

HIGH COURT OF CHHATTISGARH, BILASPUR**WPL No. 97 of 2011**

1. Smt. Usha Pillai, aged 55 years, Sr. Medical Officer, CSEB Hospital Korba (Now CSPDCL Hospital) Post – Vidyut Nagar, Darri, Korba, Distt. Korba (CG)
2. S.P. Rege, aged 60 years, Chief Engineer (Generation) Hasdev Thermal Power Project, CSEB Korba (now CSPDCL) Korba (West), Distt. Korba

---- Petitioners**Versus**

1. Industrial Court, Bench Bilaspur, Distt. Bilaspur (CG) Through its Superintendent, Green Park Colony, Bilaspur.
2. Sahdev Das Mahant, S/o Mukund Das, R/o HTPS Colony, Qt. No.F/49, Korba, Distt. Korba (CG)
3. Judicial Magistrate First Class – cum- Labour Court, Bilaspur, Distt. Bilaspur (CG)

---- Respondents

For Petitioners : Shri Abhishek Sinha, Advocate

For Respondent No.2 : Shri S.P. Kale, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****17/02/2020**

1. Heard.
2. The present petition is against the order dated 28.08.2008 passed by the JMFC, Labour Court Bilaspur.
3. The background of this case is that an order was passed on 13.11.1998 by the Labour Court, Bilaspur, wherein the salary deducted that of the respondent No.2 was directed to be returned and pursuant thereto by an order on 23.02.2004 the earlier deduction made from the salary was canceled.

Thereafter, with the allegation that such order was not complied the petitioner had filed the application under Section 91 (2) of the Chhattisgarh Industrial Relations Act, 1960, wherein it was stated that the employee/respondent No.2 was not given the benefit of pay protection which was granted by the Court. It was further stated that the respondent No.2 had not granted the benefit and the application having been filed, no heed was given to it and thereafter application for contempt was issued. The Labour Court by its order dated 28.08.2008 recorded that the contemnors according to the statement of respondent No.2 were not present at the time when the compliance of order was required to be done and on this admission the contempt was dismissed along with the finding that it was barred under Section 468 of the Cr.P.C. Thereby order of acquittal was passed. Against such order a revision was filed by respondent No.2 before the Industrial Court and the Industrial Court by its order dated 04.09.2010 (Annexure P-3) has set aside the order of the Labour Court on the ground that non-grant of salary benefit would create a continuous cause of action under Section 468 of the Cr.P.C., therefore, by application of provisions of Section 468 of the Cr.P.C., the contempt cannot be said to be barred by time and remitted the case for afresh trial before Labour Court. The said order is under challenge before this Court by the contemnors i.e. the petitioners herein.

4. Learned counsel for the petitioners would submit that the order of the Labour Court for acquittal was on merit by giving a particular finding of fact that the petitioners were not responsible to disobey the orders according to the statement of the respondent No.2, the employee himself and in addition thereto while dismissing the application it was held that the contempt petition is barred by time under Section 468 of the Cr.P.C. Learned counsel further placed on record before this Court the copy of order dated 06.02.2018 passed by the

Labour Court which shows that the contempt case was dismissed. The counsel would submit that this Court by its interim order dated 10.01.2011 has ordered that the proceedings before the Labour Court may go on but final orders would not be passed. It is stated that while the case was remitted back by Industrial Court for retrial this Court has stayed the order to the extent that no final order would be passed up till the next date of hearing. Since it was further submitted that by order dated 10.01.2011 this Court has not stayed the proceeding before the Labour Court completely only final conclusion was stayed, however, in absence of the respondent, the contempt petition was finally disposed of as dismissed and application to restore the same also was dismissed on 06.02.2018. Therefore, no fruitful purpose would be served to keep the proceeding pending.

5. Learned counsel for the respondent No.2 opposes the arguments advanced by learned counsel for the petitioners and would submit that despite the order passed by this Court on 10.01.2011 it appears that the Labour Court has wrongly dismissed the contempt petition. He would further submit that the Industrial Court also held that the order which was required to be complied has not been followed.
6. I have heard learned counsel for the parties and perused the documents.
7. The perusal of the order of the Labour Court dated 28.08.2008, it shows that the contempt was filed against the petitioners on the ground that they have not complied the order dated 13.11.1998. The labour Court observed that respondent No.2 was contingency paid employee and he was regularized on 05.08.1988 as ward boy and he was given regular pay-scale of Rs.780/-. The Labour Court further observed that the employee himself in the cross-examination had admitted the fact that when he filed the application Annexure

P-2 i.e. for compliance of order, at that time the contemnors 1 & 2 were not posted there, therefore, he failed to prove the fact that there has been deliberate disobedience of the order by the petitioners. Reference is also made to the para 28 of the statement of the employee wherein he has stated that he categorically admitted the fact that the petitioners have not disobeyed the order of the Court. Apart from that the observation was made that the contempt petition is barred under Section 468 of the Cr.P.C. The said order of Labour Court was subject of challenge before the Industrial Court. The Industrial Court adjudicated that on 04.09.2010 and remitted the case back to the Labour Court.

8. From perusal of the Industrial Court order it appears that the Industrial Court completely concentrated to the provisions of Section 468 of the Cr.P.C. and remitted the case on the ground that the cause of action for the case shall arise continuously as it pertains to non-payment of the particular pay-scale. The said finding of the Industrial Court do not take within its sweep the finding recorded on merit by the Labour Court, wherein it was categorically held that the petitioners were not responsible for disobedience of the order of the Labour Court.
9. The contempt petitions are akin to the criminal proceeding, therefore, the burden of proof would be completely on the person who comes to the Court with the allegation that particular persons have committed contempt or willful disobedience of the order of the Court. There cannot be any presumption or deemed acceptance. If the employee himself has categorically admitted in the statement that the petitioners have not committed any willful disobedience, then by mere presumption, the petitioners cannot be held liable. This finding of fact of the Labour Court is completely given a go by by the Industrial Court and no discussion exists while the case was remitted back for retrial. The Industrial

Court further failed to notice that the Labour Court has passed an order on merit for acquittal. Since the Labour Court has recorded a specific finding acquitting the petitioners and until and unless the Industrial Court gives any specific finding for setting aside the finding of acquittal, the remand order could not have been passed against the petitioners. Furthermore, the order after the case was remitted back, dated 06.02.2018 would show that after the proceedings before the Labour Court started it was dismissed and restoration to the application of the contempt was also dismissed. Under these circumstances, it appears that respondent No.2 himself is not interested to prosecute the case, with all diligence. In a result of aforesaid discussion the order dated 04.09.2010 passed by the Industrial Court is set aside. The order of the Labour Court dated 28.08.2008 (Annexure P-2) is restored.

10. Accordingly, the petition stands allowed.

Sd/-

Goutam Bhaduri
Judge

Ashu