

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPL No. 2812 of 2010

Chairman, Krishi Upaj Mandi Samiti, Pandari, Kanpa, Raipur,
Chhattisgarh

---- Petitioner

Versus

Jay Kumar S/o. Rajratnam, Aged about 48 years, R/o. Tiwari Hotel,
New Ganj Mandi, Kanpa, Lodhipara, Raipur, Chhattisgarh

---Respondent

For Petitioner	:	Mr. H.B. Agrawal, Advocate along with Ms. Prabha Sharma, Advocate
For Respondent	:	Mr. Lav Sharma, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

11/07/2019

1. The challenge in the present writ petition is to the award passed by the Labour Court, Raipur in case No. 82/2000/I.D.Act/Reference dated 29.01.2010. Vide the said award, the Labour Court has decided the dispute in favour of the employee granting the relief of reinstatement without back-wages.
2. The facts of the case is that the respondent/worker herein moved a conciliation proceeding before the Labour Commissioner alleging that he has been illegally terminated by the petitioner and the Labour Commissioner made a reference to the Labour Court, Raipur for deciding the following terms of reference:

“Whether the termination of service of Shri Jay Kumar son of Rajratnam was proper and legal, if not, to what relief he is entitled for and what directions can be issued to the employer in this regard?”

3. The parties before the Labour Court entered appearance and submitted the statement of claim and written statement. In the statement of claim, the respondent/worker contended that he was initially engaged as a daily wage employee by the petitioner/establishment way back on 16.03.1983 and on which post he continued to work up till 09.10.1989. That, on 10.10.1989, since it was a government holiday, the respondent/worker had gone to Bilaspur and where he got unwell and for a next 4-5 days he could not attend his duties on account of ill-health, and thereafter when he reported for duties, he was refused joining and he was told that his services has been discontinued by an oral order. He contended that before he was discontinued from service, the petitioner/establishment has not complied with the mandatory requirement as is required under the provisions of the Industrial Disputes Act, in as much as no notice or salary in lieu of notice neither any retrenchment compensation was provided to the respondent/ worker before discontinuance. Thus, the order of discontinuance amounts to illegal termination and prayed for the respondent/worker to be taken back in employment.
4. The petitioner/establishment i.e. the second party before the Labour Court filed their written statement and denied the contention of the respondent/worker and submits that the petitioner/establishment firstly does not fall within the definition of 'Industries' and therefore the reference itself is bad and therefore prayed for the rejection of the claim.
5. During the course of proceedings before the Labour Court, the respondent/worker examined himself and on behalf of the petitioner/

establishment one Shri Ashok Kumar Kubhej was examined. After the evidence was complete, the learned Labour Court vide impugned award dated 29.01.2010 passed an order of reinstatement without back-wages holding the discontinuance to be bad in law.

6. The counsel appearing for the respondent/worker at this juncture referred to a document dated 31.08.2010 issued by the Secretary of the petitioner/ establishment intimating the petitioner to report for duty and as such the petitioner stood reinstated in service w.e.f. 22.04.2010 onwards.
7. The contention of the petitioner/establishment is that there is no evidence on the part of the respondent/worker that he has worked for 240 days in the preceding years or earlier to establish the claim of the respondent/worker. The counsel for the respondent/worker referred to WP No. 5006/2005 decided on 26.06.2008 in this regard and thus prayed for setting aside of the award passed against the petitioner/establishment.
8. On perusal of the award passed by the Labour Court, it appears that there have been evidences adduced by both the parties. The worker in his statement as is reflected from para No.7 of the award has clearly stated that he has been working with the petitioner/establishment continuously between 16.03.1983 to 10.10.1989. Likewise, in the same paragraph, there is also a reference in respect of the evidence of the Shri Ashok Kumar Kubhej a witness on behalf of the petitioner/ establishment. In his evidence also he has accepted that the respondent/worker Jay Kumar has worked at the Krishi Upaj Mandi, Raipur between 1983 to October, 1989 as a daily wage employee and

thereafter since October, 1989, the worker has himself stopped coming to work. This deposition of the petitioner's witness before the Labour Court itself establishes the fact that the respondent/worker had worked with the petitioner/establishment continuously between 1983 to 1989, which is sufficient enough to draw an inference that there has been engagement of more than 240 days in a calendar year.

9. Given the aforesaid finding on the basis of the evidence which has come on record before the Labour Court it cannot be said that the finding of the Labour Court in any manner is a perverse finding or a finding which is contrary to the evidence.
10. All the aforesaid factual matrix would clearly reveal that the finding of the labour Court was based on the evidence which has come on record led by either side. Thus, it is a finding of fact.
11. It has been repeatedly held by the Supreme Court as also by the High Courts that finding of fact of the labour Court's should not be interfered by the High Court while exercising writ jurisdiction. In exercise of writ jurisdiction this Court has only to see whether there is any perversity in the finding of the labour Court or whether the finding arrived at is contrary to the evidence on record. In the instant case there is no ground that the finding is a perverse finding so far as the finding which has been provided and discussed it clearly reflects that it is a finding of fact based on the evidence which has been adduced by the parties in dispute.
12. 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 Court 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 appreciating the evidence or the Court has committed a grave error in law in coming to its conclusions.

13. 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.
14. 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 are social welfare legislations 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 Mines¹, 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]***.

15. The Petitioners 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.
16. In para 17 of (2014) 7 Supreme Court Cases, 190 (Hari Nandan Prasad and Another vs. Employer I/R to Management of Food Corporation of India & Another), it has been held as under:-

“17.....At the time of their disengagement even when they had continuous service for more than 240 days (in fact about 3 years) they were not given any notice or pay in lieu of notice as well as retrenchment compensation. Thus, the mandatory precondition of retrenchment I paying the aforesaid dues in accordance with Section 25-F of the ID Act was not complied with. That is sufficient to render the termination as illegal. Even the High Court in the impugned judgment has accepted this position and there was no quarrel on this aspect before us as well.....”

17. Applying the same analogy and again reiterating the same in the case of (2014) 7 Supreme Court Cases 177 (Bharat Sanchar Nigam Limited vs. Bhurumal), it has been held in paragraph- 27 as under:-

“27.....In any case, the award is passed on the basis that the respondent had worked for 240 days in the preceding 12 months' period prior to his termination and therefore it is a clear case of violation of Section 25-F of the Industrial Disputes Act. The termination is, thus, rightly held to be illegal. We do not find any perversity in this outcome.”

18. Given the said facts this Court does not find any strong case made out by the petitioner calling for an interference with the impugned order.

19. Another reason for not interfering with the impugned award is that pursuant to the order of the labour Court, respondent have already reinstated the respondent worker who is in employment since then.
20. In view of the aforesaid legal position, as it stands and also taking note of the fact that the petitioner/establishment seems to have reinstated the respondent/worker since April, 2010 itself, it would not be proper at this juncture to interfere with the award as of now. The writ petition therefore being devoid of merit stands dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved