

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 4830 of 2019**

Sushil Kumar Sharma S/o Late Shri Jamuna Prasad Sharma Aged About
54 Years R/o Irrigation Colony, Darri, Korba, Police Station - Darri, District
Korba Chhattisgarh., District : Korba, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of Water Resources, Mantralaya, Atal Nagar, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Chief Engineer Minimata (Hasdeo) Bango Project, Department Of Water Resources, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
3. Executive Engineer Hasdeo Barage Water Management Division, Rampur, Korba, District Korba Chhattisgarh., District : Korba, Chhattisgarh

---- Respondents

For Petitioner : Mr. S. P. Kale, Advocate

For State : Mr. Jitendra Pali, Dy. AG

Hon'ble Shri Justice P. Sam Koshy**Order on Board****02/07/2019**

1. The present writ petition has been filed seeking relief of regularization in service. Facts of the case is that the petitioner was working as a daily wage employee under the respondents between the period 01.01.1993 to 20.02.1995. On 20.02.1995, the services of the petitioner stood discontinued.
2. Discontinuance of service was challenged by the petitioner for the first time after 15 years before Labour Court, in a dispute that was raised in 2010. Matter got referred to the labour Court, Bilaspur where the case was registered as case No. 4/I.D.Act/2012/Reference. The Labour Court finally vide its order dated 14.06.2013 answered the reference in favour of the

petitioner granting him the relief of reinstatement without backwages. The said order dated 14.06.2013 was challenged before the High Court vide WPL No. 40/2014. The High Court vide its order dated 04.03.2014 dismissed the writ petition. While dismissing the writ petition, State Government was granted liberty to take appropriate steps in accordance with law, in case, if required by following due process of law. The State Government subsequently again terminated the petitioner from service on 28.02.2015 by giving one month's notice to the petitioner. Subsequently the termination dated 28.02.2015 was again challenged in WPS 4979/2015 and writ petition was allowed on 11.05.2016. While allowing the same, High Court granted petitioner a relief of reinstatement in service from the date of award of the Labour Court dated 14.06.2013. However, back wages was ordered to be paid only from 28.02.2015 onwards.

3. The petitioner now contends that since petitioner is in service with the respondent from 1993 to till date, the petitioner may be considered for regularization in service in terms of circular of the State Government dated 05.03.2008.
4. Counsel for the State however, opposing the petition submits that so far as the claim of the petitioner for regularization is concerned, since there has been intermittent break in service, the petitioner would not fulfill requisite eligibility criteria as is laid down in the circular dated 05.03.2008. He further submits that since there has been inordinate delay on the part of the petitioner for raising dispute against his initial discontinuance of service, the petitioner would not be entitled for regularization on that ground also.
5. Having heard the contentions put forth on either side and on perusal of record, 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 reproduce 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. ”

6. 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 1993 to 1995 thereafter he was removed. The removal has been held illegal by an order passed on 14.06.2013. Thereafter, he has been reinstated. The dispute was raised by the petitioner for the first time in the year 2010, when the dispute was raised to the State Government. Between 1995 to 2010, 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 2010. Thus, it is only from 2010 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 January, 1993 to February, 1995 and thereafter from the year 2010 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 1993 to 1995 and 2010 till date apparently the petitioner has put in more than 10 years of service and the initial appointment of the petitioner was prior to 31.12.1997, therefore, the respondent authorities would have to accordingly consider 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.
7. The writ petition accordingly stands disposed off. Let an order be passed by the respondent authorities so far as the claim of the petitioner for

regularization is concerned within a period of 90 days from the date of receipt of copy of this order.

Sd/-
(P. Sam Koshy)
Judge

Rohit