

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (L) No. 7415 of 2010

1. State of Chhattisgarh through the Secretary, Department of Water Resources, DKS Bhawan, Mantralaya, Raipur (CG).
(Petitioner No.1 was not a party before the Labour Court but has been impleaded as petitioner No.1 in the instant case as the proper course is to implead the State Government through the Secretary of the concerned department).
2. The Executive Engineer, Hasdeo Canal Water Management Division District, Janjgir Chamapa (CG).

---- Petitioner(s)

Versus

Puniram Yadav S/o Ransai Yadav, aged about 38 years, Ex. Side Helper R/o Behind BTI School, Ward No.18 Tahsil and District Janjgir Champa (CG).

---Respondents

For Petitioner-State	:	Shri Chandresh Shrivastava, Dy. A.G.
For Respondent	:	Shri S.P. Kale, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

09.08.2019

1. Challenge in this petition is to the award dated 05.06.2010 passed by the Labour Court, Bilaspur, in case No.43/ID Act/2009 (Ref.). Vide the said impugned award, the Labour Court has granted the relief of reinstatement in service without back wages however with continuity of service.
2. The facts of the case is that, the respondent-worker had raised a dispute before the State authorities against the illegal termination made by the petitioner. The State authority vide order dated 23.11.2009 made a reference to the Labour Court, Bilaspur. The terms of reference were as under:
 1. Whether the application challenging the termination of service after 13 years is maintainable ?
 2. If yes, whether the termination of service of Puniram Yadav was legal and justified ? If not, to what relief is he entitled for ?

3. The reference was registered as case No.43/ID Act/2009 (Ref.). That, either parties before the Labour Court appeared and submitted their respective statement of claim and written submissions. That, subsequently the worker got himself examined and on behalf of the petitioner-employer one Shri VK Singh, SDO, was examined. Finally the Labour Court answered two references in the affirmative holding that dispute after 13 years can be raised under the provisions of Industrial Disputes Act based on the judgments of the Supreme Court which he relied upon. The Labour Court also answered the reference in favour of the worker so far as discontinuance of service being illegal. While granting the consequential relief, the Labour Court granted the benefit of reinstatement without back-wages, however, with continuity of service. It is this order which is under challenge in this petition.
4. The contention of the petitioner is that, the worker does not have any indefeasible right in his favour as the substantive appointment of the worker was that of a daily wage worker whose services were always engaged subject to availability of work and whose services could have been discontinued any moment. Therefore, there was no illegality as such committed by the petitioner-employer in discontinuing the services of the petitioner. Further contention of the petitioner is that, the dispute itself has been raised by the worker at a much belated stage after more than 13 years and thus on this ground also the Labour Court should have turned down the reference on the ground of delay laches on the part of the respondent-worker. According to the petitioner, the worker allegedly was discontinued from service in the year, 1995 and for 13 years time he did not raise any dispute and therefore it has to be presumed that the worker had lost interest in the claim for reinstatement and he cannot thereafter be

permitted to raise the claim at a belated stage which in the instant case was of more than 13 years.

5. The further contention of the petitioner-employer is that, there is no cogent strong evidence led by the worker to establish that he had worked for a continuous period of 240 days in a calendar year and in the absence of any cogent evidence, the findings of Labour Court deserves to be set aside/quashed.
6. On the other hand, learned counsel for the respondent-worker submits that the writ petition deserves to be rejected for the reason that after the award was passed by the Labour Court on 05.06.2010, the petitioner has reinstated the respondent on 12.08.2010. He further submits that there are workers who have been appointed subsequent to the respondent in the present petition and who have been regularized by the department, but unfortunately the petitioner has been denied the same. Since the respondent already had been taken back in service and about 9 years of service has already been put in after reinstatement, it would be too harsh on the part of this court now to interfere with the order of reinstatement.
7. Further contention of the respondent is that, so far as delay part is concerned, the Labour Court as such has taken note of the various judicial pronouncements particularly those of the Supreme Court in this regard and in the process has denied the benefit of back-wages and therefore, the finding of the Labour Court cannot be said to be bad in law, arbitrary and illegal and thus prayed for rejection of the writ petition.
8. Having heard the contentions put forth on either side and on perusal of records, what is undisputed is the fact that as per the award of the Labour Court and the submissions made by the worker, he was in service under the petitioner from September, 1988 to 1995 when his services were discontinued. The dispute for the first time was raised in the year, 2009

that is after 13 years. The Labour Court finally decided the case in favour of the worker vide award dated 05.06.2010. The department i.e. the petitioners have reinstated the respondent w.e.f. 12.08.2010 after the award being passed. The respondent being reinstated, he has been in continuous service till date and has put in more than 9 years of service.

- 9.** Given the aforesaid facts and circumstances of the case, this court has a clear stand in favour of the respondent-worker so far as the relief of reinstatement is concerned and therefore, this court is reluctant to interfere so far as relief of reinstatement without backwages is concerned. Moreover, there has been sufficient evidence produced by the worker through his submissions that he has worked continuously and uninterruptedly between 1988 to 1995. There is no document produced by the department to disprove the said evidence of the worker.
- 10.** Thus, on this ground also this court is not inclined to interfere with the award. However, this court is of the opinion that the observations made by the Labour Court so far as granting continuity of service is concerned, the same could not have been made in the given facts and circumstances of the case particularly taking note of the fact that the substantive status of the respondent-worker was that of a daily wage worker whose services could had been discontinued at any stage on any date. A daily wage worker does not have a fixed tenure or has a fixed age of superannuation. The only requirement is that on a worker having put in 240 days, the establishment or the employer has to only comply with the mandatory provisions as envisaged under Chapter-V of the Industrial Disputes Act before discontinuance from service.
- 11.** Under the circumstances, granting relief of continuity of service by the Labour Court seems to be an error which is innocuous and as such the same is held to be bad in law and the impugned order stands modified

only to the extent that the entire award remains intact except the observation of continuity of service.

12.At this juncture, the counsel for the respondent-worker submits that the persons junior to the petitioner have already been regularized by the department, but due to pendency of the present writ petition before this court, the respondent was not regularized.

13.This court makes it clear that dispute or pendency of the writ petition should not come in the way of the department in considering the case of the respondent-worker for regularization particularly keeping in view the persons who were similarly placed in the department.

Sd/-
(P. Sam Koshy)
Judge

inder