

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPL No. 5195 of 2011**

1. State of Chhattisgarh, through: the Executive Engineer, Hasdeo Barrage Management Division, Rampur, Korba, District Korba, Chhattisgarh
2. Sub-Divisional Officer, Hasdeo Barrage, Water Management Sub Division, Darri, Korba, District Korba, Chhattisgarh

Represented through: Shri S.N. Singh, Aged about 55 years, S/o. Late Shri S.M. Singh, Presently posted as Executive Engineer, Hasdeo Baraj Division, Korba, District Korba, Chhattisgarh and Officer in charge of the case.

---- Petitioners**Versus**

Deosahaya Yadav, S/o. Bahorik Lal Yadav, R/o. Irrigation Colony, Darri, Korba, District Korba, Chhattisgarh

---- Respondents

For Petitioners-State	:	Mr. Rahul Jha, Govt. Advocate
For Respondent-Worker	:	Mr. Vinod Deshmukh, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****22/01/2021**

1. The present writ petition is filed assailing the award passed by the Labour Court dated 30.11.2010 passed in Case No. 11/I.D.Act/2008/Reference. Vide the said impugned award the Labour Court has granted the relief of reinstatement without back-wages.
2. The facts relevant for consideration of the present writ petition is that the respondent-worker in the present writ petition was working under the petitioners on daily wage basis initially for a period

between 01.04.1993 and continued to work with the petitioners till 31.01.1995 when abruptly the services of the respondent-worker was discontinued. The discontinuance of the service of the employee was questioned by way of raising an industrial dispute, which ultimately stood referred to the Labour Court at Korba where the case was registered as 11/I.D.Act/2008/Reference. After the completion of the pleadings the Labour Court vide its award dated 30.11.2010 answered the reference in favour of the respondent-worker granting the relief of reinstatement without back-wages. Subsequent to the award passed by the Labour Court, the respondent-worker in the instant case stood reinstated in service on 18.05.2011 and since then the respondent-worker is till date working under the petitioners.

3. Today when the matter is taken up, learned counsel for the petitioners submits that the State Government themselves pending the writ petition has meanwhile regularized the services of the respondent-worker vide order dated 08.03.2019. The challenge to the award is on the ground that the status of the respondent-worker substantially was that of a daily wage employee and that he has worked with the petitioners herein for a brief period of time that to only against availability of work, therefore the Labour Court should not have entertained the dispute raised by the respondent-worker. The further contention of the petitioners-State was that since the worker has not been able to produce substantial documentary prove to establish that he has worked for a period of more than 240 days continuously immediately before the discontinuance. On this ground also the Labour Court should not have granted the benefit

of reinstatement. Another ground, which the State has raised in the present writ petition is that the Labour Court also ought to have rejected the reference on the ground of delay laches since the dispute was raised by the worker after a considerable period of time.

4. Opposing the petition, the learned counsel for the respondent-worker submits that now that the petitioners themselves have regularized the services of the respondent-worker, the impugned order of the Labour Court should not be interfered at this juncture. The learned counsel submits that by efflux of time, the worker has reached an age of around 56-57 years and just a few years of service is left for retirement. In case at this juncture if the award of the Labour Court is interfered with or is set-aside, it may cause irreparable damage to the respondent-worker as also to his dependent.
5. The further contention of the counsel for the respondent is that admittedly from the findings given by the Labour Court it stands established that there was engagement of the respondent-worker by the petitioners, and before discontinuance the mandatory compliance as is required under Chapter-V of the Industrial Disputes Act has not been followed with, therefore the finding of the Labour Court being a finding of fact does not warrant interference and there is hardly any scope of interference left for this court under article 226 of the Constitution.
6. Having gone through the record and particularly the findings which had come on record, it clearly reflects so far as the petitioners-

State Government is concerned, they had not been able to disprove the documents which the workers had produced before the Labour Court establishing their engagement between the period 01.04.1993 to 31.01.1995. The witness of the Department i.e. the State has also accepted the fact that from the records, he has found that the worker involved in the writ petition had in fact worked under the Department as a daily wage employee. It is also revealed from the records that they have not bought the records before the Labour Court inspite of the Labour Court on an earlier occasion vide order dated 07.02.2009 having directed the State to submit these records and for which an adverse inference has been drawn by the Labour Court so far as proving the employment of the worker is concerned. Admittedly, from the pleadings, it is established that there was no retrenchment compensation or any notice or salary in lieu of notice was paid to the respondent/worker before discontinuing of his service. Thus, apparently there is a clear non-compliance of the statutory requirement as is required under Chapter-V of the Industrial Disputes Act, 1947.

7. All the aforesaid factual matrix would clearly reveal that the finding of the labour Court was based on the evidence which has come on record led by either side. Thus, it is a finding of the fact.
8. It has been repeatedly held by the Supreme Court as also by the High Courts that finding of fact of the labour Court's should not be interfered as a routine, by the High Court while exercising writ jurisdiction. In exercise of writ jurisdiction this Court has only to see whether there is any perversity in the finding of the labour Court or

whether the finding arrived at is contrary to the evidence on record.

In the instant case there is no ground that the finding is a perverse finding so far as the finding which has been provided and discussed it clearly reflects that it is a finding of fact based on the evidence which has been adduced by the parties in dispute.

9. 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 Court 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 appreciating the evidence or the Court has committed a grave error in law in coming to its conclusions.
10. 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.
11. 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]**.

12. The Petitioners through the present writ petition have 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.
13. In para 17 of (2014) 7 Supreme Court Cases, 190 (Hari Nandan Prasad and Another vs. Employer I/R to Management of Food Corporation of India & Another), it has been held as under:-

“17.....At the time of their disengagement even when they had continuous service for more than 240 days (in fact about 3 years) they were not given any notice or pay in lieu of notice as well as retrenchment compensation. Thus, the mandatory precondition of retrenchment I paying the aforesaid dues in accordance with Section 25-F of the ID Act was not complied with. That is sufficient to render the termination as illegal. Even the High Court in the impugned judgment has accepted this position and there was no quarrel on this aspect before us as well.....”

Applying the same analogy and again reiterating the same in the case of (2014) 7 Supreme Court Cases 177 (Bharat Sanchar Nigam Limited vs. Bhurumal), it has been held in paragraph- 27 as under:-

“27.....In any case, the award is passed on the basis that the respondent had worked for 240 days in the preceding 12 months' period prior to his termination and therefore it is a clear case of violation of Section 25-F of the Industrial Disputes Act. The termination is, thus, rightly held to be illegal. We do not find any perversity in this outcome.”

14. Given the said facts this Court does not find any strong case made out by the petitioner calling for an interference with the impugned order.
15. Another reason for not interfering with the impugned award is that pursuant to the order of the labour Court, respondent have already reinstated the respondent worker who is in employment since then. Another reason for not interfering with the impugned award is that the award under challenge is one which was passed more than one year ago. The writ petition is being filed after one years time.
16. For all the aforesaid reasons, the writ petition stands dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved