

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 154 of 2019

Kailash S/o Shri Faguram Kumbhkar Aged About 46 Years R/o Village Baridih, Post Kodekasa, Tahsil Dondi Lohara, District- Balod, Chhattisgarh., District : Balod, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Forest, Mahanadi Bhawan, Mantralaya, Atal Nagar, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
2. Principle Chief Conservator Of Forest Head Quarter Jail Road Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
3. Chief Conservator Of Forest Durg, Circle Durg, District- Durg, Chhattisgarh., District : Durg, Chhattisgarh
4. Divisional Forest Officer Balod, District- Balod, Chhattisgarh., District : Balod, Chhattisgarh
5. Divisional Forest Officer Forest Division Balod/chairman Scrutiny Committee Balod District- Balod, Chhattisgarh., District : Balod, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. F. S. Khare, Advocate
For State	:	Mr. Salim Kazi, Dy. AG

Hon'ble Shri Justice P. Sam Koshy

Order on Board

10/01/2019

1. The challenge in the present writ petition is to the order dated 06/10/2018 (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 20.0.2011 wherein, it has been categorically held that the petitioner was working as Chowkidar from 1988 to 2000 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 20.01.2011, the petitioner has been reinstated in service in the year 28.01.2012 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 3 years and therefore that intervening 3 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 1988 to 2000 thereafter he was removed.

The removal has been held illegal by an order passed in 2011. Thereafter, he has been reinstated. The dispute was raised by the petitioner for the first time in the year 2003, when the reference was made to the labour Court. Between 2000 to 2003, 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 2003 to 2011. Thus, it is only from 2003 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 1988 to 2000 and from the year 2003 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 1988 to 2000 and 2003 to 2018 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

Rohit