

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

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WA No. 231 of 2019

- Purushottam Lal Rathore S/o Shri Khamhan Prasad Rathore
Aged About 58 Years Occupation - Daily Wager Employee, R/o
Village Ratan Mahka, Post Dhadhra Police Station And Tahsil
Kharsia, District Raigarh Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Principal Secretary, Department
Of Urban Administrative, Mahanadi Bhawan, Mantralaya, Atal
Nagar, New Raipur, District Raipur Chhattisgarh
2. The Nagar Palika Nigam, Through Municipal Council Kharsia,
Raigarh, District Raigarh Chhattisgarh
3. Avar Sachiv, Department Of Urban Administrative, Mahanadi
Bhawan, Mantralaya, Atal Nagar, New Raipur, District Raipur
Chhattisgarh
4. The Presiding Officer, Labour, Raigarh District Raigarh
Chhattisgarh

---- Respondent

For Appellant
For Respondent /State

Mr. Manoj Kumar Jaiswal, Advocate
Mr. Vikram Sharma, Panel Lawyer

DB.:Hon'ble Mr. Prashant Kumar Mishra, Ag. C.J. &**Hon'ble Mr. Parth Prateem Sahu, J.****Order On Board By****Prashant Kumar Mishra, Ag. CJ**

29/4/2019

1. Heard.
2. On due consideration, IA No.1, an application for amendment in the prayer clause of writ appeal, is allowed.
3. Let the amendment be incorporated during the course of the day.
4. Admittedly, the appellant/petitioner had worked as daily wage Pump Operator with the Municipal Council, Kharsia from the year 1990 to 1.11.2003.
5. Upon the appellant's discontinuance from service w.e.f. 1.11.2003, he moved before the Labour Court, which passed an award on 23.2.2006 directing his reinstatement, however, the appellant was not taken back in service. Therefore, the appellant preferred WPS No.5745 of 2018, which was disposed of by this Court directing the appellant to avail the remedy available to him under Section 33 (C) (2) of the Industrial Disputes Act.
6. Thereafter, on appellant's representation, an order of reinstatement in his favour was passed on 24.12.2018 retaining him as daily wage employee on the supernumerary post of Pump Operator.
7. In the second writ petition i.e. WPS No.1316 of 2019, the appellant prayed for a direction to the respondents to consider his representation for grant of benefit of back wages.

8. In the absence of Labour Court having allowed back wages to the appellant, no such prayer independently could have been allowed in the second writ petition for the reason that in the first writ petition i.e. WPS No.5745 of 2018, a prayer for grant of salary w.e.f. 1.11.2003 was made but once that was not allowed, the appellant did not prefer any writ appeal against the said order.
9. In the order passed by the learned Single Judge in the petitioner/appellant's second writ petition i.e. WPS No.1316 of 2019, a liberty has been reserved in favour of the respondents to consider the appellant's case for regularisation in the light of past service that he has rendered.
10. In the matter of **Tukaram Vs. State of Chhattisgarh** (WPS No.1703/2015 decided on 16.5.2017), a Division Bench of this Court has held that when a person has been denied continuity in service on the strength of an illegal order of retrenchment, the period, during which, that illegal retrenchment continued, shall be deemed to be the period during which he was in the notional employment of the concerned department.
11. In view of what has been held by the Division Bench in the matter of **Tukaram (supra)**, we are inclined to dispose of the present writ appeal directing the respondents to consider the appellant's case for regularisation in terms of the State Government's Circular dated 5.3.2008 by treating the entire period after 1.11.2003 till the appellant was actually allowed to

join duties as the period rendered in service as daily wager.

12. The appellant shall file a representation for regularisation within a period of 4 weeks from today along with a certified copy of this order and the competent authority shall pass necessary order on the appellant's representation within next 3 months.

13. The writ appeal is disposed of.

Sd/-

(Prashant Kumar Mishra)
Acting Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

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