

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPL No. 88 of 2012

1. State of Chhattisgarh, through: the Divisional Forest Officer, Janjgir-Champa, Forest Division, Champa, District Janjgir-Champa, Chhattisgarh
2. The Conservator of Forest, Forest Range, Sakti, District Janjgir-Champa, Chhattisgarh

---- Petitioners

Versus

Ku. Pushpa Soni, D/o. Shri Ramdayal Soni, Village Harethi, Post Portha, Tahsil Sakti, District Janjgir-Champa, Chhattisgarh

---Respondent

For Petitioners/State	:	Ms. Astha Shukla, Panel Lawyer
For Respondent	:	Mr. S.P. Kale, Advocate along with Mr. Lav Sharma, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

11/01/2019

1. The challenge in the present writ petition is to the award dated 05.06.2010, passed by the Labour Court, Bilaspur, in case No. 6/I.D.Act/2010 (Reference).
2. Vide the impugned award, the Labour Court has granted a relief of reinstatement without back wages. The petition has been filed by the State Government assailing the same on the ground that the finding of the Labour Court seems to be erroneous, perverse and contrary to the evidence, which have come before the Court below.
3. The brief facts relevant for the adjudication of the present writ petition is that the respondent/worker was engaged by the department as a daily wage worker in the year 2007 and the services were continued with the State Government till 24.11.2008, thereafter it was discontinued. The

discontinuance was immediately challenged by way of a writ petition before the High Court vide WPS No. 375/2009. The said writ petition was withdrawn by the respondent with liberty to raise a dispute before the appropriate forum. The dispute was then raised before the appropriate authority and thereafter a reference was made to the Labour Court, Bilaspur. The term of reference was that:

*“Whether the dispute raised by the applicant was barred by limitation having raised beyond 5 months, if not, whether in the light of the judgment of the Hon'ble Supreme Court in the case of **“State of Karnataka and Others Vs. Umadevi (3) & Others, 2006(4) SCC 1”**, the discontinuance of the services of the petitioner was bad in law or not. If not, what relief the applicant is entitled for and what direction could be issued in this regard to the non-applicant.”*

4. The matter was put to trial before the Labour Court vide case No. 6/I.D.Act/2010 (Reference). During the course of hearing, the respondent/worker has examined herself and categorically stated that she was engaged w.e.f. 01.03.2007 and worked uninterruptedly till 24.11.2008 and thereafter the services of the respondent were abruptly discontinued. It was further contended by the respondent that before discontinuance, she was not paid any compensation, nor was she given notice of retrenchment or retrenchment compensation.
5. The petitioners, who were the second party/management before the Labour Court led evidence of one Mr. R.S. Sidar. After the pleadings and evidences were complete, the Labour Court, vide the impugned award, held that the discontinuance of the respondent was bad in law and accordingly ordered for reinstatement without back wages in favour of the respondent/worker in the instant case.

6. Pursuant to the award passed by the Labour Court, the department has since reinstated the respondent/worker w.e.f. 18.06.2012 and the respondent still continues to discharge her duties till date.
7. The contention of the State counsel opposing the petition is that the Labour Court failed to look into the evidences, which have been adduced by the petitioners/management, in as much as, substantive post of the respondent being that of a daily wage employee and therefore no indefeasible right has been created in her favour and therefore the discontinuance could not have been held to be bad in law.
8. It was further the contention of the State counsel that the provisions of the Industrial Disputes Act itself would not have been applicable upon the petitioner/establishment, as it does not fall within the definition of industry. It was the further contention of the petitioners that the nature of employment of the respondent was clearly temporary and was for the period, when there was availability of work and as such no indefeasible right had been created in her favour.
9. The counsel for the respondent on the other hand opposing the petition submits that the present petition itself is liable to be dismissed on the ground of delay, as the writ petition was filed after more than 2 years from the date of award under challenge in the present writ petition. It was the further contention of the counsel for the respondent that pursuant to the order of the Labour Court the petitioners have reinstated the respondent and she still continues in service, as such, she has put in considerable period of service and hence at this juncture the respondent should not be removed from her employment.

10. It was the further contention of the respondent that the witness of the petitioners/management itself has admitted the engagement of the respondent and her employment part and the same witness further has accepted the fact that the respondent has worked for a period of more than 240 days and before discontinuing, she was not given any notice, nor was she given any compensation towards retrenchment at the time of discontinuance. The respondent therefore prays for the dismissal of the writ petition.
11. Having heard the contentions put forth on either side and on perusal of record, this Court is of the opinion that as far as the delay, if any, on the part of the respondent is concerned, the said issue raised and framed by the State Government, does not seem to be proper, legal and justified as there is no such period of limitation prescribed under the provisions of the Industrial Disputes Act. Moreover, it is not a case where the respondent/worker has raised a dispute at a belated stage. The respondent had been promptly agitating the case at the first instance itself. So far as the merits of the case is concerned, it is revealed that in fact there is a delay on the part of the petitioners in filing the present writ petition. The impugned award has been passed on 05.06.2010. The writ petition has been filed after about two years i.e. on 28.06.2012. No plausible explanation or justification has been given by the State Government for challenging the dispute at the belated stage. Coming to the merits, the evidence that has been led by the respondent before the Labour Court i.e. the petitioners herein, the findings of fact of the Labour Court clearly reflects that witness of the management has himself clearly admitted the engagement of the respondent as a daily wage employee and having worked continuously from the date of

engagement till the date of discontinuance. There is also an admission by the witness of the management that before discontinuance the services of the respondent, no retrenchment compensation, neither was any notice or salary in lieu of notice given to the respondent.

12. Thus, from the aforesaid factual matrix, it is clear that the finding arrived at by the Labour Court is finding of fact based on the evidences, which have come on record.
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 appreciating the evidence or the Court has committed a grave error in law in coming to its conclusions.
14. 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.
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 Mines¹, 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.

¹AIR 1958 SC 923

reinstated the respondent in service in the year 2008 and since then she has been continuously working. As such, she has by now put in service for almost 10 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. The petition thus being devoid of merits, the same is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved