

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (L) No. 7346 of 2011

State of Chhattisgarh through the Executive Engineer, Public Works Department, Khairagarh, District Rajnandgaon, Chhattisgarh.

Represented through Shri H.R. Dhruw, aged about 48 years, S/o Shri Dhruw, presently posted as Executive Engineer, Public Works Department, Khairagarh, District Rajnandgaon (CG) and OIC of the case for petitioner/State.

---Petitioner(s)

Versus

Ganesh S/o Manglu, R/o village Chindari, post Chuikhadan, Tahsil Chuikhadan, District Rajnandgaon (CG), R/o C/o through Shri Navjeet Kumar Raman, Advocate, 25/12, Nehru Nagar (West) Bhilai, District Durg (CG)

---Respondents

For Petitioner	:	Ms. Sunita Jain, Govt. Advocate.
For Respondent-worker	:	Mr. Saket Pandey on behalf of Mr. Anup Majumdar, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

07.06.2021

1. Aggrieved by the order dated 25.01.2011 Annexure P/1 & the order dated 10.03.2008 Annexure P/2 passed by the Industrial Court, Raipur as also by the Labour Court, Rajnandgaon, respectively, the present writ petition has been filed.
2. The facts of the case in brief is that the respondent-worker has approached the Labour Court, Rajnandgaon under Section 31(3) of the Chhattisgarh Industrial Relations Act, 1960 (in short, IR Act) against the alleged discontinuance of his service by the petitioner herein. The contention of the worker before the Labour Court was

that he was initially appointed at Chhuikhadan Section of the Public Works Department, Khairagarh Sub Division in the year, 1992 and he continued to work under the petitioner continuously up till the year, 1996 when his services were abruptly discontinued. According to the worker he had put in more than four years of service and had worked continuously for a period of 240 days before his discontinuance. Before discontinuance in the year, 1996 he was not issued with any show cause notice, nor compensation of any nature even retrenchment compensation was not paid. The worker thereafter had approached the Labour Court. After a prolonged litigation, the Labour Court finally vide order dated 10.03.2008 allowed the application which the petitioner had filed and granted the relief of reinstatement with 50 percent backwages.

3. The said order of the Labour Court was subjected to challenge in an appeal under Section 65 of the CGIR Act before the Industrial Court, Raipur where the case was registered as Civil Appeal No. 34/CGIR Act/A/II/2008. The Industrial Court also after considering all the contentions raised by the petitioner herein rejected the appeal of the petitioner maintaining the order passed by the Labour Court which has led to the filing of the present writ petition.
4. The contention of the petitioner is that the Labour Court has failed to appreciate the evidence which has come on record and has also ignored the pleadings that have been brought by the authorities before the Labour Court and as such the finding was per se contrary to evidence and also is a perverse finding. He also submits that the worker involved in the present dispute has failed to establish the fact that he continuously worked for a period of 240 days prior to date of

discontinuance of his service by leading cogent evidence. Moreover, the engagement of the worker was purely temporary in nature and he did not have any substantial or indefeasible right created in his favour for claiming the benefit that he has sought for.

5. Learned counsel for the respondent-worker on the other hand submits that from the plain reading of the impugned orders it clearly reflects that the award passed by the Labour Court and which has been affirmed by the Industrial Court are based on finding of fact which does not warrant any interference. The contention also is that even otherwise pursuant to the order passed by the Labour Court at the first instance the worker stands reinstated in service way back in the year, 2005 and since then he has been continuously working with the petitioner and as such he has now put in about 16 years of service after reinstatement and therefore applying the doctrine of equity the impugned orders do not warrant any interference at this juncture. According to the worker at this stage if the impugned awards are interfered with, the worker would not only lose his employment but also would not be able to get any employment elsewhere considering the age that he has reached by efflux of time. Thus, prayed for rejection of the writ petition.

6. Very recently, the Supreme Court in the matter of Mohd. Ali v. State of H.P. and others, 2018 (5)SCALE 717 dealing the similar issue emphasized the need for working 240 days in one calendar year preceding the date of termination held as under:-

“9. It is a well known fact that the Industrial Disputes Act is a welfare legislation. The intention behind the enactment of this Act was to protect the employees from arbitrary retrenchments. For this reason only, in a case of

retrenchment of an employee who has worked for a year or more, Section 25F provides a safeguard in the form of giving one month's prior notice indicating the reasons for retrenchment to the employee and also provides for wages for the period of notice. Section 25B of the Act provides that when a person can be said to have worked for one year and the very reading of the said provisions makes it clear that if a person has worked for a period of 240 days in the last preceding year, he is deemed to have worked for a year. The theory of 240 days for continuous service is that a workman is deemed to be in continuous service for a period of one year, if he, during the period of twelve calendar months preceding the date of retrenchment has actually worked under the employer for not less than 240 days.

12. Further, it is an admitted position that though the appellant worked as such till 1991 under different work/schemes i.e. Rabi and Kharif and completed 240 days in a calendar year only during the years 1980, 1981, 1982 and 1986 to 1989 but he worked only for 195 days in the year 1990 and 19.5 days in the immediate preceding year of his dismissal which is below the required 240 days of working in the period of 12 calendar months preceding the date of dismissal, therefore, he is not entitled to take the benefits of the provisions of Section 25F of the Act and Division Bench of the High Court was right in dismissing the appeal of the present appellant."

7. The Labour Court has clearly recorded a finding that the respondent/ workman has worked for continuous period of 240 days in one calendar year preceding the date of termination, which is finding of fact based on material available on record. I do not find any illegality or perversity in the said part of order.

8. During the course of hearing it has been revealed that so far as the writ petitions arising out of identical award are concerned, the same have already been dealt with by this Court in WPL Nos. 7062/2011, 7063/2011 & 7079/2012. All these writ petitions were partly allowed in favour of the State to the extent that the order of regularization was set aside. However, the order of reinstatement with 50% back wages was maintained.
9. Today, when the matter is taken up for hearing, learned State counsel, on instruction, submits that the respondent worker involved in the present writ petition has already been regularized by the Department vide order dated 04.07.2019.
10. Given the said fact, now that the respondent-worker has already been regularized, this Court does not find any strong case made out at this juncture calling for an interference with the impugned award. However, this court would make an observation that the order of regularization passed by the Department on 04.07.2019 would have only prospective effect and it cannot be given a retrospective effect keeping in view the categorical finding by this Court in the aforementioned writ petitions which were disposed of earlier i.e. WPL Nos. 7062/2011, 7063/2011 & 7079/2012.
11. Accordingly, the order of the Labour Court to the extent of reinstatement with 50% back wages is maintained. The order of the State Govt. granting regularization from 04.07.2019 is not interfered with however it is made applicable only with prospective effect.
12. The writ petition stands disposed of.

Sd/-
(P. Sam Koshy)
Judge