

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 5951 of 2019

1. Mahettar Ram Yadav, S/o Shri Holi Ram Yadav, Aged About 59 Years, R/o Village - Mohandi, Post Office - Anda, Tahsil - Mungeli, District - Mungeli, Chhattisgarh

---- Petitioner

Versus

1. D.F.O., Bilaspur Division (Territorial) Bilaspur, Chhattisgarh
2. Range Officer, Bilaspur Range, Chhattisgarh
3. State Of Chhattisgarh Through The Secretary, Department Of Forest, Mahanadi Bhavan, New Raipur, Chhattisgarh

---Respondents

For Petitioner	:	Mr. Ritesh Verma, Advocate.
For State	:	Mr. Ayaz Naved, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

08.08.2019

1. The challenge in the present Writ Petition is to the order Annexure P-9 dated 31.08.2018, vide the said order, the claim for regularization of the petitioner has been turned-down by the respondents.
2. The facts of the case is that, the petitioner was initially appointed as a Daily Wage Employee under the respondents in the year 1976. He continued to work with the respondents for a period of more than 13 years till 1989, when he was discontinued, the petitioner immediately challenged discontinuance before the Labour Court vide case number where the matter was referred to and registered as Case No. 146/IDA/90(Ref). The Labour Court finally vide its order dated 30.06.2001 answered reference in favour of the petitioner holding

the discontinuance to be bad and ordered for reinstatement in service. The petitioner thereafter immediately was taken in service in August, 2001 and then till date, the petitioner is working under the respondents since long.

3. Award of the Labour Court as per the petitioner has not been challenged by the department and as such the same has attained its finality. The petitioner meanwhile had filed WPS No. 5945 of 2017 which stood decided on 09.11.2017 directing the respondents to consider the case of the petitioner in the light of the Judgment of the Supreme Court in the case of **Secretary, State of Karnataka Vs. Uma Devi (3) and Ors, (2006) 4 SCC 1**. The impugned order Annexure P-9 has been passed pursuant to the said order/direction.
4. The reason for rejecting the claim of the petitioner or refusing to regularise the services of the petitioner is that, the respondents do not find the petitioner to have rendered continuous service during the intervening period. The other grounds that the petitioner have raised for discontinuance is that, though there is the order of reinstatement by the Labour Court but there is no reflection of the intervening period to be treated as continuous service.
5. Both these grounds that the respondents have raised, are unsustainable. Firstly for the reason that, there is a categorical finding of the Labour Court after due recording of the evidence of the petitioner has worked continuously between 1976 to 1989 which has been unrebutted by the respondents either by giving evidence or by challenging the order of the Labour Court.

6. Another fact, which needs to be appreciated is that, the action of the discontinuance itself has been declared to be illegal by the Labour Court and there is order of reinstatement. The term “reinstatement” has been considered by the full bench of this Court in the case of **“*Tukaram v. State of Chhattisgarh, WPS No. 1703/15, decided on 16.05.2017*”**, wherein it has been categorically held that, in case, if there is a challenge to the order of discontinuance, immediately and there is also an order of reinstatement. The entire legality period would have to be treated as discontinuance in service, unless it has been specifically held so by the Labour Court or the Tribunal hearing the dispute. In the instant case, there is no such order.
7. The award of the Labour Court has not been challenged. The award has immediately been complied by the respondents by reinstating the petitioner in August, 2001.
8. In the light of the Judgment of this Court in the case of ***Tukaram v. State of Chhattisgarh (surpa)***, the entire period has to be treated as continuous in service. Even if, not from the date of reinstatement till now that is from 2001 to 2019 ie., a period of more than 18 years, the petitioner has put in continuous employment with the respondents which is not disputed and which stands admitted from the impugned order Annexure P-9 itself. The requirement under the Circular dated 05.03.2008 passed by the State Government and the subsequent circulars passed in this regard is only continuous service of 10 years which subsequently the petitioner has by now put.

9. There is no reason why the State Government should not consider the case of the petitioner in terms of Circular dated 05.03.2008 and the subsequent circulars of State Government dealing with the regularization. It is also not a case where the respondents-authorities have not regularized any person of similar nature. In the recent past, this Court has seen various orders of the department whereby they have regularized such similar services of the similarly placed persons who are and in whose favour also there were the order of the Labour Court.
10. Given the aforesaid facts of the case, this Court is of the firm view that the impugned order needs reconsideration and the same is not sustainable and set-aside/quashed. The respondents are directed to consider the case of the petitioner afresh for regularization, keeping in view the aforesaid observations made by this Court.
11. Let an appropriate order be passed within a period of 3 months from the date of receipt of copy of this Order.
12. The present Writ Petition stands allowed and disposed off.

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