thakur whereas the order sheet of the Labour Court reflect that despite giving enough opportunity to lead evidence to the State no evidence was led, thereby their right to lead evidence was closed and as a final result the award was passed in favour of the respondent whereby the respondent was reinstated to the service without back wages. Same is under challenge.
5. Learned counsel for the petitioner/State would submit that the order impugned is perverse as the engagement to the job was not on a clear vacant post and no proper procedure was followed before appointment. It is further contended that though the Labour Court has held that the respondent worked for more than 240 days but no documentary evidence has been produced to support the contention. It is only on the oral evidence such inference has been drawn, therefore the very fact that the respondent worked with the petitioner has not been established and there is delay of 9 years in making the reference, therefore the impugned order is bad in law.
6. Per contra, learned counsel appearing for the respondent opposes the petition on the ground 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 petitioner have failed to establish that 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. In this case reference was made on 25/06/2008. The respondent was removed from the service on 31/12/1999. There has been delay of around 7 years as initially the application was filed before the Assistant Labour Commissioner in December, 2017. So far 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. Admittedly in this case no departmental enquiry was conducted and any provisions of Section 25 (F) of the Industrial Disputes Act, 1947 were not followed.
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. 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.]”

12. Perusal of the original record would show that on behalf of the respondent/employee three witnesses were examined. PW-1 was G.S. Parihar who was working as a forest officer at Pandariya. He is the employee of the State and was working while he adduced his evidence. In his statement he has deposed that the respondent was working under him as a daily wager and security labour from 1997 to 1999. The certificate has been issued which is exhibited as Ex.P-1 which fortifies the fact that the respondent worked under him. Perusal of the Ex.P-1 shows that the certificate has been signed and sealed by the person issuing the same. He was working in the official capacity of Assistant Forest Officer, Sahaspur Lohara. Likewise another witness PW-2, Pardeshi Singh Thakur has deposed the same fact and contended that from 1992 to 1999 the respondent/employee worked along with him without any break and his work was satisfactory. It is further deposed that the presence was obtained on the muster roll and he worked 26 days in a month and more than 325 days in a year. He was removed in 1999. In the cross examination of this witness it is stated that he used to fill up the muster roll and along with him Rohit Sahu, Prabhakar Shrivastava and others used to work and Prabhakar Shrivastava was reinstated by the order of the Labour Court. Likewise in statement of the respondent he has deposed that he has worked at Sahaspur Lohara from 1992 to 1999 at different places at Aklama Barrier, Bano Barrier, ANR 176 Compartment, ANR 175 Compartment, Sahaspur Lohara Nistar & Basod Depot. His presence was more than 26 days in a month and more than 325 days in a year and used to draw monthly salary of Rs.1823/-. Documents Ex.P-1, P-2 and P-3 is also been supported which is certificate to show that the respondent had worked for the aforesaid period. Therefore considering the statement of the witnesses and the document, I do not find any perversity in the order of the Labour Court.

13. Now with respect to the compliance of section 25 (F) of the Industrial Disputes Act, 1947 the documents and the facts would suggest that there is no compliance of Section 25 (F).

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 Petitioner 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 2011 and since then he has been continuously working. As such, he has by now put in service for almost 8 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 petitioner 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