

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION (S) NO. 5838 OF 2018**

Jhanglu Singh, S/o Shri Ful Singh, aged about 42 years, Village Jamunpani, Post & Thana Chilpi, Tahsil – Bodla, District- Kabirdham (CG)

... Petitioner**versus**

1. State of Chhattisgarh, through Secretary, Department of Forest, Mahanadi Bhawan, New Mantralaya, Raipur (CG)
2. Principle Chief Conservator of Forest, Headquarter Jail Road, Raipur (CG)
3. Chief Conservator of Forest, Durg, Circle Durg, District Durg (CG)
4. Divisional Forest Officer, Kawardha (Kabirdham), District Kabirdham (CG)
5. Sub Divisional Forest Officer, Sahaspur Lohara/Secretary Scrutiny Committee, Sahaspur Lohara, District Kabirdham (CG)

Respondents

For Petitioner	:	Mr. F.S. Khare, Advocate
For Respondents	:	Mr. Chandresh Shrivastava, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****23/08/2019**

1. The challenge in the present writ petition is to the order dated 20.7.2018 (Annexure P-1) and order dated 24.7.2008 (Annexure P-2) whereby the claim for regularization of the petitioner has been rejected by the respondents.
2. The rejection by the respondents was on the ground that petitioner do not fulfill the requirements under the circular dated 5.3.2008 and moreover the said benefit was extended as a one time measure for those persons eligible when the circular was published.
3. 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 25.9.2009 wherein it has been categorically held that the petitioner was working as Chowkidar from January, 1986 to May 2007 when he was abruptly discontinued. The discontinuance was subjected to challenge before the Labour Court and the Labour Court vide its award dated 25.9.2009 held that the discontinuance is bad in law and thus ordered for reinstatement of the petitioner in service on his previous post. Pursuant to the award dated 25.9.2009, the petitioner has been reinstated in service on 6.12.2009 and since then he is in continuous employment.

4. 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 a Division Bench of this High Court in the case of *Tukaram Vs. State of Chhattisgarh* (WPS No. 1703/2015 and other analogous writ petitions, decided on 16.5.2017), 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 5.3.2008.

5. The State Counsel however opposes the petition on the ground that since there is no sufficient proof of the petitioner having worked for more than 240 days, the action on the part of the respondents of issuance of Annexure P-1 is proper, legal and justified. The State Counsel further submits that the petitioner is totally failed to produce any documents to justify the employment of the petitioner prior to 2007 which could have been taken note of.

6. Facts of the present case when considered from the judgment of the Labour Court, it appears that the petitioner has worked between 1986 to 2007 when he was removed. The removal has been held illegal by the award passed in the year 2009 and thereafter the petitioner has been reinstated in service. The dispute was raised by the petitioner for the first time in the year 2007 when the reference was made to the Labour Court. 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 2007 to 2009. Thus, the petitioner would be deemed to be in continuous service.

7. In the aforesaid factual backdrop, the total length of service so far as the petitioner is concerned would be from January, 1986 to till date. As he has since been reinstated after the award of the Labour Court, if we take the said period, 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, and 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.

8. Keeping in view the circular dated 5.3.2008, the writ petition is disposed of and the impugned orders (Annexure P-1 and Annexure P-2) to that extent stand set aside/quashed.

9. 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

/Sharad/