

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (L) NO.14 OF 2016**

1. State of Chhattisgarh Through The Secretary, Department of Public Works, Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh.
2. The Officer-In- Charge, Sub Divisional Officer, Public Works Department, Sub Division Nagari, Dhamtari, District Dhamtari, Chhattisgarh.
3. The Executive Engineer, Public Works Department, Dhamtari Division, Dhamtari, Chhattisgarh.

...Petitioner(s)**Versus**

1. Vijay Kumar S/o Shri Prabhuram, village Luge Post Chhoti Kareli, Tehsil and District Dhamtari (CG).
2. The Member Judge, Industrial Court, Chhattisgarh, Raipur, Chhattisgarh.

... Respondent(s)

For Petitioners-State	:	Shri Jitendra Pali, Deputy Advocate General along with Shri Rahul Mishra, Dy. Govt. Advocate.
For Respondent No.1	:	Shri Suresh Tandon, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****14.02.2019**

1. The challenge in this petition is to the order dated 08.05.2015 passed by the Industrial Court wherein the Industrial Court affirming the order of reinstatement granted by the Labour Court and quashing the order of Labour Court so far as granting regularization to the worker involved in the dispute, has also granted **Full Back Wages**. The petitioners also intend to challenge the order of Labour Court dated 27.06.2002 whereby the Labour Court has granted the relief of reinstatement in service. Though the other reliefs granted by the Labour Court has been

quashed by the Industrial Court in an appeal, the order of Labour Court is challenged confining to the relief of reinstatement.

2. Brief facts of the case is that, the respondent No.1 is said to have been engaged by the petitioners as a daily wage employee on 18.03.1985 and continued to work in service till 02.06.1993 when he was abruptly discontinued from service.
3. Discontinuance of service was challenged by the employee before the Labour Court vide case No.58/MPIR Act/93. The Labour Court taking into consideration the evidence which has been led by the parties reached to the conclusion vide its order dated 27.06.2002 that discontinuance of the services of the petitioner being violative of the provisions of Industrial Disputes Act, ordered for reinstatement in service and further directed that the employee be regularized and paid regular pay scale payable to a regular worker.
4. This order of Labour Court was subjected to challenge in an appeal under Section 65 of the Chhattisgarh Industrial Relations Act before the Industrial Court by way of two appeals, one by the State and other by the employee. The employee's appeal was registered as Civil Appeal No.220/MPIR Act/A/11/2002 claiming for back wages. The appeal of the State was registered as Civil Appeal No.259/MPIR Act/A/11/2002 challenging reinstatement and granting relief of regularization.
5. The Industrial Court initially dismissed the two appeals vide order dated 10.02.2004 wherein the appeal of the State was dismissed on the ground of delay and the appeal of the employee stood rejected on merit.

6. This order of Industrial Court dated 10.02.2004 was challenged by the State vide WP No. 698 of 2005. The said writ petition came up before the Division Bench of this Court on 09.03.2015 wherein after hearing the parties, the Division Bench allowed the writ petition and set aside the order of Industrial Court and remitted back the matter to the Industrial Court for a fresh adjudication on merits. The matter on being remitted back to the Industrial Court, the Industrial Court on rehearing the matter on merits finally vide impugned order Annexure P/1 allowed the appeal of the State in part to the extent that the order granting benefit of regularization was set aside by the Industrial Court and the Industrial Court at the same time affirmed the order of reinstatement in service, but allowed the appeal of the employee and granted the benefit of Full Back wages and consequential benefits to the employee. It is this order of reinstatement with backwages which is under challenge in the present writ petition.
7. It is relevant at this juncture to take note of the fact that pursuant to the order of Labour Court the employee concerned was reinstated in service in the year, 2004 and since 2004 the employee is in service of the petitioner till date and as such after reinstatement also the employee has put in about 15 years of service.
8. The challenge in the present writ petition by the State was on the ground that the Labour Court and the Industrial Court have failed to appreciate the fact that the employee was substantively a daily wage employee who does not have an indefeasible right attached to the post and therefore there could not have been an order of reinstatement granted in favour of the employee. The petitioner-State had further

questioned the order of Labour Court on the ground that the evidence was sufficiently adduced before the Labour Court on the part of the State showing that the employee was engaged only on the availability of work and stood discontinued because of non availability of funds as well as work. Therefore, the action on the part of the State in discontinuing the services of the employee cannot be held to be bad in law.

9. Having heard the counsel appearing on either side and on perusal of records, this court at the first instance is not inclined to interfere with the findings of the Labour Court on the ground of equity as the employee pursuant to his reinstatement in the year, 2004 has already further put in about 15 years of service. Further, perusal of Labour Court's order dated 27.06.2002 it clearly reflects that there is no dispute by the State of having not engaged the employee-respondent No.1 during the period between 18.03.1985 to 02.06.1993 i.e. the employee before his discontinuance also had put in about 8 years of service. Thus, the employee till date have minus (-) the intervening period of litigation, has worked with the department from 1985 onwards.
10. Moreover, this court is also not inclined to interfere with the order of reinstatement for the reason that there are two findings of facts available on records, first by the Labour Court exercising the original jurisdiction and subsequently by the Industrial Court exercising the appellate jurisdiction. Both the courts below have threadbare considered the evidence which were adduced by the either side and reached to the conclusion.

11. So far as interference by the High Court in an order passed by the Labour Court and the Industrial Court is concerned, it is settled position of law that this court would not substitute itself as another appellate body and threadbare go into the evidence and findings of facts.
12. This court in exercise of its power under Article 226 of the Constitution of India while considering the order passed by the Labour Court/Industrial Court would only confine itself to ensure whether the courts below have rightly exercised its powers conferred upon it or whether it has crossed its jurisdiction in any manner. Decision making process has to be scrutinized under Article 226 and not decision itself. Even if a different opinion could have been formed then also this court would not interfere with the findings of facts of the Labour Court and Industrial Court as a matter of routine.
13. In view of the aforesaid facts and circumstances of the case, this court is of the opinion that no strong case has been made out by the petitioners-State to interfere with the order of Labour Court and Industrial Court so far as granting relief of reinstatement is concerned.
14. So far as question of granting back wages is concerned, it is settled position of law that granting of back wages by the Labour Court or the Industrial Court should not be as a matter of routine. There has to be specific evidence recorded and only in case if there is a strong case made out by the employee concerned, the relief of back wages has to be granted.
15. In the instant case, undoubtedly the status of the employee was that of a daily wage employee and engaged only on availability of work and after completion of work the services of a daily wage employee

automatically stands discontinued, as such, there is no indefeasible right of a daily wage employee for claiming either employment for the next day or for continuous employment. Moreover, there has to be a specific claim and evidence led by the employee concerned before the employer to prove and establish that the employee concerned was not gainfully employed elsewhere during the period of litigation.

16. Indisputably the employee was a daily wage worker. During the period of litigation also the employee must have got himself engaged as a daily wage employee elsewhere and must have earned wages for the said period also.
17. 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.
18. 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 dealing with an award passed by the Labour Court has held that the scope of interference of the High Court is 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.

19. The Supreme Court in the case of ***“Harjinder Singh v. Punjab State Warehousing Corpn.”*** reported in ***(2010) 3 SCC 192***, in paragraph 21 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.'

(A.I.R 1958 SC 923 [State of Mysore v. Workers of Gold Mines, AIR p.928, para 10.]

20. This view has further been reiterated in the case of ***“Bhuvnesh Kumar Dwivedi v. Hindalco Industries Limited”*** reported in ***(2014) 11 SCC 85***.

21. So far as granting of back wages is concerned, the Supreme Court in case of **Rajasthan State Road Transport Corporation, Jaipur Vs. Shri Phool Chand (Dead) through Legal Representatives**, in Civil Appeal No.1756 of 2010, decided on 20.09.2018, discussing on the issue of grant of back wages in paragraphs 11 to 17 held as under:

“11. In our considered opinion, the Courts below completely failed to see that the back wages could not be awarded by the Court as of right to the workman consequent upon setting aside of his dismissal/termination order. In other words, a workman has no right to claim back wages from his employer as of right only because the Court has set aside his dismissal order in his favour and directed his reinstatement in service.

12. It is necessary for the workman in such cases to plead and prove with the aid of evidence that after his dismissal from the service, he was not gainfully employed anywhere and had no earning to maintain himself or/and his family. The employer is also entitled to prove it otherwise against the employee, namely, that the employee was gainfully employed during the relevant period and hence not entitled to claim any back wages. Initial burden is, however, on the employee.

13. In some cases, the Court may decline to award the back wages in its entirety whereas in some cases, it may award partial depending upon the facts of each case by exercising its judicial discretion in the light of the facts and evidence. The questions, how the back wages is required to be decided, what are the factors to be taken into consideration awarding back wages, on whom the initial burden lies etc. were elaborately discussed in several cases by this Court wherein the law on these questions has been settled. Indeed, it is no longer res integra. These cases are, M.P. State Electricity Board vs. Jarina Bee(Smt.), (2003) 6 SCC 141, G.M. Haryana Roadways vs. Rudhan Singh, (2005) 5 SCC 591, U.P. State Brassware Corporation vs. Uday Narain Pandey, (2006) 1 SCC 479, J.K. Synthetics Ltd. vs. K.P. Agrawal & Anr., (2007) 2 SCC 433, Metropolitan Transport Corporation vs. V. Venkatesan, (2009) 9 SCC 601, Jagbir Singh vs. Haryana State

Agriculture Marketing Board & Anr. , (2009) 15 SCC 327) and Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya(D.Ed.) & Ors., (2013) 10 SCC 324.

14. The Court is, therefore, required to keep in consideration several factors, which are set out in the aforementioned cases, and then to record a finding as to whether it is a fit case for award of the back wages and, if so, to what extent.

15. Coming now to the facts of the case at hand, we find that neither the Labour Court and nor the High Court kept in consideration the aforesaid principles of law. Similarly, no party to the proceedings either pleaded or adduced any evidence to prove the material facts required for award of the back wages enabling the Court to award the back wages.

16. On the other hand, we find that the Labour Court in one line simply directed the appellant (employer) to pay full back wages for a long period to the deceased workman while directing his reinstatement in service.

17. We cannot, therefore, concur with such direction of the Courts below awarding full back wages to the workman which, in our opinion, has certainly caused prejudice to the appellant (employer).”

22. Similar view has also been rendered by the Supreme Court in case of

P.Karupaiah (Dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. 2018 (12) SCC 663 and in paragraphs 10 and 11 held as under:

“10. The law on the question of award of back wages has taken some shift. It is now ruled in cases that when the dismissal/removal order is set aside/withdrawn by the Courts or otherwise, as the case may be, directing employee's reinstatement in service, the employee does not become entitled to claim back wages as of right unless the order of reinstatement itself in express terms directs payment of back wages and other benefits. (See M.P. State Electricity Board vs. Jarina Bee(Smt.), (2003) 6 SCC 141).

11. Indeed, the employee in order to claim the relief of back wages along with the relief of reinstatement is required to prove with the aid of evidence that from the date of his dismissal order 4 till the date of his rejoining, he was not gainfully employed anywhere. The employer too has a right to adduce evidence to show otherwise that an employee concerned was gainfully employed during the relevant period and hence not entitled to claim any relief of back wages.”

23. Given the aforesaid facts and circumstances of the case, this court is of the opinion that the order of back wages granted by the Industrial Court to the respondent No.1-employee does not seem to be justified, proper and legal. The same deserves to be and is accordingly set aside. Thus, the order of Industrial Court stands modified to the extent that the employee-respondent No.1 would be entitled only for the benefit of reinstatement without back wages.

24. The petition thus stands partly allowed to the above extent.

Sd/-
(P. Sam Koshy)
Judge