

HIGH COURT OF CHHATTISGARH, BILASPUR**WPL No. 3710 of 2011**

1. State of Chhattisgarh, Through – Secretary, Water Resources Department, Mantralaya Bhawan, Raipur (C.G.)

(Petitioner No.1 was not a party before the learned Labour Court, but has been impleaded as Petitioner No.1 herein as it is necessary to implead the State Govt. through the Secretary of concerned Department.)

2. The Executive Engineer, Kharang Water Resources Division, Bilaspur (C.G.)
3. The Sub Divisional Officer, Sarvekshan Water Resources Sub Division Bilaspur (C.G.)

---- Petitioners

Versus

1. Santosh Kumar Sahu, S/o. Bahur Ram Sahu, Aged about 40 years, R/o. Village Jawahar Nagar, Akaltara, District – Janjgir – Champa (C.G.)
2. The Presiding Officer, Labour Court, Bilaspur (C.G.)

---- Respondents

For Petitioners/State : Shri Kunal Das, PL

For Respondent No.1 : Shri Vinod Deshmukh, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board**

14/02/2020

1. Heard.
2. Challenge in this petition is to the award dated 03.07.2010 passed by the Labour Court Bilaspur under the Industrial Disputes Act, 1947 (for short 'the Act, 1947') in reference No.55/ID Act/2009 (Ref.). The reference was made to the Labour Court by the Assistant Labour Commissioner by the order dated 30.11.2009. Thereafter, the statement of claim was filed by the respondent/workman and the petitioners.
3. The employee/respondent in his statement of claim contended that he was appointed to the post of copyist on the permanent vacant post on 01.05.1990

and was working in the department of Water Resources. During the service tenure he did not receive any notice of misconduct and since services were satisfactory it was continued. Thereafter, his services were terminated on 09.04.1995 and before that he was continuously working there from 01.05.1990 to 08.04.1995, therefore, had rendered more than 240 days continuous service in a calendar year before the date of termination. It was further stated that without any departmental enquiry, the petitioner's services were terminated. Though the circular and the directions were issued by the erstwhile State of M.P. that the persons appointed after 31.12.1988 should be reinstated and further order was passed by the erstwhile State of M.P. in the year 1989 & 1987 that all the daily wagers should be regularized, but when the respondent requested for regularization, instead of regularization, his services were terminated and before such termination neither any departmental enquiry was held nor the last come first go principle under Section 25 (G) of the Act, 1947 was followed and retrenchment compensation under Section 25 (F) of the Act, 1947 was also not paid. Admittedly, it was prayed that the respondent/workman may be reinstated with back wages.

4. Per contra, the State/petitioners in their reply to statement of claim contended that the respondent was appointed in the roll of the unskilled labour in the daily muster roll and the job was temporary in nature and the respondent has not rendered the services more than 240 days before the termination and as per the order of the erstwhile State of M.P., after 31.12.1988 the direction was issued that the services of all the daily wagers should be terminated, therefore, the services of the petitioner was dispensed with. It was further contended that the reference has been made after a long delay, therefore, it was barred by limitation.

5. Learned counsel for the respondent opposed the arguments and submits that the order of the Labour Court is well merited.
6. I have heard learned counsel for the parties and perused the records. So far as 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 and another** reported in (1999) 6 SCC 82, **Gurmail Singh Vs. Principal, Govt. College of Education and others** reported in (2000) 9 SCC 496 and **Kuldeep Singh Vs. General Manager, Instrument Design Development and Facilities Centre and another** 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 be 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, finding of the Labour Court in condoning the delay do not appear to be perverse.
8. Admittedly in this case there has been no departmental enquiry was conducted or any provisions of Section 25 (F) of the Industrial Disputes Act, 1947 were not 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 ² [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 ¹ [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. The reading of the judgment of the Labour Court and the perusal of the records would show that the respondent Santosh Kumar Sahu had examined himself and on behalf of the department one S.K. Saraf, SDO, Water Resources was examined. The respondent has exhibited the documents. Ex. P-1, P-2, P-3, P-4, P-5, P-6, P-7, P-8, P-9, P-10 & P-11 which are the certificates issued by the department about the presence of the respondent that he worked in the department. These documents are not been rebutted by any evidence. Instead the statement of S.K. Saraf, witness on behalf of the department would show that he was posted in the department in May, 2008, therefore, he was not a primary witness, instead he has admitted that the respondent worked in the department from 01.05.1990 to 08.04.1995 and such statement is made on the basis of official records. He further admitted that at the time of termination neither the respondent was given any retrenchment compensation nor the principles of Section 25 (F) of the Act, 1947 were followed and further he volunteered the fact that according to the order received from the State, the services of the respondent were dispensed with. He further admitted that as per Ex. P-12 a direction was issued by the State on 2nd December, 2000 to reinstate certain employees, however, the petitioner was not taken back into services and referring to Ex. P-14 in respect of one Suresh Kumar Yadav, he submitted that he was appointed on 06.11.1991 and he was regularized and he further admitted that Ex. P-1 to P-11 are the documents issued by the department shows that the respondent worked in the department.
12. The Labour Court relied on the said statement and came to a conclusion that the provisions of Section 25(F) of the Industrial Dispute Act, 1947 were not

followed and the Court also recorded that no document has placed on record to show the “last comes first go” procedure were followed, therefore, prima facie it shows that non-compliance of Section 25(F) of the Industrial Disputes Act, 1947 were apparently on the face of record.

13. 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.

14. 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.

15. 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 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 has 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 2010 and since then he has been continuously working. As such, he has by now put in service for almost 10 years after the award was passed.
18. 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

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