

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 7108 of 2019**

Bisahu Netam S/o Kartik Ram, Aged About 45 Years, R/o Sind, Post Office And Tehsil - Beral, District – Bemetara, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through - Secretary, Public Works Department Mahanadi Mantralaya, New Raipur, District – Raipur, Chhattisgarh
2. Engineer - In - Chief, Public Works Department, Mahanadi Mantralaya, New Raipur, District – Raipur, Chhattisgarh
3. Superintendent Engineer, Public Works Department, Durg, District – Durg, Chhattisgarh
4. Executive Engineer, Public Works Department, Bemetara District – Bemetara, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Sanjay Patel, Advocate
For State	:	Mr. Ashutosh Mishra, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****09.09.2019**

1. The claim of the petitioner in the present writ petition is for a direction to the respondents to consider the case of the petitioner for regularization in terms of the circular dated 05.03.2008.
2. The contention of the petitioner is that the petitioner was initially engaged by the respondents in the year 1986-87 and after working about 13-14

years, the services of the petitioner stood discontinued w.e.f. 25.03.2000. The petitioner thereafter preferred a case before the Labour Court by raising a dispute under the Industrial Disputes Act. The matter stood referred to the Labour Court and the Labour Court finally vide awarded dated 09.02.2015 Annexure P-1 granted the benefit of reinstatement in service without back wages. The said order of the Labour Court was not challenged by the Department and the petitioner was taken back in service on 26.05.2015 and since then the petitioner is continuously working with the respondents. Therefore, the petitioner is entitled for the benefit of regularization.

3. State counsel, on the other hand, opposing the petition submits that after the services of the petitioner stood discontinued in the year 2000, the petitioner raised a dispute after more than 9 years, therefore, this inordinate unexplained delay on the part of the petitioner would not be treated as continuous service. Thus, the respondents have rightly not considered the case of the petitioner for regularization.
4. Having heard the contentions put forth on either side and on perusal of the record, it is undisputed that the petitioner was working with the respondents since 1986-87 till March 2000 i.e. the petitioner had worked for a period of about 13-14 years. Thereafter, the petitioner did not raise a dispute or challenge the order of discontinuance for a period of 9 years. The petitioner finally raised a dispute in 2009 and the matter stood referred to the Labour Court who later on passed an order on 09.02.2015 granting the benefit of reinstatement in service without back wages.
5. From the admitted position what is undisputed is that the petitioner had

worked between 1986-87 till March, 2000 and then from May, 2015 till date. In between the petitioner had raised Industrial Dispute in 2009 which got finally decided in 2015. Taking into consideration the wordings of paragraph-26 of the judgment passed by Division Bench of this Court in the case of **Tukaram Vs. State of Chhattisgarh and others in WPS No. 1703/2015** and analogous writ petitions decided on 16.05.2017, the litigating period also has to be treated as continuous service. If that is taken note of, the petitioner's continuous service would be between 2009 when he raised the dispute which went on till the award was passed on 09.02.2015. Subsequently, the award stood complied with and the petitioner is still working on the said post. Thus, for all practical purposes, the service rendered, which could be taken note of by the department so far as the petitioner is concerned, is between 1986-87 till March, 2000 and from 2009 till date. For ready reference paragraph-26 of the judgment of Tukaram (supra) is reproduced hereinunder:

“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. Given the aforesaid facts and circumstances of the case, more particularly taking note of the fact that the initial appointment of the petitioner was of the year 1986-87 and the two period i.e. 1986-87 till March, 2000 and from November, 2009 till date, it would reflect that during both these period the petitioner had put in more than 10 years of service each. Thus, the petitioner has made out a claim for being considered for regularization in

the light of the circular dated 05.03.2008 and also the judgment of the Division Bench of this Court in the case of Tukaram (supra). Let this exercise be completed within a period of 4 months from the date of receipt of copy of this order.

7. The writ petition accordingly stands allowed and disposed of.

Sd/-
P. Sam Koshy
Judge