

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment delivered on 19.12.2019****WPL No. 6460 of 2011**

Secretary Krishi Upaj Mandi Samiti, Mungeli, Distt. Bilaspur (C.G). ---
Petitioner

Versus

Tulsiram Yadav S/o Late Kejwa Yadav R/o Village and Post Retra Kala
 Tah. Lormi, Distt. Bilaspur Chhattisgarh presently residing at C/o
 Rampratap Singh Parihar, Village and Post Tedha Dhora, Tehsil Mungeli,
 Distt. Bilaspur --- **Respondent**

For the Petitioner	: Mr. Yashwant Singh Thakur, Advocate
For the Respondent	: Mr. Vinod Deshmukh, Govt. Advocate

SHRI JUSTICE GOUTAM BHADURI**CAV JUDGMENT/ORDER**

1. The challenge in this petition is to the order dated 04.08.2011 passed by the Industrial Court under the Industrial Disputes Act in reference Case bearing No. 64/ID Act/2010(Ref). The reference having been made by the State under the ID Act, the respective parties filed their claim.
2. The respondent employee contended that he was appointed on vacant post of driver after the resolution was passed by the Board on 08.04.2006 and consequent thereupon, the appointment was made on 28.08.2006. He was discharging his duties without any stigma or any charges of misconduct and he worked uptill 10.12.2009, however, his service was terminated on 26.12.2009 without holding any enquiry on the ground that he unauthorisedly remained absent from his duties. The statement of pleading further contains a fact that the respondent had worked for 240 days and

more and had worked 26 days continuously in each month and his regularization was also in the process. The termination order dated 26.12.2009 was stated to be bad in law for the reason that the employer did not comply with the provisions of Section 25F of the Industrial Disputes Act along-with 25(g). It is further contended that the mandatory provisions of Rule 76-A of Industrial Rules were not complied and no retrenchment compensation was paid to the employee.

3. In reply to the Statement of Claim, the employer, petitioner herein denied all the averments and it was stated that no sanctioned post of driver was existing in Krishi Upaj Mandi Board and the appointment of respondent Tulsi Ram was not approved by the Board of Directors. Further it was denied that the applicant has continuously worked for 240 days. It was stated that on 30.10.2009, the employee came and parked the vehicle and went away and subsequently informed on 03.11.2009 to the Secretary, but never came back till 10.11.2009 and in between this period, he submitted an application along-with medical documents. Since the employee was not present without any lawful cause, as such, the explanation justifying his absence was called for. Eventually when the letter was sent and it was not replied, he was terminated from service by order dated 10.11.2009. It was further contended that the employee Tulsi Ram was absent from 31.10.2009, consequently he was removed on 10.12.2009. The rest of the averments were also not denied. It is further stated that according to the set-up existing in the Organization of the Krishi Upaj Mandi Samiti, the post has not been sanctioned for driver and the prayer was made to dismiss the petition before the Labour Court.
4. On the basis of pleadings, the issues were framed and before the Labour Court the employee was examined. As many as 13 documents were exhibited in his evidence while on behalf of the employer, the petitioner herein, one Ashok Kumar, the Secretary of the Marketing Committee was

examined and the Court after evaluating all the facts and evidence passed the award whereby the reinstatement of the employee with 50% back wages was ordered, which is under challenge in this petition.

5. Learned counsel for the petitioner would submit that the Labour Court has manifestly has failed to observe that the respondent was continuously in service for a period of not less than one year which was a condition precedent to come to conclusion that there has been breach of section 25 of the Industrial Disputes Act. It is further contended that the order is also silent on the fact that the employee worked for continuous period of one year as required u/s 25-B of the I.D. Act. It is stated that the respondent employee failed to prove that he was in the muster roll of the Krishi Upaj Mandi for such continuous period of time. It is stated that those are preconditions to hold that there has been breach of condition of section 25 of the Act. It is further contended that the post of driver is a cadre post, therefore, the appointment was required to be made in accordance with Rules. Referring to section 30 of the Krishi Upaj Mandi Act Adhiniyam, 1972, it is stated that the appointment of staff are to be made with prior sanction of the Managing Director. Since the appointment of the respondent/employee was made without sanction of the M.D., that cannot be within the ambit of recruitment or appointment u/s 30 of the Act. It is further stated that neither any advertisement was made nor any proper procedure before the appointment was carried out. It was also stated that the appointment was not made against the vacant post and if any breach was found, at the most, certain compensation ought to have been awarded in lieu of reinstatement.
6. Per contra, learned counsel for the respondent opposed the arguments and submitted that the order is well merited. It was further submitted that this Court in exercise of power under Article 227 of the Constitution of India has a limited jurisdiction and the grounds which have been urged before this

Court were not raised before the Labour Court, so that the adjudication on those points could not be arrived at. Consequently the only limited power which the court exercise under Article 227 of the Constitution of India, no fault can be attributed as the findings are completely based on oral and documentary evidence. He further submits that the applicant has already been reappointed, therefore, having complied with the order, the challenge before this Court is futile.

7. Heard learned counsel for the parties and also perused the records of the labour Court.
8. A perusal of the award of the labour would show that the grounds which have been raised before this Court as to the clear vacancy of post was not subject of issue before the Labour Court. No issues were framed. Both the parties the petitioner and respondent went to the Labour Court with a specific case and examined the witnesses. The respondent employee exhibited document Ex.P-4 which is a resolution passed by the Krishi Upaj Mandi Samiti to appoint a driver. Thereafter, the permission was sought for by Annexure P-5 on 21.04.2006 and the Chhattisgarh State Krishi Vipnan Board by order dated Annexure P-6 granted the permission to appoint the driver to the placement agency. The Statement of Secretary Ashok Kumar Verma who was examined on behalf of the petitioner has fortified the set up which is proved by Annexure P-13 and stated that one post of driver is vacant in the set up. The documents Ex.D-1 to D-8 are with respect to process of appointment of the driver. Though the document is exhibited by the petitioner as also the respondent but reading of the same would demonstrate the fact that the the driver was required to be appointed as per Ex. D-1 which pertains to a document requiring sanction. Ex. D-7 is also proved as Annexure P-5. Ex. D-1(C) is about the appointment of the driver seeking permission of appointment of driver. Ex.D.6 is about seeking permission to appoint the driver as the placement agency was not available

and as per Annexure P-7, after the permission was accorded, the driver was appointed on collectorate rate. Therefore, the labour Court after evaluating the evidence and statements of witnesses came to conclusion that after due sanction the permission was accorded to appoint the driver and it was held that after after obtaining due permission on the clear vacancy of post, respondent employee was appointed. The statement of the witnesses on behalf of the petitioner also contended that the vehicle is available with Krishi Upaj Mandi Samiti and the driver is required and on the date when he was examined, he affirmed that the driver is required for the Board. Therefore, the finding of the labour Court that after due permission, the appointment was made cannot be faulted.

9. With respect to compliance of section 25F of the I.D. Act 1947, the witness of the petitioner stated that respondent was unauthorisedly absent from his duty. However, neither any opportunity of hearing was give nor the departmental enquiry was held thereby the rules of natural justices were grossly violated. The witness further admitted the fact that before the termination of service, neither any notice was ever served to the respondent nor any retrenchment compensation was paid, instead, he has stated that the employees of the muster roll are not required to be given any notice or any compensation. The labour court while examining this issue has held that before the termination, no notice was served. While examining the document though were not exhibited, the Court came to a conclusion that the receipt of the alleged notice is not on record. Instead, it has relied on document D-12 which was an application given on medical ground supported by the medical certificate Ex.D-13 and accordingly the finding was arrived at that the respondent employee was not unauthorizedly absent. After evaluating the facts and evidence, It was further held that no notice was ever served either of termination or any enquiry and after appreciating the evidence, the labour Court came to conclusion that out of prejudice, the respondent was removed from service on some reason or the other,

therefore, that cannot be justified.

10. For the sake of reference, section 25-B of the Industrial Disputes Act, 1947, is reproduced here-in-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 [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 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].”

11. 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.]”

12. On examination of the entire record in view of the aforesaid context of law the documents exhibited by respondent employee Ex.P-1 to P-4 would show that initially the secretary sought for sanction of the post of driver which was accorded to be appointed by the Krishi Vipanan Board. Thereafter, he was appointed in the year 2006. The averments have been made by the respondent that he worked from 28.08.2006 to 10.12.2009, therefore, he had worked for more than 240 days in a calendar year. The said evidence and the statement remains un rebutted. There is no document on record to further show that respondent was given any show cause notice nor he was heard before the order of termination was passed. Though the petitioner examined their witness, but the documents which were exhibited by respondent employee remain un rebutted. Therefore, the necessary inference would be made that the respondent had worked for more than 240 days in a calendar year before he was terminated and the compliance was not made in respect of Section 25F of the Act, 1947.

13. 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.
14. The jurisdiction under Article 227 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.
15. 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 are social welfare legislations 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 petitioner through preferred the present writ petition has failed to show

that either there being any perversity in the finding of the Court below or the Court has exceeded its jurisdiction not vested in it thereby the exercise of power under Article 227 of the Constitution of India is warranted. However, for the back-wages, except the statement of respondent, no averments have been made that he was not gainfully employed while he was out of service. The labour Court only on assumption has granted 50% back-wages to the respondent. Since no evidence is on record by way of oral statement or documentary evidence that he was not gainfully employed, therefore, as per the law laid down in ***AIR 2018 S.C. 2194***, the respondent shall not be entitled for the back wages.

17. In view of such finding, the order of the Labour Court is maintained to the extent that the respondent be reinstated in service. Since it has been stated that pursuant to the order of reinstatement of the Labour Court the respondent has been taken in service, I am not inclined to interfere with the order of the labour Court whereby the petitioner was reinstated. However, the petitioner shall not be entitled to back wages.
18. With the aforesaid observations, this writ petition is partly allowed.

Sd/-

Goutam Bhaduri
Judge

Rao