

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (S) No. 1075 of 2019**

Kunjram Karsh S/o Shri Naryan Prasad Karsh Aged About 47 Years R/o Village And Post Semra, Tahsil And Police Station- Navagarh, District Janjgir Champa, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary Department Of Water Resources, Mantralaya, Naya Raipur, Raipur, Chhattisgarh.
2. Engineer In Chief Department Of Water Resources, Sihawa Bhawan, Civil Lines, Raipur, District Raipur, Chhattisgarh.
3. Chief Engineer Minimata (Hasdeo) Bango Project Department Of Water Resources, District Bilaspur, Chhattisgarh.
4. Executive Engineer Minimata Bango Canal Division No. 6, Nandelibhata, Sakti, District Janjgir Champa, Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Lav Sharma, Advocate
For Respondent/State	:	Shri Saleem Kazi, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****18/02/2019**

1. Claim of the petitioner in the present writ petition is for a direction to the respondents to consider the case of the petitioner for regularization on the post of Helper and in accordance with the circular of State government dated 05.03.2018.
2. Counsel for the petitioner submits that the petitioner herein was initially engaged as Daily Wage employee in the year 1986 and he continued to work till 31.07.1992 and thereafter the services stood discontinued on the discontinuance of service, the petitioner raised a

dispute before the Labour Court in the year 2007 and obtained an award in his favour on 30.09.2009 whereby relief of reinstatement without back wages was granted.

3. The said order of the Labour Court dated 30.09.2009 was challenged before the High Court by the State Government in WPL 6067 of 2010. The said writ petition got dismissed vide order dated 07.12.2015 upholding the order of the Labour Court. Meanwhile, the petitioner on the award of the labour being passed was reinstated in service in November 2009 and since then the petitioner continuously is working under the respondent as daily wage employee and has therefore claimed for an appropriate direction to the respondents to consider the case of the petitioner for regularization.
4. It is the contention of the petitioner that since the Labour Court has passed an order of reinstatement in service and have also held that the termination to be bad in law therefore for all practical purposes, the petitioner has to be treated to be in continuous employment from 1986 till date and thus as the circular of the State Government Dated 05.03.2008 would be applicable in the case of the petitioner and he would be entitled for regularization.
5. The State Counsel however opposing, the petition submits that it is the case where though the service of the petitioner stood discontinued in 1992, the petitioner for the first time had questioned his discontinuance after a long inordinate delay of 15 years in the year 2007 and there is no proper explanation or justification for non raising dispute during the said 15 years times. Therefore, according to the State Counsel the petitioner would not be entitled for the

benefits as are otherwise enshrined in the judgment of this Court in the case of **Tukaram Sahu Versus State of Chhattisgarh & others connecting matters (WPS No. 1703 of 2015 Decided on 16.05.2017.**

6. Undisputed facts from the submission which have been put forth by either side is that the petitioner stood discontinued from service after working between 1986 to 1992. The petitioner raised a dispute before the Labour Court for the first time after 15 years in the year 2007.
7. The Labour Court passed an order in September 2009 in favour of the petitioner and he was later on reinstated in November 2009 and, since then he is working with the respondents.
8. It would be relevant at this juncture, refer to the judgment of Tukaram wherein the Division Bench of this Court in paragraph 26 said judgment held as under

26. Accordingly, these Writ Petitions are allowed. The question of law discussed earlier to be decided in these petitions is answered in the affirmative in favour of the petitioners-workers holding that they would not fall in the category of litigious worker and that they would be entitled for continuity of service for the period they were out of employment while they were litigating before the Labour Court. ”

9. From the aforesaid observations, it is abruptly clear that this Court's decision was clear on this count that it is the litigating period for which the petitioner would be entitled for the benefit. Facts of the present

case when considered from the judgment of the labour Court, it appears that he has worked between 1986 to 1992 thereafter he was removed. The removal has been held illegal by an order passed in September, 2009. Thereafter, he has been reinstated. The dispute was raised by the petitioner for the first time in the year 2007, when the reference was made to the labour Court. Between 1992 to 2007, the petitioner had infact not worked anywhere neither had he challenged his removal before any forum. Keeping in view the judgment of the Division Bench in the case of Tukaram (Supra), it would clearly reflect that the litigating period for petitioner would be from 2007. Thus, it is only from 2007 onwards, the petitioner would be deemed to be in continuous service. In the aforesaid factual back drop the total length of service so far as the petitioner is concerned, would be between May, 1986 to July, 1992 and thereafter from the year 2009 till date. As he has since been reinstated after the award of the labour Court, if we take the said two periods that is from 1986 to 1992 and 2009 till date apparently the petitioner has put in more than 10 years of service and the initial appointment of the petitioner was prior to 31.12.1997, therefore, the respondent authorities would have to accordingly consider the case of the petitioner and pass a fresh order, so far as his claim for regularization is concerned. Keeping in view the circular dated 05.03.2008. The writ petition accordingly stands disposed off. Let an order be passed by the respondent authorities within a period of 90 days from the date of receipt of copy of this order.

Sd/-

(P. Sam Koshy)
JUDGE