

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPL No. 155 of 2013

1. State of Chhattisgarh, through: Secretary, Water Resources Department, Mahanadi Bhawan, Naya Mantralaya, Naya Raipur, Police Station Mandir Hasaud, Raipur, Chhattisgarh

(Petitioner No.1 was not a party before the learned Labour Court, but has been impleaded as petitioner No.1 herein as it is necessary to implead the State Government through the Secretary of the concerned Department.)

2. The Executive Engineer, Hasdeo Barrage Water Management Division, Rampur, Police Station Rampur, Tahsil and District Korba, Chhattisgarh

---- Petitioners

Versus

1. Nathiyaram Rajwade, Aged about 45 years, S/o. Late Hiraram Rajwade, R/o. Village and Post Kanki, Korba, Police Station and Tahsil Kartala, District Korba, Chhattisgarh
2. The Presiding Officer, Labour Court, Koba, Police Station Korba, District Korba, Chhattisgarh

---Respondents

For Petitioners/State	:	Mr. Anshuman Shrivastava, P.L
For Respondent No.1	:	Mr. Vinod Deshmukh, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

25/02/2019

1. The challenge in the present writ petition is to the award dated 12.02.2013, passed by the Labour Court, Korba, in case No. 10/I.D.Act/2010/Reference.
2. Vide the said impugned award, the Labour Court has answered the reference in favour of the worker involved and has ordered for reinstatement in service without back-wages. The challenge to the impugned order is on the ground that the dispute itself was raised by

the worker involved in the dispute after an inordinate unexplained delay of more than 13 years.

3. The second ground is that the substantive appointment of the worker was as a daily wage employee and the daily wage employees are always engaged as and when availability of work and there is no right whatsoever created in their favour and their services stand automatically discontinued on the competition of the days work.
4. The State counsel have also questioned the finding of the Labour Court on the ground that the learned Labour Court has not properly appreciated the evidences, which have been adduced by the parties before the Labour Court.
5. Per contra, Mr. Vinod Deshmukh, Advocate appearing for the respondent/worker opposing the petition submits that it is a case where the petitioner at the first instance itself had put in about 6 years of continuous employment and that subsequent to the order of the Labour Court, the petitioner has again been reinstated on 13.03.2013 and since then also the petitioner has again put in about 6 years of service. Thus, in all he has put in about 12 years of service and at this juncture, it would not be proper for discontinuing the services of the petitioner or for allowing the writ petition of the State.
6. Counsel appearing for the worker further submits that the plain reading of the finding given by the Labour Court would by itself show that those findings are all finding of fact based on the evidence or materials, which were produced during the course of evidence

before the Labour Court and the said findings unless it is held to be perverse or contrary to the evidence, the same should not as a matter of routine to be interfered by the High Court under Article 226 of the Constitution of India.

7. Having heard the contentions put forth on either side and on perusal of record, from the order of the Labour Court it clearly reveals that the respondent/worker in support of his contentions had adduced his evidence and in his deposition he had clearly mentioned that the petitioner was initially engaged in July, 1989 and he continued to work with the respondents till 28.02.1995. The worker further in his deposition had clearly submitted that before discontinuance, he was neither issued with any show cause notice or salary in lieu of notice, nor was he paid any sought of compensation on his being retrenched as is mandatorily required under the provisions of Section 25F of the Industrial Disputes Act.
8. The petitioner/State had led the evidence of one Ramkrishna Swarnakar, who in his deposition has not disputed the engagement of the respondent/worker between 1989 to 1995. He has also not disputed the fact that before discontinuance of the worker, he was not paid with any compensation, nor was he issued with any notice or salary in lieu of the notice. Moreover, the attendance register and the documents in respect of the wages paid to the daily wage employee showing the engagement of the respondent/worker and the wages paid to the respondent/worker during the intervening period have been duly proved by way of proper exhibit being marked before the Labour Court, which further establishes the engagement

of the petitioner during the period 1989 to 1995, and it further establishes the fact that the respondent/worker had put in continuous 240 days of service immediately prior to his discontinuance w.e.f. 28.02.1995.

9. All these facts, which have come before the Labour Court by way of evidence led by either side, would reveal that the findings of the Labour Court is a finding of fact and is based on the evidence, which have brought before the Court.
10. In para 17 of **(2014) 7 Supreme Court Cases, 190 (Hari Nandan Prasad and Another v. 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.....”

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.”

11. The Supreme Court in the case of **“Harjinder Singh v. Punjab State Warehousing Corpn.”** reported in **(2010) 3 SCC 192**, in paragraph 21 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.’

(A.I.R 1958 SC 923 [State of Mysore v. Workers of Gold Mines, AIR p.928, para 10.]”

12. This view has further been reiterated in the case of **“Bhuvnesh Kumar Dwivedi v. Hindalco Industries Limited”** reported in **(2014) 11 SCC 85**.
13. Given the aforesaid facts and circumstances of the case, this Court is of the opinion that no strong case has been made out by the State Government for interfering with the impugned award. This Court

further is not inclined to interfere with the impugned award, as this Court finds that the worker involved in the present case has since been reinstated by the department way back in March, 2013 onwards after the order of the Labour Court and since then he is still continuous employment with the respondents, though the reinstatement was pursuant to the requirement under Section 17-B of the Industrial Disputes Act.

14. The writ petition accordingly stands dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved