

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURWP No. 2027 of 2006

- Bengal Nagpur Cotton Mill, through General Manager, Rajnandgaon (C.G.) through Factory Manager, Shri K.R. Chittawar, S/o Late Shri R.N. Chittawar, Aged about 56 years, Officiating Factory Manager, Bengal Nagpur Cotton Mill, Rajanandgaon (C.G.)

---- Petitioner

Versus

1. Shri Moolchand S/o Shri Nandram Ji Age not known, R/o Labagh, Rajnandgaon (C.G.)
2. Presiding Officer, Labour Court, Rajnandgaon (C.G.)
3. Member Judge, Industrial Court, Chhattisgarh, Raipur (C.G.)

---- Respondents

For Petitioner	:-	Shri Anup Majumdar, Advocate
For Respondent No.1	:-	None, despite service of notice.

Order On Board ByPrashant Kumar Mishra, J.05/09/2019

1. Petitioner would call in question the Appellate Order passed by the Industrial Court, Chhattisgarh, Raipur on 28.11.2005, dismissing the appeal preferred by the petitioner as well as workman. Appeals were preferred by both the parties

challenging the award dated 08.04.2000 passed by the Labour Court, Rajnandgaon, allowing the workman's application for reinstatement with back wages to the extent of 70%.

2. In a domestic inquiry the workman was charged for committing theft of *Brass(Brush)* from the factory premises on 22.06.1984. The workman was removed from service against which he preferred application under Section 31(3) read with Section 61 of the Chhattisgarh Industrial Relations Act, 1960. The Labour Court allowed the application on finding that the domestic inquiry was not conducted properly and there is no proof of the fact that the workman had committed theft. The Labour Court directed reinstatement with 70% back wages. The management as well as the workman moved separate appeals before the Industrial Court and by the impugned order both the appeals have been dismissed.
3. On perusal of the award passed by the Labour Court and the Appellate Order passed by the Industrial Court, it appears that workman neither pleaded nor proved that he was not gainfully employed during period of his ouster from service. In the matters of **M.P. State Electricity Board Vs. Jarina Bee (Smt.), (2003) 6 SCC 141, G.M. Haryana Roadways Vs. Rudhan Singh, (2005) 5 SCC 591, J.K.**

Synthetics Ltd. Vs. K.P. Agrawal and another (2007) 2 SCC 433, Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & others, (2013) 10 SCC 324 and one latest judgment rendered in the matter of M.L. Singla Vs. Punjab National Bank and another, AIR 2018 SC 4668, it has been held that the initial burden to prove that the workman was not gainfully employed, is on the workman. Once the burden is discharged by pleadings and producing evidence the burden shifts on the management. In the case at hand neither the Labour Court nor the Industrial Court has referred to any pleading or evidence led by the workman in this regard, therefore, award of back wages is wholly unjustified.

4. Coming to the issue of reinstatement in the services it is to be seen that since after the closure of Bengal Nagpur Cotton Mill, Rajnandgaon the entire establishment has been taken over by the management of National Textile Mill Corporation and at present the mill at Rajnandgaon is closed.
5. There can be no question of employment in a closed mill/establishment, therefore, the relief of reinstatement has been rendered infructuous. As the same cannot be allowed in favour of workman due to closure of petitioner's textile mill.

6. In view of the above, the writ petition is allowed and the impugned award passed by the Labour Court and the Appellate Order passed by the Industrial Court are set aside.

Sd/-
(Prashant Kumar Mishra)
Judge

Ankit