

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 4134 of 2019

Sahdev Gond S/o Late Samaru Gond Aged About 50 Years Occupation Guard (Daily Wages), Water Resources, Sub Division Pantora, Tahsil And District Janjgir - Champa Chhattisgarh., R/o Village Karma Post Pantora, Tahsil Baloda, District Janjgir-Champa Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Water Resources Mantralaya, Mahanadi Bhawan, Naya Raipur, P.S. Abhanpur District Raipur Chhattisgarh.
2. Chief Engineer Water Resources Department Sihawa Bhawan, Raipur District Raipur Chhattisgarh.

---Respondents

For Petitioner	:	Mr. Atul Pandey, Advocate
For State	:	Mr. P. Acharya, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy

Order on Board

17/06/2019

1. The claim of the petitioner through the present writ petition is for a direction to the respondents to consider the case of the petitioner for regularization.
2. The contention of the petitioner is that the petitioner has initially appointed on 01.01.1988 and he continued to work up till 28.02.1995 when his services was abruptly discontinued. He had challenged the discontinuance before the Labour Court, where he got an order in his favour on 12.03.2013. That on the basis of the order of Labour Court, the petitioner was reinstated on 10.04.2013 and since then he is continuously working. Therefore applying the judgment of this Court in the case of "***Tukaram Vs. State of Chhattisgarh***" (WPS No. 1703/2015) and other analogous writ petitions decided on 16.05.2017, the claim of the petitioner should be considered for regularization.

3. The State counsel however opposing the petition submits that the petitioner would not be entitled for any relief as there was an inordinate delay between the date of initial discontinuance and the time when he first approached the Labour Court challenging his discontinuance. According to the State counsel, there was a gap of more than 17 years on the part of the petitioner in raising the dispute after he was discontinued in the year 1995 and prayed for rejection of the writ petition. According to the State counsel, even as per the judgment of “**Tukaram**” (supra) the intervening period during which he has not challenged the order of initial discontinuance cannot be considered for the purpose of regularization.
4. Given the aforesaid facts and the circumstances of the case, it would be relevant at this juncture to refer to the paragraph 26 of the judgment of **Tukaram** (Supra). For ready reference, it has been reproduced herein 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. ”

5. From the aforesaid observations, it is abruptly clear that this Court's decision was clear on this count that it is the litigating period for which the petitioner would be entitled for the benefit. Facts of the present case when considered from the judgment of the Labour Court, it appears that he has worked between 1988 to 1995 thereafter he was removed. The removal has been held illegal by an order passed on 12.03.2013. Thereafter, he has been reinstated on 10.04.2013. The dispute was raised by the petitioner for the first time in the year 2012, when the reference was made to the Labour Court. Between 1995 to 2012, the petitioner had infact not worked with the

department neither had he challenged his 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 petitioner would be from 2012. Thus, it is only from 2012 onwards, the petitioner would be deemed to be in continuous service. In the aforesaid factual back drop the total length of service so far as the petitioner is concerned, would be between 1988 to February, 1995 and thereafter from the year 2012 till date. As he has since been reinstated after the award of the Labour Court, if we take the said two periods that is from 1988 to 1995 and 2012 till date apparently the petitioner has put in more than 10 years of service and the initial appointment of the petitioner being prior to 31.12.1997, therefore, the respondent authorities would have to accordingly reconsider the case of the petitioner and pass a fresh order, so far as his claim for regularization is concerned keeping in view the circular dated 05.03.2008.

6. The writ petition accordingly stands disposed of with a direction to the respondents to consider the claim of the petitioner for regularization at the earliest preferably within a period of 4 months from the date of receipt of the copy of this order.

Sd/-
(P. Sam Koshy)
Judge

Ved