

NAFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**WPS No. 4836 of 2019**

Prakash Deshmukh S/o Rameshwar Deshmukh Aged About 47 Years R/o Ward No. 3 Rajmahal Chowk, Chhuikhadan, District Rajnandgaon Chhattisgarh.

**---- Petitioner**

**Versus**

1. State Of Chhattisgarh Through Secretary, Water Resources Department, Mahanadi Bhawan, Mantralaya, Atal Nagar, Raipur, District Raipur Chhattisgarh.
2. Engineer In Chief Water Resources Department, Shivnath Bhawan, Atal Nagar, Raipur.
3. Chief Engineer Mahanadi Godawari Kachhar, Water Resources Department, Raipur, Chhattisgarh
4. Executive Engineer Water Resources Department, Kasdole, District Baloda Bazar Bhatapara, Chhattisgarh

**---Respondents**

|                |   |                                |
|----------------|---|--------------------------------|
| For Petitioner | : | Mr. C. Jayant K. Rao, Advocate |
| For State      | : | Mr. Arvind Dubey, Panel Lawyer |

**Hon'ble Shri Justice P. Sam Koshy**  
**Order on Board**

**02/07/2019**

1. The present writ petition has been filed seeking for a direction to the respondents to consider the claim of the petitioner for regularization.
2. The facts of the case is that according to the petitioner, he was engaged as a daily wage employee by the respondents in 1987. He continued to work as a daily wage employee till 1995 when he was abruptly discontinued from service. The discontinuance from service was challenged by the petitioner by raising an industrial dispute in the year 2008 i.e. after about 13 years from the date of discontinuance.
3. The matter was referred by the State Government to the Labour Court Raipur, where the case was registered as Case No. 39/I.D.Act/2008 (Ref.)

and it was renumbered again as Case No. 50/I.D.Act/2011 (Ref.). The Labour Court finally vide its award dated 02.03.2013 granted the relief of reinstatement without back wages. It has been informed that the respondents have complied with the order by reinstating the petitioner in service and since 2013 the petitioner is working with the respondents till date and therefore has prayed for consideration of the petitioner for regularization in terms of the circular dated 05.03.2008.

4. The State counsel however opposing the petition submits that it is a case where there has been an intermittent break in service and as such the petitioner does not fulfill the eligibility criteria as per circular dated 05.03.2008. It was also the objection on behalf of the State Government that there has been an inordinate delay on the part of the petitioner in raising a dispute after he was initially discontinued in the year 1995. Thus, the intervening period during which the petitioner was sitting idle without challenging the discontinuance also cannot be counted for the purpose of continuity of service and thus prayed for rejection of the writ petition.
5. Having heard the contentions put forth on either side and on perusal of record, the admitted factual position as it stands is that as per the award of the Labour Court, which has since attained finality, the petitioner has worked as a daily wage employee with the respondents between 1987 to 1995, thereafter the petitioner raised a dispute only in 2008 i.e. after 13 years. The petitioner has an award in his favour from the Labour Court on 02.03.2013. The Labour Court has also granted only the relief of reinstatement without back wages and there was no order of treating the intervening period as period spent on duty.
6. Since the State Government has not challenged the award of the Labour Court, the same has attained the finality. The petitioner stood reinstated in

2013 and since then the petitioner has been working continuously with the respondents for another period of 6 years by now.

7. 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. ”**

8. 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 1987 to 1995 thereafter he was removed. The removal has been held illegal by an order passed on 02.03.2013. Thereafter, he has been reinstated. The dispute was raised by the petitioner for the first time in the year 2008, when the dispute was raised with the State Government. Between 1995 to 2008, 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 2008. Thus, it is only from 2008 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 1987 to 1995 and thereafter from the year 2008 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 1987 to 1995 and 2008 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 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.

9. The writ petition accordingly stands disposed off and the impugned order (Annexure P/1) to that extent stands set-aside/quashed. Let a fresh order be passed by the respondents authorities within a period of 90 days from the date of receipt of the copy of this order.

Sd/-  
**(P. Sam Koshy)**  
**Judge**

Ved