

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 7709 of 2018

Nathiyaram S/o Late Shri Hiraram Rajwade Aged About 50 Years Working To The Post Of Chaukidar As A Daily Wager At Hasdeo Right Bank Canal, Water Management Sub Division No.1, Pantora WRD, District - Korba, Chhattisgarh, R/o Village And Post Kanki, Police Station Kartala, Tahsil Kartala, District - Korba, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh, Through Its Secretary, Water Resources Department Mantralaya, Mahanadi Bhawan, Atal Nagar, District - Raipur, Chhattisgarh.
2. Engineer-In-Chief, Engineer Water Resources Department Sihava Bhawan Raipur, District - Raipur, Chhattisgarh.
3. Chief Engineer Water Resources Department, District - Bilaspur, Chhattisgarh.
4. Executive Engineer Hasdeo Barrage Water Management, Division Rampur (WRD), Police Station Rampur, Tahsil And District - Korba, Chhattisgarh.
5. Sub Divisional Officer, Hasdeo Right Bank Canal Water Management, Sub Division No.1, Pantora, WRD, District - Korba, Chhattisgarh.

---Respondents

For Petitioner	:	Mr. Vinod Deshmukh, Advocate
For State	:	Mr. Anshuman Shrivastava, P.L.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

25/02/2019

1. 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 on the post of Chaukidar and in accordance with the circular of State government dated 05.03.2018.
2. Counsel for the petitioner submits that the petitioner herein was initially engaged as Daily Wage employee in the year 1989 and he

continued to work till 28.02.1995 and thereafter the services stood discontinued. On the discontinuance of service, the petitioner raised a dispute under the Industrial Disputes Act in the year 2008 and obtained an award in his favour on 24.07.2008 whereby relief of reinstatement without back wages was granted.

3. The said order of the Labour Court dated 12.02.2013 was challenged before the High Court by the State Government in WPL No. 155/2013. The said writ petition got dismissed vide order dated 25.02.2019 upholding the order of the Labour Court. Meanwhile, the petitioner on the award of the Labour Court being passed was reinstated in service in 2013 and since then the petitioner continuously is working under the respondents as daily wage employee and has therefore claimed for an appropriate direction to the respondents to consider the case of the petitioner for regularization.
4. It is the contention of the petitioner that since the Labour Court has passed an order of reinstatement in service and has also held that the termination to be bad in law therefore for all practical purposes, the petitioner has to be treated to be in continuous employment from 1989 till date and thus the circular of the State Government Dated 05.03.2008 would be applicable in the case of the petitioner and he would be entitled for regularization.
5. The State Counsel however opposing, the petition submits that it is the case where though the service of the petitioner stood discontinued in 1995, the petitioner for the first time had questioned

his discontinuance after a long inordinate delay of 13 years i.e. in the year 2008 and there is no proper explanation or justification for non raising dispute during the said 13 years times. Therefore, according to the State Counsel the petitioner would not be entitled for the benefits as are otherwise enshrined in the judgment of this Court in the case of **“Tukaram Sahu v. State of Chhattisgarh & others” (WPS No. 1703 of 2015)** and other connected matters , decided on 16.05.2017.

6. Undisputed facts from the submission, which have been put forth by either side is that the petitioner stood discontinued from service after working between 1989 to 1995. The petitioner raised a dispute before the Labour Court for the first time after 13 years in the year 2008.
7. The Labour Court passed an order on 12.02.2013 in favour of the petitioner and he was later on reinstated in 2013 and, since then he is working with the respondents.
8. It would be relevant at this juncture to refer to the judgment of **“Tukaram”** (supra) wherein the Division Bench of this Court in paragraph No. 26 said judgment held as 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. ”

9. From the aforesaid observations, it is apparently 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 1989 to 1995, thereafter he was removed. The removal has been held illegal by an order passed on 12.02.2013, thereafter, he has been reinstated. The dispute was raised by the petitioner for the first time in the year 2008, when the reference was made to the Labour Court. Between 1995 to 2008, the petitioner had in fact not worked anywhere neither had he challenged his removal before any forum.
10. 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 from 2008. Thus, it is only from 2008 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 1989 to 1995 and thereafter from the year 2008 till date. As he has since been reinstated after the award of the Labour Court, if we take the said two periods i.e. from 1989 to 1995 and 2008 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 consider the case of the petitioner and pass a fresh order, so far as his claim for regularization is concerned, keeping in view the circular dated 05.03.2008.

11. Let an order be passed by the respondent authorities within a period of 90 days from the date of receipt of copy of this order.
12. The writ petition accordingly stands disposed off.

Sd/-
(P. Sam Koshy)
Judge

Ved