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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 66 of 2018**

{Arising out of order dated 28.03.2016 passed in Writ Petition (L) No. 702 of 2008 by the learned Single Judge}

Uday Singh Tomar S/o Bacharam Singh Tomar @ Bachra Singh Tomar Aged About 61 Years By Occupation Conductor, R/o Darripara, Ambikapur, District Sarguja Chhattisgarh Permanent / Present Address Village Amelehada, Post Ambah, District Morena (M.P.)

----Appellant**Versus**

1. Agar Manager, Chhattisgarh Infrastructure Development Corporation, Ambikapur Ambikapur, District Sarguja Chhattisgarh.
2. Divisional Manager, Chhattisgarh Infrastructure Development Corporation, Bilaspur Chhattisgarh
3. Managing Director Chhattisgarh Infrastructure Development Corporation, Raipur Chhattisgarh.
4. Industrial Court, Through Member Judge, Bilaspur Chhattisgarh.

---- Respondents

For Appellant	: Shri Anshuman Shrivastava, Advocate.
For Respondent No. 1 to 3	: Shri R.N. Pusty, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board**Per Ajay Kumar Tripathi, Chief Justice****21/02/2019**

1. Heard learned counsel for the parties.
2. We have perused IA No. 1 of 2018, which is an application for condonation of delay of 581 days in filing this appeal. For the reasons indicated in the application, the same is allowed. Delay is condoned.
3. Writ application filed by the Respondents *i.e.* the Chhattisgarh Infrastructure Development Corporation (for short 'the CIDC') challenging the order of the Labour Court and the Industrial Tribunal was allowed.

4. The issue before the Labour Court and the Industrial Tribunal was whether the present Appellant, who was working as a Conductor in the erstwhile Madhya Pradesh State Road Transport Corporation, who, on bifurcation of the State came to be adjusted in the CIDC had made any application for voluntary retirement or not? If so, the kind of relief which the employee could be granted.
5. There were two rounds of litigations earlier. The earlier round of finding of the Labour Court was set aside and matter remanded back by the Industrial Court for verification whether any evidence or material had come by way of an exhibit to show whether any application for voluntary retirement was tendered or not. In the second round of adjudication, the Labour Court found that there was Exhibit D/6 and P/4 but keeping in mind that the present Appellant/workman categorically denied that he had ever tendered any application for voluntary retirement coupled with absence of any direct evidence by the employees of the CIDC, namely Devendra Singh Sikarwar and Pawan Sahu who too did not state or accept that any application by the employee was tendered to them, the earlier finding and conclusion that there was no clear evidence of the workman having tendered his application for voluntary retirement was reiterated.
6. This time round, in appeal the Industrial Tribunal also upheld the finding of the Labour Court and the Management or the CIDC therefore decided to assail the two decisions in a writ application being WP(L) No. 702 of 2008.
7. Taking note of these background to the dispute, the learned Single Judge, without going into the details as such, opined that the order of the Labour Court was unsustainable since no factual cross-verification with regard to the signature of the employee had been made. Merely on oral statement of the employee, the finding could not have been arrived that the employee did not tender or submit or got submitted his application for voluntary

retirement. The Court therefore held that the Appellant would be entitled to the last wages drawn till the date he tendered his application for voluntary retirement.

8. Appeal has been preferred now by the employee assailing the decision of the learned Single Judge on the ground that the two factual aspects seems to have gone wrong in the decision impugned. One, that the employee was never reinstated back in service. According to the counsel for the Appellant, he does not know how and when this statement came to be made and incorporated in the order, and second, that the finding regarding non-tendering of the application for voluntary retirement by the Appellant was not based only on his oral evidence and statement. Both the Courts below have gone into the issue, examined the witnesses who were produced on behalf of the management and in absence of any cogent, valid and unimpeachable evidence, they did reach the conclusion that no application on behalf of the workman was filed for voluntary retirement.
9. Obviously since the decision of the learned Single Judge has implications for him as the order restricted payment of wages till the date of filing of the application for voluntary retirement, in the background urged and noted, appeal has been filed to set aside the order of the learned Single Judge.
10. The Court had assistance of the counsel for the CIDC as also the benefit of having the original records which was available with the said counsel including the evidence and statement of witnesses. We have verified things for ourselves. It is not that merely because the employee denied that he had not filed any application for voluntary retirement, the Labour Court or the Industrial Court jumped to the conclusion. There are adequate materials and evidence available before the forum, especially the Labour Court to reach the conclusion that there was no application filed by the workman for voluntary retirement, there could be some mischief played somewhere.

11. So far as the opinion of the learned Single Judge is concerned that there should have been factual cross verification in relation to the signature, that stage would have come provided evidence had come that application was filed by the employee or by a person authorised by him seeking voluntary retirement. The authenticity of the signature alone was not the issue. In this background, therefore, coupled with the fact that erroneous kind of information was given to the learned Single Judge that the Appellant had been reinstated, the error in the order of the learned Single Judge dated 28.03.2016 crept in.
12. In the said background, the impugned order dated 28.03.2016 is set aside. No interference is warranted with the order of the Labour Court as well as the Industrial Tribunal. The Appellant would be treated to have superannuated on reaching the age of superannuation and he shall be entitled to the benefits in terms of the directions given by the Labour Court and the Industrial Tribunal.
13. The appeal stands allowed in terms of the above.

Sd/-
(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE