

HIGH COURT OF CHHATTISGARH, BILASPUR**WPL No. 3035 of 2011**

1. Hurkat Agricultural Equipment Pvt. Ltd. (Now Radhe Hurkat Ispat Pvt. Ltd.) Urla Raipur, C.G. Employer, Through its Manager Director.

---- Petitioner**Versus**

1. Surendra Yadav, S/o. Shankar Yadav, C/o. Pawan Kirana Store, Achholi, Post Urla Raipur, Chhattisgarh.
2. Ashok Rai, Contractor, Agricultural Equipment Pvt. Ltd. Urla, Raipur, Chhattisgarh.
3. Presiding Officer, Labour Court Raipur, Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. Rakesh Mohan Pandey, Advocate
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For Respondent No.1	:	Mr. S.P. Kale, Advocate
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Hon'ble Shri Justice Goutam Bhaduri**Order On Board****21.05.2020**

1. Despite repeated calls and the information having been sent for two days, no one turned up to argue the case on behalf of the petitioner. Under the circumstances, the counsel from the Legal Aid Mr. Rakesh Mohan Pandey was called and was requested to go through the file so as to argue the same after some time.
2. Challenge in this petition is to the award dated 29.11.2010 passed by the Labour Court under the I.D.Act in a case bearing No.37/2005/I.D.Act/Reference. The petitioner as also the

respondent No.1 filed the statement of claim on the reference made under Section 10(1) of the I.D.Act 1947. Subsequently, the award was passed wherein the respondent No.1 was directed to be reinstated with 50% back wages.

3. Learned counsel for the petitioner would submit that the respondent No.1 was not directly appointed by the petitioner organization as he was being engaged by the contractor. He would submit that there is no direct employer - employee relationship existed in between the petitioner and respondent No.1. Further he would submit that the respondent No.1 was not under the direct control of the petitioner and his services were never terminated and he himself stopped to report for the job to the petitioner from September, 2004. Consequently, he himself has abandoned the service. It is further contended that the evidence do not support the contention of the respondent No.1 so as to reinstate him with 50% back wages as no statement has been made that he was gainfully employed during the time when he was terminated.
4. Per contra, learned counsel for the respondent No.1 would submit that no evidence exists in favour of the petitioner so as to show the liability. He would submit that no evidence has also been adduced by the petitioner to substantiate the facts that the respondent No.1 was directly on role in the petitioner company. He would submit that before the termination was effected the compliance of Section 25F of the I.D. Act has not followed. Consequently, the finding of the learned Court below is after

appreciation of all the evidence is well merited which do not require any interference.

5. Heard learned counsel for the parties and perused the documents.

6. 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

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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

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appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].”

7. 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.]”

8. It is 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.

9. 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.
10. 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]**

11. With the aforesaid statutory principles when the order and evidence are examined, it would show that while appreciating the cause, the learned Labour Court has examined the statement of respondent No.1. Copy of the statement of respondent No.1 Surendra Yadav is also attached as Annexure P-3. The respondent No.1 made a statement that on 27.12.2002 he was working on the post of Townment with the organization of the petitioner. He further stated that his work was satisfactory and he was not served with any warning or letter of show cause in discharge of his job. He further stated that he has not received any charge sheet for misconduct at any point of time. Further he stated that on 11.09.2004 when he went to his job, the owner of the organization Mukesh told him that he is no more required for the job. He further stated that he had worked for more than 240 days in the organization in one calendar year and before he was stopped to job certain blank paper was got signed. He further submitted that before his services were terminated, he was not served with any notice and retrenchment compensation was not paid to him. He further has stated that after termination, he remained unemployed, therefore, he may be reinstated with entire back wages.
12. In the cross examination, he denied certain suggestions made to him. He stated that he was employed by the contractor Ashok Yadav in the Hurkat Agricultural and he started working since 30.12.2003. This statement to the fact he worked with petitioner

company remains unrebutted. The suggestion to the fact that he abandoned his job from 11.09.2004 has been denied and evidence to rebut the same was advanced. In the cross examination, with respect to his earning after termination, it is stated that he used to do agriculture and labour job and per month he used to earn Rs.1000/-.

13. With respect to the evidence adduced by petitioner, the statement of Brajesh Hurkat which has been discussed in the order. It was stated that Rs.2150/- was paid to the respondent No.1 as salary and the attendance register was being kept by the contractor and the respondent No.1 had worked till 2004. Thereby the fact of employment as principal employer by the petitioner company has been corroborated. The order further includes that before the Court, the witness of petitioner company has made categorical submission that he is ready to take back the respondent No.1 into the job. So certain admission also exists.
14. On the basis of the aforesaid discussion, the Court below has come to a conclusion that the respondent No.1 was working as Townment with the petitioner organization and he has been worked for more than 240 days and without any notice and retrenchment compensation his services has been terminated. Learned Court below has further granted reinstatement with 50% back wages. The respondent No.1 has made a statement that he is unemployed, however, during cross examination has made a statement that he used to earn Rs.1000/- per month after he was

terminated. Therefore, under the facts of this case, it cannot be said that he was not gainfully employed after the termination though may not be to the extent as he was getting the wages. In view of the facts and evidence, I am not inclined to interfere with the order of reinstatement which has been made by the impugned award. However, considering the statement of the respondent No.1 and part earning made the back wages to the extent of 50% is modified to the extent of 25 %. The respondent No.1 therefore would be entitled to 25% of the back wages from the date of his termination till he was reinstated to the job.

15. With the aforesaid modification, the petition stands disposed off.

Sd/-
Goutam Bhaduri
Judge

Ashok