

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgement Reserved on 08.1.2020****Judgment Delivered on 29/1/2020****WA No. 302 of 2019****(Arising out of order dated 14.1.2019 passed by learned Single Judge in WP No.2924/2004)**

- Steel Authority of India Limited, through the Managing Director, Bhilai Steel Plant, Bhilai, District Durg (CG)

**---- Appellant
(Respondent)****Versus**

1. Doman Singh Verma, aged about 57 years, resident of Gandhi Chowk, Purani Basti, Supela, Bhilai, District- Durg (Chhattisgarh).
2. Presiding Officer, Labour Court, Durg District- Durg, (Chhattisgarh).
3. Industrial Court, through the President, DKS Bhawan, Mahanadi Khand, Ghadi Chowk, Raipur, Chhattisgarh.

---- Respondents

For Appellant	:	Mr. Ashish Surana, Advocate
For Respondent No.1	:	Mr. Sudeep Johri, Advocate.

Hon'ble Shri PR Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

CAV Order**Per Parth Prateem Sahu, J**

1. Challenge in this appeal is to the order dated 14.1.2019 passed by the learned Single Judge thereby allowing writ petition filed by respondent No.1 and directing his reinstatement in employment with payment of 50% back wages.
2. Facts of the case, in nutshell, are that respondent No.1 was appointed as 'Nominal Muster Roll Mazdoor' (for short 'NMR')

by appellant vide order dated 28.9.1987. After some time of appointment, respondent No.1 was discontinued from the service by oral order w.e.f. 1.10.1988. Respondent No.1 challenged his discontinuation before the Labour Court, Durg by filing an application under Section 31 (3) read with Section 61 of the Madhya Pradesh Industrial Relations Act, 1960 (now 'Chhattisgarh Industrial Relations Act, 1960) (for short 'the Act of 1960') stating therein that his services have been discontinued without giving any reason; without issuing order of removal/termination from service and without following provisions of Section 25F of the Industrial Disputes Act, 1947 (for short 'the Act of 1947')

3. Appellant herein filed written statement pleading therein that respondent No.1 was sponsored by the Employment Exchange 'on priority basis' based on the instructions contained in the Minutes of Meeting held on 12.11.1971 for appointing him as 'DPL candidate' (Displaced Person). At the time of appointment, respondent No.1 not only made a declaration but also sworn an affidavit to the effect that none of his family members is granted employment by Bhilai Steel Plant, Bhilai. On receipt of a complaint regarding making of false declaration by respondent No.1 while entering into employment, the investigation was commenced and it was found that father of respondent No.1 namely Shri Rambharose (Personnel No. 18983) is working since 1960 with Bhilai Steel Plant. As respondent No.1 secured employment by furnishing false information at the time

of his appointment, which amounts to grave misconduct, he was discontinued from the employment. It was also pleaded that respondent No.1 has not completed 240 days of continuous service and hence the provisions of Section 25 F of the Act of 1947 are not applicable. There was no need of issuing charge sheet or to hold departmental enquiry because respondent No.1 was employed as 'daily wage employee'. There is no arbitrariness or discrimination in action of appellant in discontinuing service of respondent No.1 because the employees (as mentioned in Para-11 of application), who were taken back in service after discontinuation, were the permanent employees and the Circulars relied upon by respondent No.1 cannot have overriding effect over the Standing Orders.

4. Taking into consideration the fact that no order of discontinuation or removal of respondent No.1 from service was passed, the Labour Court vide order dated 18.4.1991 held the action on the part of appellant employer to be illegal and ordered for reinstatement of respondent No.1 employee with payment of full back-wages. Appellant employer challenged the said order of the Labour Court before the Industrial Court who after hearing respective counsel for the parties set aside the order of Labour Court and remanded back the matter for deciding it afresh after affording opportunity to the parties to adduce evidence in support of their respective claim. It has further been directed that appellant employer be also granted an opportunity to prove the charge of misconduct against

respondent No.1 employee.

5. After the remand of case, appellant employer examined three witnesses in support its case and also filed appointment orders of Chhabilal (uncle of respondent No.1) as Ex.D-1 & D-2 and service book of Rambharose (father of respondent No.1) as Ex.D3-C. The Labour Court after hearing the parties and appreciating the evidence brought on record by respective parties, allowed claim of respondent No.1 Employee vide order dated 26.11.1997 and ordered for reinstatement with 75% back wages. The Labour Court has held that allegation/charge of misconduct levelled against respondent No.1 has not been proved; no notice was issued prior to removal or discontinuation of respondent No.1 from service and thus the action on the part of appellant is illegal and unwarranted.
6. Challenging the order dated 26.11.1997, appellant employer and respondent employee both have preferred appeals and the Industrial Court while dismissing the appeal preferred by respondent employee, allowed the appeal of employer vide order dated 3.2.2004 and set aside the order of reinstatement and payment of 75% back wages to respondent No.1 by holding that respondent employee cannot be granted any relief as he failed to prove that his removal/discontinuation from service was illegal. Thereupon respondent No.1 moved this Court under Article 226 of the Constitution of India. Vide order impugned writ petition filed by respondent employee was partially allowed by the learned Single Judge and while

maintaining order of the Labour Court directed reinstatement of respondent employee in service, the quantum of back wages was reduced from 75% to 50%. The learned Single Judge was of the view that the Industrial Court was not correct in going into technicalities of the issue and arriving at the conclusion that employee failed to prove the fact that employer committed illegality in removing him from service. The learned Single Judge has also held that burden to prove/justify removal of respondent No.1-Employee before the Labour Court was on the employer and not on the employee, as held by the Industrial Court. Hence this challenge by appellant employer on the grounds as adumbrated in memo of appeal.

7. Mr. Ashish Surana, learned counsel representing appellant employer would argue that in the year 1954-55 huge area of land was acquired by Bhilai Steel Plant and there was a policy to provide employment to atleast one member of the family whose land had been acquired. As per scheme/minutes of meeting dated 12.11.1971, the government officials were required to maintain records of the persons whose lands were acquired and details of persons who have obtained certified copy of land acquisition proceeding. Pursuant to acquisition of land of grandfather of respondent No.1 bearing Khasra No.3 area 0.55 acre situated at Supela, District Durg, respondent No.1 was granted employment by appellant and at the time of entering into employment, respondent No.1 submitted a declaration form (Annexure R-1 to writ petition) to the effect that

no member of his family was granted employment by Bhilai Steel Plant. An anonymous complaint was received by the management of Bhilai Steel Plant alleging in it that respondent No.1 while entering into employment had made incorrect declaration. On the basis of the said complaint, an enquiry was conducted and it was found that land of grandfather of respondent No.1 was acquired by Bhilai Steel Plant and that the father of respondent No.1, by name Rambharose, is already in employment with Bhilai Steel Plant as 'DPL' candidate and thus respondent No.1 made an incorrect declaration in Declaration Letter that none of his family members has been given employment by Bhilai Steel Plant. He referred to Annexure R-2 to writ petition, which is Minutes of Meeting Dated 12.11.1971, and submits that as per Para-1 of this minutes, only one heir or dependant of the land holder is entitled to priority and the object behind obtaining such declaration is to exclude those candidates who are not entitled for grant of employment in lieu of acquisition of land by appellant. He also referred to affidavit submitted by Rambharose, father of respondent No.1, dated 19.1.1987 wherein it is mentioned that land situated at Patwari Halka No.69 was acquired by Bhilai Steel Plant in the year 1954-55, no one has been granted employment by Bhilai Steel Plant; they have not been allotted any land or shop and he wanted his son i.e. respondent employee, to be given employment by Bhilai Steel Plant. He submits that affidavit submitted by father of respondent No.1 as also declaration form filled up by

respondent No.1 clearly mention that no one from the family of respondent No.1 is in the employment of Bhilai Steel Plant, whereas father & uncle of respondent No.1 were already in employment. He further submits that copy of service book of Rambharose was filed as Ex.D3-C and copy of appointment orders of Chhabiram, uncle of respondent No.1, were also placed on record and from perusal of the same it is clear that at the time of grant of employment of respondent No.1, other relatives / family members of respondent No.1 were already employed with Bhilai Steel Plant. He further submits that learned Single Judge committed error in not considering statements of witnesses examined by appellant and also documents (Ex.D1 to D3-C) brought on record which clearly establish that father of respondent No.1 was given employment as 'DPL candidate'. In these circumstances, appellant employer was justified in discontinuing/removing respondent No.1 from employment and hence, the order impugned is liable to be interdicted.

8. Per contra, Mr. Sudip Johri, learned counsel appearing on behalf of respondent No.1, submits that except appointment orders of Chhabilal, uncle of respondent No.1, and service book of Rambharose, father of respondent No.1, no other document has been exhibited by appellant to prove the charge of misconduct alleged to have been committed by respondent No.1. Document, Annexure R-3, which is exhibited and marked as Ex.D3-C, is a service book filled up in English by the officials

of appellant employer and not by said Rambharose, who has studied upto Class 7th only and not able to write and understand English language in which said service book was filled, and thus, the appellant cannot be granted any benefit of said document. It is also submitted that in the application filed under Section 31 (3) read with Section 61 of the Act of 1960, respondent No.1 had specifically pleaded that without giving any reason and without passing any order in writing, respondent No.1 was orally discontinued from service w.e.f. 1.10.1988. Neither any enquiry, as required under the law, was conducted nor the provisions of Section 25 F of the Act of 1947 have been complied with. Appellant employer in the written statement filed before the Labour Court has pleaded that respondent No.1 committed serious misconduct when he secured employment with the Bhilai Steel Plant by misleading the authorities by suppressing the fact of employment of his father and uncle with the Bhilai Steel Plant, therefore, he was discontinued from service. He also submits that the witnesses examined by appellant employer have not specifically stated that father of respondent No.1 was provided employment as DPL candidate. He submits that the land shown in Annexure R-4 is different from the land mentioned in Annexure R-1 i.e. Declaration Form submitted by respondent No.1. Appointment letter of the father of respondent No.1 has not been produced although appointment letters of Chhabilal, uncle of respondent No.1, were placed on record. This goes to suggest that appointment letter of father of respondent No.1 was

deliberately and purposefully suppressed by appellant employer and therefore adverse inference is to be drawn against appellant employer. He submits that it is a cardinal rule in the law of evidence that the best available evidence should be brought before the Court to prove a fact or the point in issue. Hence, in the case at hand, it is for the appellant, who orally discontinued service of respondent No.1 by levelling allegation of misconduct, to prove the charge of misconduct by adducing best available piece of evidence, which the employer failed to adduce. Lastly, he submits that the learned Single Judge has passed the order after considering every aspect of the matter in detail and the same does not call for any interference in exercise of appellate jurisdiction.

9. We have heard learned counsel for the parties and perused the record.
10. In the light of rival submissions made by learned counsel for the parties, two questions arise for consideration (i) whether appellant employer has been able to prove the charge of misconduct, as pleaded in the written statement filed before the Labour Court, justifying discontinuation of respondent No.1 from employment; (2) whether non-production of any evidence by respondent No.1 in his defence is fatal to his case and that by itself is sufficient to uphold discontinuation/removal of respondent No.1 from service; and whether the finding recorded by the Industrial Court that it is burden of respondent No.1 -Employee to prove that dismissal is illegal, is

sustainable.

11. It is not in dispute that appellant employer had framed a policy in the year 1971 to provide employment to atleast one member of the family whose land had been acquired by Bhilai Steel Plant. PBK Nair (NAW-1), who was working as Section Officer with appellant, has stated that one labour namely Chhabilal is in the employment with Bhilai Steel Plant as 'Technician (Mechanical)' and name of father of Chhabilal is Ramadhin. Ex.D-1 & D-2 are the appointment letters of said Chhabilal. In the cross-examination, this witness has stated that there is no such document on record showing that Chhabilal was appointed as DPL candidate. According to this witness, an enquiry was conducted by the Vigilance Department of Bhilai Steel Plant in which it was found that Chhabilal was appointed as 'DPL' candidate, but no document in support thereof has been produced in the matter.

12. P. Matthew (NAW-2), who was working as Assistant Manager (Personnel) in Bhilai Steel Plant, has stated that he has brought the service book and personal file of Rambharose, who was working in his department. Ex.D3-C is the photocopy of service book of Rambharose, in which he has disclosed names of his family members. In the cross-examination this witness has admitted that Rambharose was recruited in the year 1960.

13. According to Y.K. Pausari (NAW-3), a policy in respect of DPL

candidate was framed on the basis of meeting dated 12.11.1971 wherein there is provision of preference in recruitment to the land holders; and carbon copy of minutes of meeting dated 12.11.1971 has also been placed on record.

14. Perusal of the statements of above witnesses examined by appellant employer reveal that there was a scheme of appellant to provide employment to atleast one member of the family whose land had been acquired and that at the time of appointment of respondent No.1 on priority basis, Rambharose & Chhabilal were already in the employment of Bhilai Steel Plant. Argument advanced by learned counsel for appellant since inception is also to the effect that father of respondent No.1 was already in the employment as DPL candidate, therefore, respondent No.1 is not entitled to get benefit of employment as 'DPL' candidate because as per policy of appellant, only one member of the displaced family is entitled for appointment.

15. In the light of submission of learned counsel for appellant, if the written statement filed by appellant before the Labour Court is looked into, it is apparent that respondent No.1 was discontinued from service on account of submission of false information and affidavit at the time of entering into employment that no member of his family is given employment by Bhilai Steel Plant, whereas father of respondent No.1 was already in employment since 1960. It is also apparent that respondent No.1 was discontinued from the employment as he

committed misconduct of furnishing false information to secure employment. It was also pleaded that appellant employer asked for an opportunity to prove the allegation of misconduct in the Court itself.

16. From the pleadings made in the written statement filed by appellant before the Labour Court, it is manifest that allegation of misconduct resulting in removal of respondent No.1 from employment is not on account of the fact that one member of family of respondent No.1 has already been given employment by Bhilai Steel Plant as DPL candidate, rather it was due to submission of false information/declaration and affidavit to secure employment.
17. We have discussed the evidence of the witnesses examined by appellant employer i.e. NAW-1 to 3, and found that in order to prove the charge of misconduct, these witnesses have not exhibited the document of declaration and affidavit submitted by respondent No.1, allegedly containing false information/declaration. Unless and until the affidavit and declaration said to have been made by respondent No.1 are brought on record, it cannot be said that appellant employer has proved the allegation of misconduct based on which respondent No.1 was discontinued from employment.
18. Argument advanced by learned counsel for appellant that only one person of the family whose land had been acquired by Bhilai Steel Plant is entitled to get employment as DPL

candidate on priority basis, and as father of respondent No.1 was already granted employment as DPL candidate by Bhilai Steel Plant, which stands established from the document Ex.D3-C, is not acceptable for the reason that there is no specific plea/defence to this effect on the part of appellant employer in the written statement filed before the Labour Court. It is settled law that any evidence without pleading is inadmissible. The Apex Court in the matter of **Ram Sarup Gupta (dead) by L.Rs. v. Bishun Narain Inter College and Ors.** reported in **1987 AIR 1242** observed as under:

“It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the advisory party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise.”

19. In the matter of **Bachhaj Nahar v. Nilima Mandal & ors** reported in **AIR 2009 SC 1103**, Hon'ble Supreme Court has observed thus;-

"9. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. This Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from

the course which litigation on particular causes must take."

In case at hand also, the appellant cannot be permitted to make out entirely a new case before the High Court, which was not even pleaded at the first instance i.e. before the Labour Court.

20. So far as the finding recorded by the Industrial Court that the burden is upon the employee concerned to prove that action of appellant employer in discontinuing his service is illegal, but respondent No.1 failed to adduce any cogent and clinching evidence in this regard, is concerned, it is undoubtedly true that the initial burden of proving misconduct is on the employer. Hon'ble Supreme Court in the matter of **Amar Chakravarty & ors v. Maruti Suzuki India Limited** reported in **(2010) 14 SCC 471** while dealing with the question of dismissal of workman on the ground of misconduct without holding enquiry, has held thus:-

"13.....In any proceeding, the burden of proving a fact lies on the party that substantially asserts the affirmative of the issue, and not on the party who denies it. (See: Anil Rishi Vs. Gurbaksh Singh)⁶ Therefore, it follows that where an employer asserts misconduct on the part of the workman and dismisses or discharges him on that ground, it is for him to prove misconduct by the workman before the Industrial Tribunal or the Labour Court, as the case may be, by leading relevant evidence before it and it is open to the workman to adduce evidence contra. In the first instance, a workman cannot be asked to prove that he has not committed any act tantamounting to misconduct.

21. In the present case, it is admitted position that respondent No.1 was discontinued from employment by appellant employer on

the ground of misconduct of furnishing false declaration/ information and affidavit at the time of entering into employment, as pleaded in written statement. It is also not in dispute that appellant employer had not adduced any evidence before the Labour Court to prove said charge of misconduct, as is discernible from the written statement filed before the Labour Court by appellant employer specifically seeking an opportunity to prove the charge of misconduct against respondent No.1. Even the document containing such false information/ declaration and supporting affidavit of appellant, as alleged, have not been produced before the Labour Court by appellant employer.

22. Thus, in view of well settled preposition of law quoted above that an employer, who asserts misconduct on the part of workman, is under an obligation to prove misconduct by the workman, this Court is of the considered opinion that the Industrial Court had fallen into an error in holding that burden to prove the action of appellant employer to be illegal is on the employee. The initial burden was on appellant employer to justify its action of discontinuing respondent No.1 from the employment without conducting any enquiry in that regard.

23. Even if the argument of learned counsel for appellant is presumed to have raised before the Court below, then also the appointment order of Rambharose was not brought on record as evidence. Though appellant employer had produced certain documents in support of allegation of misconduct i.e.

submission of false information before this Court, but those documents cannot be taken into consideration at this stage as it was not made part of record by exhibiting the same before the Labour Court. Appellant should have filed these documents, if wanted to place reliance, at the appropriate stage before the Labour Court through their witnesses so that there would be an opportunity to respondent No.1 to cross-examine those witnesses with respect to their evidence (documentary evidence) to be produced by them by way of exhibits.

24. On a query being put by this Court to learned counsel for respondent No.1, he informs that at present respondent No.1 is aged about 59 years. Considering the fact that respondent No.1 was appointed as daily rated employee and was getting Rs.18-70 paise per day, as pleaded in application filed under Section 31 (3) read with Section 60 of the Act of 1960, and further considering that respondent No.1 has completed 59 years of age, it will not be appropriate to maintain the order of reinstatement passed by Labour Court and affirmed by learned Single Judge vide order impugned, rather the ends of justice will be served if some monetary compensation is awarded to respondent No.1. Hon'ble Supreme Court in the matters of wrongful termination or retrenchment of temporary employee without following the provisions of Section 25F of the Act of 1947 has held that instead of passing an order of reinstatement of such employee, the amount of compensation be awarded.

Hon'ble Supreme in the matter of **Punjab and Sindh Bank & another vs. Daljinder Singh** reported in **(2015) 16 SCC 293** has held thus;-

“7. Having heard the learned counsel for the parties and after perusal of the papers on record, we are of the view that admittedly the plaintiff was not the authority who sanctioned loan. We have no reason to disagree with the concurrent findings of the first appellate Court and the High Court. Both the courts below have accepted the defence taken by the plaintiff before the enquiry officer and given finding of fact that under instructions of the Branch Manager, the respondent filled the form, and out of the persons who approached the Bank for loan, only surety was personally known to him. As such he acted bona fide.

8. Therefore, we decline to disturb the finding of fact as to wrongful dismissal from service recorded by the first appellate court and the High Court, but considering the facts and circumstances of the case, we are of the opinion that it is not a fit case for directing reinstatement. Rather awarding a lump sum compensation of an amount of rupees five lakhs by the appellant Bank to the plaintiff for his wrongful dismissal, would meet the ends of justice. If the amount is not paid or deposited before the trial Court within three months from today, the appellant shall pay interest @ 6% p.a. from the expiry of three months.”

25. For the foregoing reason, the writ appeal is allowed in part and while maintaining the order passed by learned Single Judge holding that appellant employer failed to prove allegation of misconduct against respondent No.1 employee and also

looking to the fact that respondent No.1 is continuously out of service since 1988, we are of the opinion that it is not a fit case for directing reinstatement of respondent No.1. Accordingly, we modify the order of reinstatement with 50% back wages and direct the appellant employer to pay compensation of Rs.3,00,000/- (Rupees Three Lakhs) to respondent No.1 within a period of 3 months from the date of this order, instead of reinstating respondent No.1 in employment with payment of 50% back wages. In the event of failure on the part of appellant employer to pay the said amount within 3 months, the same shall carry simple interest at the rate of 6% per annum.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-