

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 8417 of 2018

Dukalu S/o Shri Kartik Sahu, aged 52 years, R/o village Lafinkhurd,
Tahsil & District Mahasamund (C.G.).

---Petitioner

Versus

1. State Of Chhattisgarh, Through The Secretary, Capital Complex, New Raipur, Raipur (C.G.).
2. Chief Engineer, Mahanadi Godawari Kachhar, Kodar Pariyojna, Mahasamund, District Mahasamund (C.G.).
3. Executive Engineer, Kodar Nahar, Mahasamund, District Mahasamund (C.G.).

---Respondents

For petitioner	:	Shri J.K.Gupta, Advocate.
For State	:	Ms. Sunita Jain, Government Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

03/01/2019

1. The relief sought for in the present writ petition is for a direction to the respondents to consider the case of the petitioner for regularization in the light of the circulars dated 5.3.2008 and 16.8.2012. The relief sought for is on the basis of the judgment passed by the Division Bench of this Court in the case of **Tukaram and Others Vs. State of Chhattisgarh** in WPS No. 1703/2015 and other analogous writ petitions **decided on 16.05.2017.**

2. The brief facts of the case is that the petitioner was initially appointed as a Daily wage worker under the respondents wayback in the year 1985. He continued to serve the Department from 1995 when his services was

abruptly discontinued. The petitioner thereafter raised a dispute before the State Government under the provisions of the Industrial Dispute Act challenging his discontinuation and the matter stood referred to the labour Court in the year 2004 and subsequently the matter stood transferred to newly established labour Court, Mahasamund, whereby the case renamed as the case number 7/I.D. Act/2013 (Reference). The said reference stood answered on 10.3.2016 whereby labour Court held that the discontinuance of the services of the petitioner to be bad in law and ordered for reinstatement without back wages.

3. The award passed by the labour Court was not challenged by the Department before any higher forums and the same has since attained finality. In compliance of the order of the labour Court, petitioner has been reinstated in service in the year 2016 itself and since then he continues to work as Daily Wage Employee under the respondents.

4. The contention of the petitioner is that applying the principles laid down by the Division Bench of this Court in the case of *Tukaram (Supra)*, petitioner is entitled for being considered for regularization by treating his entire period that is from the date of his initial appointment till date as spent on duty and thereby in the light of the circulars dated 5.3.2008 and 16.8.2012, petitioner should have been considered for regularization. Having not done so has led to the filing of the present writ petition.

5. State counsel on the contrary opposing the petition submits that since there was a break in service, so far as the petitioner is concerned past

services of the petitioner cannot be counted for the purpose of bringing the case of the petitioner under the condition stipulated in the circulars dated 5.3.2008 and 16.8.2012. It was further contention of the State counsel that there is an inordinate delay on the part of the petitioner in raising the dispute against discontinuance in the services of the petitioner, therefore, would not be entitled for the benefit and period during which he was sitting idle and thus prayed for the rejection of the petition.

6. Having heard the contention put forth on either side and perusal of the records, undisputedly the petitioner seems to have worked for respondents between 1985 to 1995, thereafter his services were discontinued. The discontinuance was under challenge before the labour Court. The dispute was raised in the year 2004 as revealed from Paragraph 1 of the award of the labour Court. Thus it seems that dispute by the petitioner raised itself after about seven years from the date of discontinuance. The labour Court is not granted any benefit during the period when the petitioner has been out of employment or period he had not raised any dispute. However, taking into consideration the judgment of the Division Bench in the case of Tukaram (Supra) particularly the contents of the Paragraph 26 of the said judgment which for ready reference 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.”

7. It has to be considered that for the litigating period which in the instant case was between 2004 to 2016, the same would also have to be treated as period spent on duty. However, it is made clear that for the period between 1995 to 2004 during which the petitioner seems to be sitting idle without raising any dispute before any forum or challenging termination the said period would not be treated as period spent on duty.

8. Given the facts, writ petition stands disposed off with direction to the respondents to consider the case of the petitioner for regularization. Taking into consideration the services rendered by the petitioner between 1985 to 1995 and 2004 to 2016 as period spent on duty and the services rendered by him subsequent to his reinstatement which in other words means except for the period between 1995 to 2004, the entire service of the petitioner between 1985 till date shall be treated as in continuous employment for the purpose of considering his case for regularization in the light of the circulars dated 5.3.2008 and 16.8.2012.

9. With the aforesaid observations writ petitions stand disposed off.

Sd/-
(P. Sam Koshy)
JUDGE

Sumit