

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (L) No. 5269 of 2011**

Tukaram S/o Shri Atmaram Verma, R/o Village and Post Dhara,
Tahsil Dongargarh, Distt. Rajnandgaon, CG

---- Petitioner**Versus**

1. State of Chhattisgarh through the Secretary, Department of Forest,
DKS Bhawan, Raipur, CG
2. The Divisional Forest Officer, Forest Division, Khairagarh, Distt.
Rajnandgaon, CG

---- Respondents

For Petitioner	:	Mr. Ajit Singh, Advocate
For State	:	Mr. P. Acharya, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****16.08.2019**

1. The challenge in the present writ petition is to the order dated 13.10.2010 Annexure P-1 whereby the Labour Court, Rajnandgaon has answered the reference in negative holding that the petitioner is not entitled for any relief.
2. The facts of the case are that the petitioner was working as a daily wage worker and he worked with the respondents from 1991 to 2004 for a period of 13-14 years. Thereafter, the services of the petitioner were abruptly discontinued by the respondents. The discontinuance part was subjected to challenge by way of industrial dispute and the matter stood referred to the Labour Court at Rajnandgaon by the State Govt. The matter was

registered as case no. 195/ID Act/Ref./2008. The terms of reference made to the Labour Court by the State Govt. was:

“Whether the termination of services of Tukaram S/o Atmaram Verma was legal and justified? If not, what relief he is entitled for? What directions could be issued to the non-applicant employer in this regard?”

3. The parties to the dispute entered appearance before the Labour Court and submitted their respective statement of claim and written statement. Thereafter, the worker got himself examined and also examined one Shri Shyamlal Uike, a Dy. Ranger in the department as a witness in support of his case. The State in response did not lead any evidence in support of their contentions. The Labour Court finally vide impugned award dated 13.10.2010 answered the reference in negative holding that since the petitioner has failed to produce cogent evidence before the Labour Court to establish that he had worked for 240 days before discontinuance of service, the entire dispute raised by the petitioner was turned down. It is this order which is under challenge in the present writ petition.
4. The contention of the counsel for the petitioner is that so far as the burden of proof that was upon the petitioner is concerned, he has discharged it fully yet the Labour Court has taken a contrary view. He further contended that the pleadings and the evidence which have come on record clearly establish the fact that the petitioner was in continuous service with the respondents before discontinuance. It was further contended that there is no dispute regarding the petitioner having worked with the respondents between 1991 to 2004. Therefore, it has to be presumed that there was continuous engagement and the finding of the Labour Court deserves to be

set aside. Thus, counsel for the petitioner prayed for the relief of reinstatement in service with all consequential benefits.

5. State counsel, however, opposing the petition submits that ultimately the status of the petitioner was that of a daily wage worker. There was no documentary proof as such produced by the worker to establish that he had worked for 240 days before being discontinued. It was also the contention of the respondent State that the engagement of the petitioner was only subject to the availability of work and which cannot give an indefeasible right to the petitioner worker as a daily wage employee could have been discontinued at any moment and that there was no fixed tenure in favour of the petitioner.
6. Having heard the contentions put forth on either side and on perusal of the record, the admitted factual matrix of the case is that the petitioner did raise an industrial dispute before the Labour Court. The Labour Court registering the case, issued notice to the contesting parties. Both the parties entered appearance and submitted their respective claims. The worker examined himself before the Labour Court and pleaded that he had worked as a daily wage worker under the respondents between 1991 to 2004. The said evidence of the worker stands un rebutted by way of any evidence on the part of the respondents. The evidence of the worker was substantiated by an officer of the respondent department itself namely Shyamlal Uike, a Dy. Ranger under whom the petitioner had worked. The statement of the Officer of the Department examined on behalf of the worker categorically establishes the engagement of the petitioner and also the fact that there was continuous work as the said witness himself in his deposition has accepted that the worker stood engaged for 26 days in a month. The said

witness has also deposed accepting the maintenance of Registers for the payment of salary and marking of attendance of these daily wage workers. Since the respondent Department did not lead any evidence, the petitioner was compelled to move an application calling for the records. The said application was allowed by the Labour Court on 08.10.2009 directing the respondent department to produce the record before the Labour Court. However, in spite of there being an order of the Labour Court the Department did not produce any record before it.

7. So far as the deposition of Shyamlal Uike is concerned, he in his evidence has admitted the fact that the muster roll were prepared by the Department in respect of the daily wage workers engaged and they were paid for 26 days in a month. All these materials have not been controverted or rebutted by the Department by leading any cogent evidence, oral or documentary before the Labour Court. In the absence of any such record what could be safely inferred and concluded is that the petitioner has discharged his burden as much as possible from his side. He has laid his own evidence as also called upon an Officer of the Department to support his case. Under the circumstances, it cannot be said that the petitioner has not proved his case of having worked for 240 days in a calendar year.
8. Once the employment part has been admitted by the witness of the Department, there was no good reason why the Labour Court should have drawn an adverse inference against the petitioner rather it should have held that the petitioner has discharged his burden proving that he had worked for more than 240 days in a calendar year and appropriate relief should have been granted. This Court therefore is of the opinion that the finding of the Labour Court to that extent is not sustainable and the same deserves to be

and is accordingly set aside.

9. Admittedly, from the evidence of Shyamlal Uike it appears that the petitioner had worked for a considerable period though for 26 days for a month. It is undisputed that before discontinuance, the petitioner was not given any compensation as is required under the provisions of Chapter V of the Industrial Disputes Act neither was any retrenchment compensation notice issued to the petitioner before discontinuance of service.
10. Given the aforesaid factual matrix of the case, the discontinuance amounts to illegal termination and also violative of the provisions of the Industrial Disputes Act. Under the normal circumstance, the petitioner, in the event of the discontinuance being held to be illegal termination, would be entitled for reinstatement in service. In the instant case, this Court is conscious of the fact that the petitioner was discontinued from service in the year 2004. From the said date till now i.e. for a period of about 13-14 years the petitioner is out of employment and has not worked under the respondents. Therefore, at this juncture it would not be proper and justified granting of the relief of reinstatement to the petitioner.
11. However, at the same time, the petitioner cannot be rendered remediless without any relief. Taking into consideration the recent decision of the Supreme Court and the trend which is being followed, this Court is of the opinion that ends of justice would meet if the relief of a lump sum compensation is awarded to the petitioner in lieu of reinstatement taking note of the considerable gap from the date of termination till date that have elapsed. This Court, considering the fact that the petitioner had worked for around 13-14 years with the respondents, quantifies a lump sum compensation in lieu of reinstatement at Rs.1,50,000/- (One Lakh Fifty

Thousand Only).

- 12.** The impugned order Annexure P-1 stands set aside/quashed. The discontinuance of the petitioner is held to be illegal. However, the petitioner in lieu of reinstatement is ordered to be entitled for a lump sum compensation of Rs.1,50,000/- as full and final settlement.
- 13.** The writ petition accordingly stands allowed in part.

**Sd/-
P. Sam Koshy
Judge**

Khatai