

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (L) No. 19 of 2016**

1. State Of Chhattisgarh Through The Secretary, Department Of Public Works, Mahanadi Bhawan, Mantralaya, Naya 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 proper course is to implead the State Government, through the secretary of the concerned department)
2. The Officer In Charge, Sub Divisional Officer, Public Works Department, Sub Division Nagri, District Dhamtari, Chhattisgarh
3. The Executive Engineer, Public Works Department, Dhamtari Division, Dhamtari, Chhattisgarh

---- Petitioners**Versus**

1. Smt. Jamuna Bai W/o Late Deenanath Sahu, Village And Post Mohdi, Thana Kurud, Tehsil And District Dhamtari, Chhattisgarh
2. The Member Judge, Industrial Court, Chhattisgarh, Raipur, Chhattisgarh

---- Respondents

For petitioners/State	:	Shri Jitendra Pali, Dy. A.G.
For Respondent no.1	:	Shri Suresh Tandan, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****14/02/2019**

1. The challenge in the present writ petition is to the order Annexure P-1 dated 08.05.2015 whereby the learned Industrial Court, affirming the order passed by the Labour Court Annexure P-2 dated 27.06.2002 wherein the Labour Court had granted the relief of reinstatement but

since the employee meanwhile had expired, had granted the relief of back wages from the date of discontinuance to the date of reinstatement.

2. The brief facts relevant for disposal of the present writ petition is that the husband of respondent no.1 was initially appointed as a daily wage employee on 01.01.1984 and he continued to serve the respondents till 02.06.1993 when his services were abruptly discontinued. The discontinuance of employment was challenged by the employee i.e. Husband of respondent no.1 vide Case No.52/MPIR Act/93 before the Labour Court, Raipur. The Labour Court, after recording the evidence of all the parties, passed an order on 27.06.2002 holding that the discontinuance of service was in violation of the provisions of Chapter 5 of the Industrial Disputes Act and therefore, ordered for reinstatement in service and also directed the respondents to consider the employee as a regular employee. This order dated 27.06.2002 was subjected to challenge in an appeal before the Industrial Court by the State Govt. as well as by the employee. The appeal preferred by the employee seeking the relief of back wages was registered as Civil Appeal No. 214/M.P.I.R.Act/A/11/2002. The appeal preferred by the employer/State questioning the relief of reinstatement and regularization was registered as Civil Appeal No. 253/M.P.I.R.Act/A/11/2002. Both these appeals stood rejected vide order dated 10.02.2004. The appeal of the State was dismissed on the ground of delay and the appeal of the employee stood dismissed on merits. The State Govt. subsequently preferred a writ petition

before the High Court challenging the order of the Industrial Court as well as the Labour Court vide WP No. 666/05. The said writ petition along with a bunch of other writ petitions challenging the same order came up for hearing before the High Court on 09.03.2015. The High Court vide order dated 09.03.2015, after considering the entire facts and circumstances of the case, set aside the order of the Industrial Court and remitted the matter back to the Industrial Court for passing a fresh order on merits.

3. Pursuant to the order of the High Court, the Industrial Court again after reconsidering the entire facts and circumstances of the case and hearing the parties vide impugned order dated 08.05.2015 partly allowed the appeal holding that the relief of regularization is not justified and the same was set aside, whereas the relief of reinstatement in service was affirmed. However, the Industrial Court found that since the employee namely Deenanath involved in the dispute had expired in the meantime, the said employee was reinstated. Therefore it was ordered that the widow of the deceased employee shall be entitled for the benefit of back wages from the date of removal from service till the date of reinstatement granted to the deceased employee. It is this order which is under challenge in the present writ petition.
4. Considering the fact that there are two concurrent finding of facts, one by the Labour Court and the second by the appellate Court i.e. Industrial Court, this Court is now left with very limited scope for interfering with the impugned order. This Court while considering the writ petition has to look into the decision making process and not the

decision itself. It is settled position of law that the High Court under Article 226 of the Constitution of India would not substitute itself as a fact finding body sitting over the order passed by the Labour Court as well as the Industrial Court exercising appellate powers while exercising writ jurisdiction.

5. In the instant case, perusal of the order of the Labour Court passed at the first instance itself would reveal that the employee has been able to successfully prove his case before the Labour Court of having worked continuously from 01.01.1984 to 02.06.1993 before he was abruptly discontinued without following the requirement of law under the provisions of the Industrial Disputes Act in as much as before discontinuance, the petitioner was not given any notice nor was he paid any salary in lieu of notice nor was he paid any sort of retrenchment compensation as is required under the provisions of Section 25 N of the Industrial Disputes Act. Thus, there is a clear finding of fact given in favour of the deceased employee based on the evidences which were recorded. Further what is revealed is that the said finding of fact has been scrutinized by the appellate Court i.e. the Industrial Court in an appeal and the Industrial Court has also affirmed the order of reinstatement made by the Labour Court and has interfered with the order only to the extent of granting of the benefit of regularization and since the employee had died, granted back wages to the legal heirs.
6. It is settled position of law that the power of this Court is very limited while examining the legality and validity of the award passed by the Labour Court. The Hon'ble Supreme Court in the case of "**Indian**

Overseas Bank v. I.O.B. Staff Canteen Workers Union & Anr.”, reported in **2000 SCC (L&S) 471** has held that while exercising the power under Articles 226 & 227 of the Constitution of India, it is impermissible under Article 226 of the Constitution of India to interfere with pure finding of fact or re-appreciation of the evidence. According to the Hon'ble Supreme Court, the High Court does not exercise the appellate jurisdiction under Article 226 of the Constitution of India, even if another view is possible, even then the High Court cannot substitute its decision.

7. Again in the case of “***Sugarbai M. Siddiq And Ors v. Ramesh S. Hankare (D) By Lrs.***”, reported in **2001(8) SCC 477** the Hon'ble Supreme Court while dealing with an award passed by the Labour Court has held that the scope of High Court is concerned, not with the decision of the Labour Court/Tribunal, but the decision making process. All that the High Court has to ascertain is whether the Court below had jurisdiction to deal with the matter, and whether the issue in question stands vitiated for any procedural irregularity only then can the High Court interfere with the findings of the Labour Court and not otherwise.
8. 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]***.

9. Keeping all these facts into consideration, this Court is of the firm view that no strong case has been made out by the petitioner State to interfere with the order of the Industrial Court dated 08.05.2015 as also the order passed by the Labour Court on 27.06.2002. The writ petition being devoid of merit deserves to be and is accordingly dismissed.

Sd/-

**(P. Sam Koshy)
JUDGE**