

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****WP No. 423 of 2005**

1. Chhattisgarh State Electricity Board Through The Division Engineer, STRE Construction Division, CSEB, Jagdalpur, Chhattisgarh
2. Executive Engineer STRE Construction Division MPEB (Now CSEB), Jagdalpur Chhattisgarh.

---- Petitioners**Versus**

1. Industrial Court Raipur, Chhattisgarh.
2. Jagannath Sharma (deleted as per Hon'ble Court Order Dated-14-08-2018)
2 (A) Kamla Bai W/o Late Jagannath Sharma Aged About 63 Years

2 (B). Smt. Nandini D/o Jagannath Sharma Aged About 54 Years
2 (C). Ajay Kumar Sharma S/o Jagannath Sharma Aged About 44 Years

R/o Village Pureyera, Tehsil Naraharpur, District Jagdalpur,
Chhattisgarh

---- Respondent

For Petitioners	Mr. Abhishek Sinha, Advocate
For Respondents 2(A) to 2(C)	Mr. PK Tulsyan, Advocate

Order On Board By**Hon'ble Mr. Justice Prashant Kumar Mishra****5/9/2019**

1. Heard.
2. Challenge in this writ petition is to the appellate order passed by the Industrial Court affirming the order passed by the Labour Court, Jagdalpur, reinstating the deceased-workman with full backwages.
3. It is common ground that as of now, the workman has died and is represented through his legal representatives.
4. Mr. Abhishek Sinha, learned counsel for the petitioners, would inform that the deceased-workman was reinstated in service on 13.8.1996 soon after the Labour Court passed the award on 10.8.1996.
5. In view of the above, since the workman was reinstated in service and has served out the entire service till the age of superannuation during pendency of the writ petition, the issue about the validity of the order of reinstatement has been rendered academic. Learned counsel for the parties have argued only on the issue of backwages.
6. The only issue which now remains alive for decision making is whether the Labour Court was justified in awarding full back wages without having any pleading or proof that the workman was not gainfully employed during his ouster from service.
7. The legal question as to when the Labour Court may allow back wages and the requirement, which the workman should fulfill to claim such backwages, has been decided by the Hon'ble

Supreme Court time and again, to quote a few i.e. **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.**

8. In all these matters, it is held that the initial burden lies with the workman to plead and prove that he was not gainfully employed during his/her period of ouster from service and if he/she pleads and proves the said fact, the burden shifts on the employer to disprove the assertion of the workman.
9. If we examine the state of pleading and proof in the matter at hand, the only conclusion which can be drawn is that the workman has neither pleaded nor proved that he was not gainfully employed. The Labour Court has not referred to any such pleading or statement during examination of the workman.
10. Although the record of the Labour Court is not available, but as of now, it will not be a prudent exercise to summon the record and keep the petition pending, wherein, the order has been passed in favour of the respondent way back in August 1996 and as on date, the workman has already died.
11. In another judgment rendered by the same Bench, which has decided the above matter of **ML Singla (supra)**, the Supreme

Court was dealing with almost similar matter (**Rajasthan State Road Transport Corporation, Jaipur Vs. Phool Chand (Dead) through Lrs., AIR 2018 Supreme Court 4534**), wherein, after a long drawn battle, the workman died in the course of litigation and the Supreme Court found that he had not pleaded or proved the fact of not gainfully employed but still the Supreme Court having considered the period of litigation and other relevant aspects of the matter, awarded 50% of back wages to the workman.

12. Coming to the facts of the present case, it is pertinent here to mention that the petitioners have filed some documents before the Industrial Court to demonstrate that the workman was not gainfully employed and further that their appeal was dismissed by the Industrial Court on technical grounds.

13. Ordinarily, when such are the facts, this Court would have remanded the matter to the Labour Court for recording evidence on the issue but in view of the death of workman during pendency of the writ petition, it would not be a feasible or prudent exercise, therefore, the petition is disposed of here itself.

14. The workman in the instant case was in litigation since 1984, which means the litigation is now more than 35 years old. In the meanwhile, the workman has retired on attaining the age of superannuation and later died during pendency of the writ petition.

15. Therefore, ends of justice would be served if the writ petition is allowed in part in respect of back wages directing that instead of full back wages, the petitioners shall pay 50% of the back wages to the legal representatives of the workman for the period from 16.2.1984 to 10.8.1996.

16. It is ordered accordingly.

Sd/-

(Prashant Kumar Mishra)

Judge

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