

HIGH COURT OF CHHATTISGARH AT BILASPURWP No. 2924 of 2004

Doman Singh Verma, aged about 42 years, Gandhi Chowk Purani Basti, Supela, Bhilai, District Durg (C.G.).

---Petitioner

Versus

1. Steel Authority of India Ltd., Through the Managing Director, Bhilai Steel Plant, Bhilai.
2. Presiding Officer, Labour Court, Durg.
3. Industrial Court, Through the President, D.K.S. Bhawan, Mahanadi Khand, Ghadi Chowk, Raipur.

---Respondents

For petitioner	:	Shri Sudeep Johri, Advocate.
For resp.No.1	:	Shri Ashish Surana, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

14/01/2019

1. The challenge in the instant Writ Petition is to the order of the Industrial Court, Raipur dated 03/02/2004 – Annexure-P/1 passed in two appeals, one is preferred by the petitioner and the other is preferred by the respondents. The two appeals were registered as Appeal Nos. 409/MPIR/97 and 410/MPIR/97.
2. The brief facts relevant for adjudication of the instant Writ Petition is that, the petitioner herein was given employment by the respondents on the post of NMR – Nominal Muster Roll Majdoor on 28/09/1987. The petitioner continued to work on the said post till 30/09/1988 i.e. for a period of 1 year and from 01/10/1988 onwards, the services of the petitioner stood

discontinued. The discontinuance of the service of the petitioner was without a written order being passed against him. The petitioner on enquiry from the respondent-Management as to the reason for discontinuance it was alleged that, the petitioner has obtained employment by playing fraud with the management to the extent that he has submitted false declaration of there being no other family members in his family who has been given employment as a displaced person or have been given employment against the land of his family which was acquired by the respondents.

3. The discontinuance of service with effect from 01/10/1986 was first challenged before the Labour Court, Durg under Section 31-3 of the MPIR Act, 1960. The Labour Court vide its order dated 18/04/1997 allowed the application and granted full backwages. The said order was challenged under Section 65 of the Act of 1960 before the State Industrial Court. The Industrial Court allowed the appeal of the employer vide order dated 22/09/1995 and remanded the matter for fresh adjudication. On due consideration, the learned Labour Court passed a fresh order on 26/11/1997 – Annexure-P/12 allowing the application of the petitioner and granting him relief of reinstatement with 75% backwages.

4. This order was subjected to challenge by the two aforesaid appeals preferred by the petitioner as well as the Management. The Industrial Court vide the impugned order dated 03/02/2004 has allowed the appeal of the respondent-employer and rejected the appeal of the worker and further held that the worker is not entitled for any relief and thereby the Industrial Court

has affirmed the order of discontinuance from service. It is this order which is under challenge in the instant Writ Petition.

5. What is relevant also to be taken note of is the fact that, during the course of evidence, the Management has led the evidence of 3 witnesses namely i) P.B.K. Nair ii) Shija P. Mathew iii) Y.K.Passari.

6. The contention of the counsel for the petitioner is that, the evidence which has been led by the Management does not establish the charge that has levelled against the petitioner. It is the contention of the petitioner that the evidence also does not prove the allegations which have been levelled against him on account of which the services have been terminated/discontinued. He further submits that, none of these witnesses have produced before the Court any material evidence that was required to justify the action of the Management in discontinuing the services of the petitioner and thus prayed for setting aside of the order of the Industrial Court.

7. The learned counsel for the respondent-Management however opposing the petition submits that, the witnesses examined on behalf of the Management did state before the Labour Court that the father as well as the Uncle of the petitioner were already in employment of the Bhilai Steel Plant. They further stated that, these two persons were given employment as displaced persons and on the basis of this evidence, the counsel for the Management tried to emphasis on the fact that the petitioner thereafter could not have got employment and these facts has been suppressed by him by

way of declaration that he had submitted which has been found to be false and therefore the petitioner does not deserve any relief. It was also the contention of the Management that, even otherwise, as per the circular governing the field it is only one person in the family who could have got employment for the land which has been acquired. Since the father and Uncle of the petitioner were already in employment as displaced persons, the petitioner again could not have been granted employment against the same head and thus prayed for rejection of the Writ Petition.

8. Having heard the contentions put forth on either side and on perusal of record what stands admitted or undisputed from the aforesaid facts which have been narrated is that, the petitioner admittedly was granted appointment wayback in the year 1987 as an NMR. The appointment given was as displaced person for the land belonging to his family which was acquired. The petitioner by virtue of his appointment had worked for a period of more than 1 year.

9. Admittedly, the services of the petitioner stood discontinued with effect from 01/10/1988. There is also no dispute as to the fact that, the discontinuance of the petitioner from service was on the ground that there were other family members who had already been granted employment by the respondents for their land which has been acquired. That it is against the same land which the petitioner also had got employment by making a false declaration to the authorities concerned.

10. Perusal of evidence of the 3 witnesses examined on behalf of the Management clearly reveals that, none of these witnesses have been able to make a categorical statement before the Labour Court in respect of the land belonging to the petitioner's family which was acquired and against the same land was the employment provided to the father of the petitioner as well as his Uncle. The evidence of the Management does not give any specific details in respect of the Uncle of the petitioner namely Chhabilal being given employment as a displaced person.

11. So far as the father of the petitioner is concerned, except for an entry in the service book which too is of the year 1960, there does not seem to be any other material produced by the Management to prove the allegation levelled against the petitioner.

12. In the opinion of this Court, when the allegation levelled by the Management against the petitioner is that of obtaining employment by fraud, fraud to the extent of submitting a false declaration in respect of there being no other members in the family who have got employment against the land which has been acquired. The primary evidence which the Management was supposed to lead was the specific land which was acquired belonging to the family of the petitioner. The details of the land as well as the details of the persons who have been provided employment against the respective land. It was also necessary to establish by the Management that against the same land which has been acquired by the Management against which the

petitioner has been given employment, the father or the Uncle also was provided employment.

13. In the absence of any specific details in this regard led by the employer before the Labour Court, the finding of the Labour Court of the Management having not proved their case or charges levelled against the employee for the purpose of terminating him from service is not established. To that extent, the finding of the Labour Court seems to be fair and justified.

14. The Industrial Court does not seem to have considered these aspects expect for going into the technicalities of the issue whether the employee has been examined or not, whether the employee has proved his case or not. In the opinion of this Court, this burden and duty was casted upon the employer.

15. From the given evidence, there does not seem to be any specific material produced by the employer before the Labour Court to establish the allegation and charge.

16. For the aforesaid reason this Court is of the opinion that, the finding of the Industrial Court to that extent is bad in law.

17. The Writ Petition therefore deserve to be and is accordingly allowed.

18. However, so far as the awarding of backwages to the tune of 75% by the Labour Court is concerned, in the opinion of this Court, the same is on the higher side. One cannot loose sight of the fact that, for all these intervening period, the petitioner has not discharged any duty.

19. Under the normal circumstances, it is the principle of No-Work-No-Pay which ought to have been applied, but taking into consideration the fact that considerable time has lapsed in the litigation and the petitioner has got only few years of service left for attaining the age of superannuation, this Court in order to compensate the petitioner suitably ordered that the petitioner would be entitled for backwages only to the extent of 50% instead of 75%.

20. The impugned order dated 03/02/2004 stands set-aside and in the process, the order of the Labour court dated 26/11/1997 stands affirmed with the aforesaid modification.

Sumit

Sd/-
(P. Sam Koshy)
JUDGE