

HIGH COURT OF CHHATTISGARH, BILASPUR**WPL No. 3091 of 2011**

1. State of Chhattisgarh, Through the Secretary, Department of Water Resources, D.K.S. Bhawan, Mantralaya, Raipur, C.G.

(The petitioner No.1 was not a party before the learned Labour Court but has been impleaded as petitioner No.1 in the instant petition as the proper course is to implead the State Government through the Secretary of the concerned department)

2. Executive Engineer, Minimata Bango Nahar Sambhag Kramank 2, Champa, District -Janjgir-Champa, Chhattisgarh

---- **Petitioners**

Versus

- Rajesh Kumar Chandra, S/o Badri Prasad Chandra, aged about 36 years, R/o Village Borsi, Post Taldeori, District – Janjgir-Champa, Chhattisgarh

--- **Respondent**

For Petitioner/State : Ms. Richa Shukla, Dy.G.A.

For Respondent : Shri S.P. Kale, Advocate.

Hon'ble Shri Justice Goutam Bhaduri**Order On Board**

07/11/2019

Heard.

1. Challenge in this petition is to the order dated 16.08.2010 passed by the Labour Court, Bilaspur under the Reference No.27/ID Act/2010. A reference being made to the Labour Court and a statement of claim was filed by the respondent that he was appointed to the post of Watchman(*Chowkidar*) on 01.08.1990 at the Division No.-II Bamhnidih and he was working satisfactory and he continued in the service. His services were terminated on 08.02.1995 and from the date of appointment on 01.08.0995 till the date of termination, he continued in the services without any interruption and, on, 08.02.1995 his service be terminated

by oral order. It was also pleaded that though the circular and directions were also issued by the State on 31/12/1988 to take back services of the person whose services were terminated prior to 2000, yet the services of the petitioner was not taken back and illegally the services were terminated.

2. Per contra, the State in their statement of claim denied the averments of the respondent and contended that on the basis of the requirement of the job, on 01.08.1990 the respondent was employed as a Watchman. Subsequently, pursuant to the government order dated 30/07/94 the services of the respondent were dispensed with. With respect to the taking back all the persons who were terminated prior to 2000 the State contended that though the direction was received to take back the persons whose services were terminated prior to 2000, however the respondent could not be taken back to the service as the post was not vacant.
3. On the basis of the pleading of the parties issues were framed by the Labour Court and the parties led their evidence. Eventually the order was passed on 16/08/2010 whereby the petitioner was reinstated as a daily wager without any back wages.
4. Learned State counsel would submit that the court below failed to take into notice that the engagement of the respondent was on daily wage basis. It is further stated that the said post was not a sanctioned post and the appointment to the post was not made after due advertisement and there was inordinate delay in filing of the petition. It is stated that he was terminated in the year 1995 and the statement of claim was filed after a delay of 12 years.
5. Learned counsel appearing for the respondent opposes the petition on the ground that the award passed by the Labour Court is well merited and reasoned. It is further contended that the Labour Court has given due reasons

and appreciated the evidence led, therefore this court in exercise of power under Article 227 of the Constitution of India normally do not interfere unless and until perversity is writ large on the face of it. He further submits that the petitioner have failed to establish that any perversity or illegality which is apparent on the face of the order which warrants any interference.

6. I have heard learned counsel for the parties and perused the records. So far delay is concerned in making reference this point has been settled by the catena of decisions by the Supreme Court starting from the case of Ajaib Singh Vs. Sirhind Cooperative Marketing-cum- processing Service Society Limited and another reported in (1999) 6 SCC 82, Gurmail Singh Vs. Principal, Govt. College of Education and others reported in (2000) 9 SCC 496 and Kuldeep Singh Vs. General Manager, Instrument Design Development and Facilities Centre and another reported in (2010) 14 SCC 176.
7. Law is settled that in cases of the reference under the Industrial Disputes Act, 1947 the time cannot be act as a rider. Accordingly, the law of limitation would not apply. It is also obvious that if the termination is illegal and the reference is made then the cause of action would be continuous. Consequently, the delay if any cannot be made a ground for dismissal. In a result, finding of the Labour Court in condoning the delay do not appear to be perverse.
8. Admittedly in this case there has been no departmental enquiry was conducted or any provisions of Section 25 (F) of the Industrial Disputes Act, 1947 were not followed.
9. For the sake of brevity Section 25(F) of the Industrial Disputes Act, 1947 is reproduced herein below:-

“25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less

than one year under an employer shall be retrenched by that employer until--

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay ² [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government ¹ [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].”

10. Likewise Section 25(B) of the Industrial Disputes Act, 1947 defines the continuous service which reads as under:-

“25B. Definition of continuous service.- For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) ninety- five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case. Explanation.-For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

(i) he has been laid- off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;

(ii) he has been on leave with full wages, earned in the previous years;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.]”

11. The reading of the judgement of the Labour Court would show that the respondent in order to prove his presence that he had discharged the job has filed the documents from Annexure-P1 to Annexure-P16. The said documents are with respect to the presence of the respondent. The witness S.B. Bareth, Assistant Engineer had admitted that before the services the respondent were terminated, neither retainment compensation was paid nor any permission was obtained from the State. The Labour Court relied on the said statement and came to a conclusion that the provisions of Section 25(F) of the Industrial Dispute Act, 1947 were not followed and the Court also recorded that no document has placed on record to show the "last comes first go" procedure were followed, therefore, prima facie it shows that non-compliance of Section 25(F) of the Industrial Disputes Act, 1947 were apparently on the face of record.
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 Authority 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 admitting evidence illegally 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 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 Mines (AIR 1958 SC 923) 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]**

16. 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.

17. This Court is also reluctant to set aside the impugned order of the Labour Court for the reason that pursuant to the award, the petitioner State Govt. reinstated

the respondent in service in the year 2011 and since then he has been continuously working. As such, he has by now put in service for almost 8 years after the award was passed.

18. In this view of the matter, this Court does not find any strong case on behalf of the petitioners made out calling for interference with the impugned award of the Labour Court and the petition being devoid of merits, the same is accordingly dismissed.

**Sd/-
(Goutam Bhaduri)
Judge**