

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 5724 of 2019

Jai Hari Netam S/o Late Shri Dhanau Netam Aged About 49 Years R/o Village Sitakasha, Post And Police Station Gaiadatola, Tahsil Chhuriya District Rajnandgaon Chhattisgarh., District : Rajnandgaon, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Forest, Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Principle Chief Conservator Of Forest Head Quarter, Jail Road Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
3. Chief Conservator Of Forest Durg Durg, Circle Near 5 Building District Durg, Chhattisgarh., District : Durg, Chhattisgarh
4. Divisional Forest Officer Forest Division Rajnandgaon, In Front Of P T S, G E Road, Rajnandgaon, District- Rajnandgaon, Chhattisgarh., District : Rajnandgaon, Chhattisgarh

---Respondents

For Petitioner	:	Mr. Neeraj Pradhan, Advocate
For State	:	Mr. Anshuman Shrivastava, P.L.

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

05/08/2019

1. The challenge in the present writ petition is to the order dated 22/09/2018 (Annexure P-1) passed by the respondents whereby the claim for regularization of the petitioner has been rejected. The rejection by the respondent was on the ground that petitioner do not fulfill the requirements under the circular dated 05/03/2008 and moreover the said benefit was extended as a one time measure for those persons eligible when the circular was published.
2. Learned counsel for the petitioner submits that so far as the service of the petitioner is concerned, there is an order in his favour by the labour Court,

Rajnandgaon dated 19.09.2012 wherein, it has been categorically held that the petitioner was working as Chowkidar from January, 1995 to December 1999 when he was apparently discontinued. The discontinuance was subjected to challenge in the labour Court. The labour Court held that the discontinuance is bad in law, and have ordered for reinstatement in service on his previous post.

3. Pursuant to the award dated 19.09.2012, the petitioner has been reinstated in service 15.01.2013 and since then he is in continuous employment. According to the counsel for the petitioner the said award of the labour Court has not been challenged before any other forum and as such the award has become final. Counsel for the petitioner further submits that in the light of the judgment of Division Bench of this Court in the case of **Tukaram Vs. State of Chhattisgarh, WPS No. 1703/2015 and others**, analogous writ petitions decided on 16.05.2017, the petitioner has to be given the advantage of counting his service from the date of his initial appointment till date and the entire intervening period has to be treated as continuous service and thereby the case of the petitioner should have been considered, in the light of the circular dated 05.03.2008.
4. The State counsel however opposing the petitioner, submits that the petitioner would not be entitled for any relief as sought and the impugned order, Annexure (P-1) seems to be a factually justified order. State counsel further submits that it is a case where the petitioner has raised a claim before the labour Court after about 12 years and therefore that intervening 12 years period cannot be counted. He further refers to the judgment of Tukaram (Supra) wherein he submits that judgment would also state that it is the period during which the petitioner was litigating before the labour

Court that would be counted for continuity in service, not for the date during which he had not raised the industrial dispute.

5. 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 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 1995 to 1999 thereafter he was removed. The removal has been held illegal by an order passed on 19.09.2012. Thereafter, he has been reinstated. The dispute was raised by the petitioner for the first time in the year 2011, when the reference was made to the labour Court. Between 1999 to 2011, the petitioner had infact not worked anywhere 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 between 2011 to 19.09.2012. Thus, it is only from 2011 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, 1995 to December, 1999 and from the year 2011 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 1995 to 1999 and 2011 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.

7. Keeping in view the circular dated 05.03.2008, 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 respondent authorities within a period of 90 days from the date of receipt of copy of this order.

Sd/-
(P. Sam Koshy)
Judge

Ved