

HIGH COURT OF CHHATTISGARH, BILASPUR**WPL No. 2765 of 2011**

1. State of Chhattisgarh through the Secretary Department of Water Resources, D.K.S. Bhawan, Mantralaya Raipur (C.G).
2. Sub-Divisional Officer, Minimata Bangao Nahar Upa Sambhag No.17, Bilaspur (C.G). **--- Petitioners**

Versus

Suresh Kumar Pandey through Shir Ramesh Kumar Dwivedi Nutan Coloy
Irrigation Colony Pump House Bilaspur CG **--- Respondent**

For the Petitioners : Ms. Akanksha Jain, Dy. Govt. Advocate.
For Respondent No.1 : Mr. S.P. Kale, Advocate.

Hon'ble Shri Justice Goutam Bhaduri**Order on Board****03.02.2020**

1. The challenge made in this petition is to the order dated 24.02.2009 passed by the Labour Court, Bilaspur in a reference No.49/ID Act/2005. Respondent no.5 filed a statement of Claim on reference being made u/s 10(1) of the Industrial Disputes Act. In the statement of claim, it was pleaded that respondent was engaged as Chowkidar/watchman and he was initially appointed in the year 1994 by the Water Resources Department, District Bilaspur. It is further pleaded that due to excellent performance, he was continued in the job. On 09.02.1995 he was promoted to the vacant post of watchman and all of a sudden in the month of July, 1996, his service was terminated. It is further stated that the petitioner had worked without any stigma or any misconduct. The respondent employee pleaded that the termination was not because of any misconduct and before terminating the services of the petitioner, the provisions of Industrial Disputes Act have not been complied with. The respondent further

stated that the nature of job which he was performing was perennial in nature and continued even after the service of respondent was terminated.

2. Per contra, the State (petitioners herein) had contended that the State in their statement denied the averments of the respondent and contended that the petitioner's services was availed on the basis of requirement of job and according to the nature of availability of work. It is further stated that as per the direction given by the erstwhile State of Madhya Pradesh, the persons who are employed subsequent to 31.12.1998, their services were terminated, consequently the petitioner's services was terminated. It is further contended that reference was made after 9 years of date of termination, therefore, it was barred by time.
3. On the basis of the pleading of the parties issues were framed by the Labour Court and the parties led their evidence. Eventually the order was passed on 24/02/2009 whereby the petitioner was reinstated as a daily wager without any back wages.
4. Learned State counsel appearing for the petitioners would submit that the court below failed to take into notice that the engagement of the respondent was on daily wage basis. It is further stated that the said post was not a sanctioned post and the appointment to the post was not made after due advertisement and there was inordinate delay in filing of the petition. It is stated that he was terminated in the year 1996 and the statement of claim was filed after a delay of 9 years. It is further contended that the petitioner has not continuously worked for 240 days in one calendar year prior to termination.
5. Learned counsel appearing for the respondent opposes the petition on the ground that the award passed by the Labour Court is well merited and reasoned. It is further contended that the Labour Court has given due reasons

and appreciated the evidence led, therefore this court in exercise of power under Article 227 of the Constitution of India normally do not interfere unless and until perversity is writ large on the face of it. He further submits that the petitioners have failed to establish that any perversity or illegality is apparent on the face of the order warranting interference by this Court.

6. I have heard learned counsel for the parties and perused the records. So far delay is concerned in making reference this point has been settled by the catena of decisions by the Supreme Court starting from the case of ***Ajaib Singh Vs. Sirhind Cooperative Marketing-cum- processing Service Society Limited reported in (1999) 6 SCC 82***, ***Gurmail Singh Vs. Principal, Govt. College of Education reported in (2000) 9 SCC 496*** and ***Kuldeep Singh Vs. General Manager, Instrument Design Development and Facilities Centre reported in (2010) 14 SCC 176***.
7. Law is settled that in cases of the reference under the Industrial Disputes Act, 1947 the time cannot act as a rider. Accordingly, the law of limitation would not apply. It is also obvious that if the termination is illegal and the reference is made then the cause of action would be continuous. Consequently, the delay if any cannot be made a ground for dismissal. In a result, findings of the Labour Court in condoning the delay do not appear to be perverse.
8. Now coming to the merits of the case, admittedly, in this case, neither the departmental enquiry was conducted nor the provisions of Section 25 (F) of the Industrial Disputes Act, 1947 was followed.
9. For the sake of brevity Section 25(F) of the Industrial Disputes Act, 1947 is reproduced herein below:-

“25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be

retrenched by that employer until--

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].”

10. Likewise Section 25(B) of the Industrial Disputes Act, 1947 defines the continuous service which reads as under:-

“25B. Definition of continuous service.- For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock- out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and (ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) ninety- five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.
Explanation.-For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

(i) he has been laid- off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;

(ii) he has been on leave with full wages, earned in the previous

years;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.]”

11. Reading of the award of the Labour Court would show that while the case under the I.D. Act was decided, the respondent employee examined himself as P.W.1 and in support of his statement, one Ramesh Kumar Dwivedi was examined as P.W.2 and on behalf of respondent one S.R. Minj was examined. The respondent has exhibited the documents Ex.P-1 to P-15. Ex.P-2 pertains to copies of the muster rolls for the months of December, 1994 Feb. 1995, March, 1996, June 1996 which was produced and Ex.P-4 pertains to Attendance Register of 1995. The labour Court while examining these documents held that in the attendance register (Ex.P-4) the attendance of the respondent was shown from 1 to 10 and thereafter from 21 to 31 which bears the signature. Likewise in Ex.P-4 from 1 to 10 and from 21 to 27, certain payments have also been recorded. Ex.P-7 pertains to communication which is made wherein certain documents were sought under the Right to Information Act. The said documents uptill Ex. P-14 would go to show that copies of vouchers were given to establish the fact that respondent had continuously worked from 1994 to 1996 and worked more than 240 days in one calendar month. Finally by examining Ex.P-14, a document wherein certain statements have made by K.P. Gupta, Assistant Engineer who has certified that respondent Suresh Kumar had worked in the muster roll from 1994 to 1996 in the inspection bungalow. The said facts apart from the documentary evidence is supported by the oral evidence of Ramesh Kumar Dwivedi DW.2. Though the petitioners had examined one Sohan Ram Minj but except the oral statement, the documentary evidence was not rebutted especially the contents of Ex.P-14 and Ex.P-15 which contain a fact and statement of the departmental officials that the

respondent worked for 240 days before his date of termination in one calendar year is not rebutted. The reference of departmental persons who certified those facts were named as K.P. Gupta and M.R. Sahu. Consequently, the finding of the Labour Court that the respondent worked continuously for more than 240 days in one calendar year as required under sub section (2)(a)(ii) of Section 25(B) of the Industrial Disputes Act, 1947 appears to be correct. In a result, the finding of the Labour Court that before the termination on 28/02/1995 the respondent worked for 240 days continuously in 12 previous calendar months do not appear to be illegal or arbitrary or perverse.

12. Now with respect to the compliance of section 25 (F) of the Industrial Disputes Act, 1947 the documents and the facts would suggest that there is no compliance of Section 25 (F).
13. Now with respect to the compliance of section 25 (F) of the Industrial Disputes Act, 1947 the documents and the facts would suggest that there is no compliance of Section 25 (F).
14. It is also a settled position of law that under the writ jurisdiction, this Court would not interfere with the order passed by the Labour Court as if sitting as an Appellate Authority particularly in a case under I.D. Act. The interference would be only to a limited extent whether there is perversity in the finding arrived at by the Court below or the Court has exercised its jurisdiction beyond the powers conferred upon it. The High Court can interfere with factual aspect only when it is convinced that the Labour Court has made patent mistakes in admitting evidence illegally or the Court has committed a grave error in law in coming to its conclusions.
15. The jurisdiction under Article 226 of the Constitution of India in examining the correctness of the order of the Labour Court was confined to errors in the decision making process and not on the merits of the decision itself. This Court

does not find any infirmity in the decision making process warranting interference.

16. The Supreme Court in the case of **Harjinder Singh v. Punjab State Warehousing Corporation [2010 (3) SCC 192]** held as under:-

“21. Before concluding, we consider it necessary to observe that while exercising jurisdiction under Articles 226 and /or 227 of the Constitution in matters like the present one, the High Courts are duty-bound to keep in mind that the Industrial Disputes Act and others similar legislative instruments are social welfare legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the Preamble of the Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43-A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to subserve the common good and also ensure that the workers get their dues. More than 41 years ago, Gajendragadkar, J. opined that:

‘10. The concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State.’ (State of Mysore v. Workers of Gold Mines (AIR 1958 SC 923) AIR p.928, para 10.)”

This view has further been reiterated in the case of **Bhuvnesh Kumar Dwivedi v. Hindalco Industries Limited [2014 (11) SCC 85]**

16. The Petitioners through the present writ petition have failed to show either there being any perversity in the finding or the Court below having exceeded its jurisdiction. In the absence of the two, the finding arrived at by the Labour Court has to be accepted to be proper, legal and justified.
17. This Court is also reluctant to set aside the impugned order of the Labour Court

for the reason that pursuant to the award, the petitioner State Govt. reinstated the respondent in service in the year 2009 and since then he has been continuously working. As such, he has by now put in service for almost 11 years after the award was passed. It is stated that respondent has been reinstated in service with effect from 26.11.1990.

17. In this view of the matter, this Court does not find any strong case on behalf of the petitioners made out calling for interference with the impugned award of the Labour Court and the petition being devoid of merits, the same is accordingly dismissed.

Sd/-
(GOUTAM BHADURI)
JUDGE