

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPL No. 5679 of 2011**

State of Chhattisgarh, through: the Divisional Forest Officer, Forest Division, District Kabirdham, Chhattisgarh

---- Petitioner**Versus**

Bahoran Kumbhkar, S/o. Bhonda Kumbhkar, R/o. Village Rengakhar, Tehsil Bodla, District Kabirdham, Chhattisgarh

---- Respondents

For Petitioner-State	:	Mr. Sudeep Verma, Deputy G.A.
For Respondent	:	Mr. Ajit Singh, Advocate

Hon'ble Shri Justice P. Sam Koshy
Order on Board

02/03/2021

1. Challenge in the present Writ Petition is to the award dated 21.12.2010 passed by the Labour Court, Rajnandgaon, in Case No.10/I.D.Act/Reference/2009, whereby the Labour Court has answered the reference in favour of the respondent-worker and ordered for grant of reinstatement with 50% back wages to him.
2. Before narrating the facts of the case, it would be pertinent to take note of the fact that pursuant to the impugned award passed by the Labour Court, the petitioner-department have reinstated the respondent-employee and who is still working with the petitioner for a decade now.
3. Brief facts of the case are that the respondent in the instant case had raised an industrial dispute before the conciliation officer alleging

illegal termination by the petitioner-department. The appropriate authority vide its order dated 14.01.2009 referred the matter to the Labour Court, Rajnandgaon for adjudication on the following terms of reference :

“Whether the termination of Shri Ashok Kumar Soni from service is legal and proper? If not, to what relief he is entitled for and in this regard what directions should be given to the non-applicant?”

4. The parties to the dispute entered appearance before the Labour Court and submitted their respective statement of claim and written statement. In the statement of claim, the respondent-employee submitted that he was initially engaged as a worker with the petitioner-department in the year 1990 and was discharging his duties that of a Chowkidar at Rengakharkala Range under Divisional Forest Officer, Kawardha and worked continuously on the said post till 2000, when abruptly on 23.02.2000 without any explanation or any retrenchment compensation or any notice, his services were terminated/discontinued. This, according to him, was in violation of Section 25-F of the Industrial Disputes Act and also amounts to an illegal termination and therefore he was entitled for reinstatement with all consequential benefits.
5. The petitioner-department who was the second party before the Labour Court submitted their written statement denying all the contentions of the respondent-worker so far as his continuous employment with the petitioner and of his having completed more than 240 days in a calendar year. According to the petitioner, the need for the compliance of the provisions of Section 25-F of the Industrial Disputes Act was not required, on the ground that the

respondent-worker was only a daily wage worker and also that he had not worked for more than 240 days in a calendar year and thus they prayed for the rejection of the reference before the Labour Court.

6. The Labour Court after the pleadings were complete and the evidence were recorded, finally vide impugned award dated 21.12.2010 answered the reference in favour of the respondent-worker, holding that the action on the part of the petitioner-department in discontinuing the services of the respondent is in clear violation of the provisions of the Industrial Disputes Act and therefore the Labour Court granted the relief of reinstatement with 50% back wages to the respondent-worker. It is this award which is under challenge in the present writ petition.
7. Learned Counsel for the petitioner-department challenges the impugned award of the Labour Court firstly on the ground that the dispute has been raised by the respondent-employee at a belated stage and therefore he would not be entitled for any relief. It was also contended by the learned Counsel for the petitioner-department that since the substantive post on which the respondent was engaged was that of a daily wage employee, the provisions of the Industrial Disputes Act would not had been applicable upon the respondent-worker. He further contended that the respondent since was admittedly engaged as a daily wage worker and engaged only subject to availability of work, in the absence of any proof of availability of work the relief granted by the Labour Court was bad in law. Lastly, it was contended that applying the principles of 'no work

no pay' and also taking note of the substantive status of the worker being that of a daily wage employee, granting of 50% of back wages by the Labour Court is bad in law.

8. Per contra, learned Counsel for the respondent-worker submits that the present petition is devoid of merit, for the reason that the petitioner has not been able to show any perversity in the finding of the Labour Court nor can the finding arrived at by the Labour Court can be said to be contrary to the evidence and in the absence of these two ingredients the scope of judicial review by the High Court in exercise of its extraordinary writ jurisdiction gets minimal. Therefore, the petition deserves to be rejected.
9. Having considered the rival contentions put forth by either side and on perusal of the records, so far as the contention of the petitioner with regard to the reference being raised at a belated stage is concerned, the said issue is no longer ***res integra***, as the law has been well settled by the Hon'ble Supreme Court in a series of decisions starting from the case of **"Ajaib Singh v. Sirhind Cooperative Marketing-cum-processing Service Society Limited and another"** (1999) 6 SCC 82, **"Gurmail Singh v. Principal, Govt. College of Education and others"** (2000) 9 SCC 496 and **"Kuldeep Singh v. General Manager, Instrument Design Development and Facilities Centre and another"** (2010) 14 SCC 176. In view of the said authoritative pronouncements, the contention raised by the learned Counsel for the petitioner in this regard stands negated.

10. So far as the arguments made on the merit of the case in respect of denial of the employment and the working of 240 days in a calendar year etc., are concerned, the records show that the petitioner-department has not led any evidence before the Labour Court, inasmuch as no witnesses were examined on their behalf before the Labour Court. As a result, the evidence which has been led by the respondent-worker has stood unrebutted and in the circumstances, the finding given by the Labour Court cannot be said to be bad or contrary to evidence and for this reason, it can also be not said to be a perverse finding.
11. However, admittedly, from the given factual background what clearly reflects is the fact that the alleged discontinuance of employment of the respondent was in 2000 and the respondent for the first time raised an industrial dispute in the year 2006 and the reference was made on 14.01.2009. No proper explanation or justification is on record to show as to why the alleged discontinuance was not promptly challenged. True it is that the respondent-worker has also not worked with the petitioner department during this period and his substantive nature of work was that of a daily wage employee. Therefore, firstly there being a delay in raising the dispute and secondly he being a daily wage employee, the Labour Court ought to have applied the principles of 'no work no pay'. Thus, in the opinion of this Court, the Labour Court has wrongly granted 50% of back wages while awarding the reinstatement to the respondent-worker. Therefore, the granting of 50% of back wages by the Labour Court, which also stood stayed by this Court vide its order dated 4.12.2009, deserves to be and is accordingly struck down.

12. So far as the relief of reinstatement is concerned, since the petitioner-department themselves have reinstated the respondent-employee immediately on the award having been passed and on which post the respondent is still working, coupled with the fact that there is no evidence led by the petitioner before the Labour Court, the finding of reinstatement does not warrant any interference and the same stands affirmed.
13. In view of above, the present writ petition stands partly allowed, with the aforesaid modification in the impugned award in as much as the order of reinstatement stands affirmed however so far as grant of back wages is concerned the same stands set-aside/quashed.

Sd/-
(P. Sam Koshy)
Judge

Ved