

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPL No. 135 of 2019**

1. State Of Chhattisgarh Through The Secretary, Water Resources Department, Mahanadi Bhawan, Mantralaya, Atal Nagar Raipur, Chhattisgarh. (The Petitioner No. 1, Was Not A Party Before The Learned Labour Court But Has Been Impleaded As Petitioner No.1 In The Instant Petition As The State Government Through The State Government Through The Secretary, Of The Concerned Department), District : Raipur, Chhattisgarh
2. Executive Engineer Water Resource Division I.T.I. Rampur, District Korba Chhattisgarh.
3. Sub Divisional Officer Water Resources Division No. 1, Tahsil Katghora District Korba Chhattisgarh.

---- Petitioner**Versus**

Ganesh Ram Yadav S/o Hari Prasad Yadav Aged About 49 Years R/o Hukara, Post Katghora, Tahsil Katghora, District Korba Chhattisgarh., District : Korba, Chhattisgarh

---- Respondents

For Petitioner/State	:	Mr. Rahul Mishra, Dy. GA
For Respondent	:	None

Hon'ble Shri Justice P. Sam Koshy**Order on Board****18/06/2019**

1. The challenge in the present writ petition is to the award passed by the labour Court dated 05.05.2018 passed in case No. 16/I.D. Act/2015/Reference.
2. The facts of the case is that respondent was engaged by the petitioner as a daily wage employee way back in the year 1986. It is said that he had worked as a daily wage employee from 1986 to 1997 when his services were abruptly discontinued. The

discontinuance of the respondent was challenged by way of a dispute raised under the provisions of Industrial Disputes Act. The matter stood referred to the labour Court, Korba where the case was registered as case No. 16/I.D. Act/2015/Reference. The workers as well as management i.e the petitioner entered appearance before labour Court and submitted their respective claim and written statement. The contention of the worker before the labour Court was that the worker was discontinued without compliance of the mandatory provisions as is required under the chapter 5 of the Industrial Disputes Act. The contention of the worker was that before discontinuance no notice was issued neither was he issued salary in lieu of the notice nor was he paid retrenchment compensation while his services was being discontinued.

3. On the contrary, the petitioner-State Government had filed their objection raising the grounds that the disputed had been raised at a belated stage and therefore the reference itself should had been rejected on the ground of delay. Moreover, it was the contention of the State Government that substantive engagement of the respondent was that of a daily wage worker who was engaged as and when availability of work was there and on completion of a day's work his services automatically stood discontinued. Therefore worker would not be entitled for any notice or compensation for discontinuance and thus discontinuance cannot be said to be bad.
4. Contention of the State counsel is that labour Court has not properly appreciated the findings which has come on record particularly the status of the respondent-worker and has passed an order which deserves to be set aside.

5. Having gone through the record and particularly the findings which had come on record, it clearly reflects so far as the petitioner-State Government is concerned they had filed their written statement wherein they had accepted the engagement of the respondent as a daily wage employee. The worker had led evidence before the labour Court. He had sought information under the Right to Information Act for providing muster roll during the period he was working as a daily wage employee. The said information was refused by the State Government on the ground that records were not available as they had got destroyed by termites. Therefore, labour Court drew an adverse inference. Moreover, witnesses which has been examined on behalf of the State Government i.e. Santosh Kumar Tiwari who has also categorically accepted that before discontinuing the services of the respondent he was not paid any retrenchment compensation or salary in lieu of the notice nor was he issued any sort of notice. On the contrary, the witness had accepted the engagement of the intermittently as a daily wage employee.
6. All the aforesaid factual matrix would clearly reveal that the finding of the labour Court was based on the evidence which has come on record led by either side. Thus, it is a finding of the fact.
7. It has been repeatedly held by the Supreme Court as also by the High Courts that finding of fact of the labour Court's should not be interfered with the High Court while exercising writ jurisdiction. In exercise of writ jurisdiction this Court has only to see whether there is any perversity in the finding of the labour Court or whether the finding arrived at is contrary to the evidence on record. In the instant case there is no ground that the finding is a perverse finding so far as the

finding which has been provided and discussed it clearly reflects that it is a finding of fact based on the evidence which has been adduced by the parties in dispute.

8. 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 Court 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.
9. 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.
10. 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 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]**.

11. 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.

12. In para 17 of (2014) 7 Supreme Court Cases, 190 (Hari Nandan Prasad and Another vs. Employer I/R to Management of Food Corporation of India & Another), it has been held as under:-

"17.....At the time of their disengagement even when they had continuous service for more than 240 days (in fact about 3 years) they were not given any notice or pay in lieu of notice as well as retrenchment compensation. Thus, the mandatory precondition of retrenchment I paying the aforesaid dues in

accordance with Section 25-F of the ID Act was not complied with. That is sufficient to render the termination as illegal. Even the High Court in the impugned judgment has accepted this position and there was no quarrel on this aspect before us as well.....”

Applying the same analogy and again reiterating the same in the case of (2014) 7 Supreme Court Cases 177 (Bharat Sanchar Nigam Limited vs. Bhurumal), it has been held in paragraph- 27 as under:-

“27.....In any case, the award is passed on the basis that the respondent had worked for 240 days in the preceding 12 months' period prior to his termination and therefore it is a clear case of violation of Section 25-F of the Industrial Disputes Act. The termination is, thus, rightly held to be illegal. We do not find any perversity in this outcome.”

13. Given the said facts this Court does not find any strong case made out by the petitioner calling for an interference with the impugned order.

14. Another reason for not interfering with the impugned award is that pursuant to the order of the labour Court, respondent have already reinstated the respondent worker who is in employment since then. Another reason for not interfering with the impugned award is that the award under challenge is one which was passed more than one year ago. The writ petition is being filed after one years time.

15. For all the aforesaid reasons, the writ petition stands dismissed.

Sd/-
(P. Sam Koshy)
Judge