

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (S) No. 1252 of 2019**

1. Ravilal Kurrey S/o Harilal, Aged About 43 Years, R/o Village Dokarabhata, Police Station Chuikhadan, Tehsil Khairagarh, District Rajnandgaon, Chhattisgarh.
2. Parsadi Sahu S/o Heru Sahu, Aged About 38 Years, R/o Village Dokarabhata, Police Station Chuikhadan, Tehsil Khairagarh, District Rajnandgaon, Chhattisgarh.
3. Shiv Kumar Sahu S/o Feru Sahu, Aged About 48 Years, R/o Village Dokarabhata, Police Station Chuikhadan, Tehsil Khairagarh, District Rajnandgaon, Chhattisgarh.
4. Jairam Kurrey S/o Harilal, Aged About 45 Years, R/o Village Dokarabhata, Police Station Chuikhadan, Tehsil Khairagarh, District Rajnandgaon, Chhattisgarh.
5. Dashrath Sahu S/o Jagrakhan Sahu, Aged About 36 Years, R/o Village Khairbana, Tehsil And Police Station Khairagarh, District Rajnangaon, Chhattisgarh.
6. Ram Gopal Sahu S/o Dashru, Aged About 50 Years, R/o Village Bhusatola, Ppolice Station Chuikhadan, Tehsil Khairagarh, District Rajnangaon, Chhattisgarh.

---- Petitioners**Versus**

1. State Of Chhattisgarh, Through The Secretary, Department Of Water Resource, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur, Chhattisgarh.
2. Executive Engineer, Water Resource Division, Chhuikhadan, District Rajnandgaon, Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Gary Mukhopadhyay, Advocate.
For State	:	Shri P.Acharya, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****22/02/2019**

1. Claim of the petitioners in the present writ petition is for a direction to the respondents to consider the case of the petitioners for regularization on

the post of Helper and in accordance with the circular of State government dated 05.03.2018.

2. Counsel for the petitioners submits that the petitioners herein were initially engaged as Daily Wage employee in the year 2000 and they continued to work till 30.10.2008 and thereafter the services stood discontinued. On the discontinuance of service, the petitioners raised a dispute before the Labour Court in the year 2011 and obtained an award in his favour on 28.08.2012 whereby relief of reinstatement without back wages was granted.

3. The said order of the Labour Court dated 28.08.2012 was challenged before the High Court by the State Government in WPL 6067 of 2012. The said writ petition got dismissed vide order dated 07.12.2015 upholding the order of the Labour Court. Meanwhile, the petitioners on the award of the Labour Court being passed were reinstated in service in 2012 and since then the petitioners continuously are 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 petitioners 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 petitioners has to be treated to be in continuous employment from 2000 till date and thus the circular of the State Government Dated 05.03.2008 would be applicable in the case of the petitioners and they 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 petitioners stood discontinued in

2008, the petitioners for the first time had questioned their discontinuance after a long inordinate delay of 3 years i.e. in the year 2011 and there is no proper explanation or justification for non raising dispute during the said 3 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 v. 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 petitioners stood discontinued from service after working between 2000 to 2008. The petitioners raised a dispute before the Labour Court for the first time after 3 years in the year 2011.

7. The Labour Court passed an order on 28/08/2012 in favour of the petitioners and they were later on reinstated in 2012 and, since then they are working with the respondents.

8. It would be relevant at this juncture to refer to the judgment of Tukaram (Supra) 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 apparently clear that this Court's decision was clear on this count that it is the litigating period for which the petitioners would be entitled for the benefit. Facts of the present case when considered from the judgment of the labour Court, it appears

that they have worked between 2000 to 2008 thereafter they were removed. The removal has been held illegal by an order passed on 28/08/2012. Thereafter, they have been reinstated. The dispute was raised by the petitioner for the first time in the year 2011, when the reference was made to the labour Court. Between 2008 to 2011, the petitioners had infact not worked anywhere neither had they challenged their 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 petitioners would be from 2011. Thus, it is only from 2011 onwards, the petitioners would be deemed to be in continuous service. In the aforesaid factual back drop the total length of service so far as the petitioners is concerned, would be between 2000 to 2008 and thereafter from the year 2011 till date. As they have since been reinstated after the award of the labour Court, if we take the said two periods that is from 2000 to 2008 and 2011 till date apparently the petitioners have put in more than 10 years of service and the initial appointment of the petitioners was prior to 31.12.1997, therefore, the respondent authorities would have to accordingly consider the case of the petitioners and pass a fresh order, so far as their 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

Sumit