

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (L) No. 2658 of 2010**

- Block Development Officer, Block Bilha, District Bilaspur (Chhattisgarh)

---- Petitioner**Versus**

1. Radhe Shyam Yadav, aged 45 years, son of Shri Kholbahara Yadav, resident of vilage Baima Nagoi, District Bilaspur, at present Block Office Bilha, District Bilaspur (C.G.)
2. The Presiding Officer Under I.D. Act-cum-Labour Court, Bilaspur (C.G.)
3. Appropriate Government Through The Labour Commissioner (Administration) Chhattisgarh, Raipur (C.G.)

---- Respondents

For Petitioner	:	Shri Somnath Verma, Advocate.
For Respondent No.1	:	Shri Vinod Deshmukh, Advocate.
For Respondent Nos.2&3	:	Shri Faiz Kazi, Panel Lawyer.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice**Order on Board****22.02.2019**

1. Heard learned counsel for the parties.
2. Reference Case No. 11/IDA/2008 was initiated on a reference made by the Competent Authority of the State of Chhattisgarh.
3. The reference which was required to be answered was whether Radhe Shyam Yadav was entitled to regularization, and if not, what is the kind of relief he is entitled to.
4. Radhe Shyam Yadav was initially engaged on 05.11.1990 under the present Petitioner on the post of a Khalasi. He was getting paid on the Collector rate. When he started demanding regularization after working for more than the 240 days, Petitioner decided to disengage him. This led to

a round of litigation which culminated into a decision in favour of the employee by the Labour Court on 30.07.1994. He was ordered to be reinstated with full benefits as the said disengagement was held to be illegal.

5. Thereafter, the employee has been working regularly even till date. He again got a reference made for regularization because the Petitioner were refusing to take a decision despite circulars and direction issued by the State Government that all those who were engaged prior to 1997 on daily wages were required to be regularized.
6. The Industrial Tribunal went into the reference, examined witnesses and records including the submission made that there was no post of Khalasi, that the employee had not worked regularly as he was only engaged for 89 days at a time and that no right is created in his favour.
7. The Tribunal rejected such resistance put up by taking note of the fact that the engagement of the private Respondent was on the basis of a conscious decision taken by the authorities of the Petitioner. A proper note-sheet was initiated and based on the same, a decision was taken for engagement on the post of a Khalasi and the existence of such document was not disputed or denied.
8. The Court also took note of the fact that the fact of 89 days was nothing, but an effort to deny a workman his rightful claim for regularization because of continued period of work as also a policy decision taken by the State Government to extend the benefit of regularization to such people who have been working on daily wages.
9. The Tribunal found that the post of Khalasi may not exist now in terms of the reorganization or the structure in place, however, such subsequent

decision cannot be taken into consideration keeping in mind that there was a decision taken by the competent authority to engage on such a post. Therefore, the engagement of the private Respondent on the post of Khalasi cannot be said to be illegal or erroneous.

10. Merely because there is no post of a Khalasi now, it does not mean that more than 20 years of work which had been put in right from the year 1990 by the private Respondent was not required to be recognized. The Tribunal, therefore, rightly gave a direction not only to regularize the private Respondent, but also a direction that he should be either regularized on the post of Khalasi or if the post is not available now it should be done on an equivalent post because his working uninterruptedly for a long period of time was not a matter of dispute anymore.
11. We do not find any infirmity in the reference so answered by the Industrial Tribunal, therefore, the writ application is dismissed.
12. We also take note of the fact, that in the present writ application, the previous order or reference so answered by the Industrial Tribunal on 30.07.1994, a copy of which is Annexure P/2 to the writ application, is also sought to be challenged in the present writ application. Such a challenge cannot be allowed on the ground that two different orders cannot be clubbed and assailed in one common writ application and a decision of 1994 cannot be allowed to be assailed in the year 2010.
13. Writ application has no merit. It is dismissed.

Sd/-

(Ajay Kumar Tripathi)
Chief Justice