

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPL No. 4771 of 2011**

1. State Of Chhattisgarh, Through: the Secretary, Department of Water Resources, DKS Bhawan, Mantralaya, Raipur, CG

(The petitioner no.1 was not a party before the learned State Industrial Court, Chhattisgarh, Raipur Labour Court but has been impleaded as petitioner no.1 in the instant petition as the proper course is to implead the State Government through the Secretary of the concerned department)

2. The Superintending Engineer, Department of Public Works, Public Works Division, Durg division, Durg (CG)
3. The Executive Engineer, Department of Public Works, Public Works Division, Khairagarh, District Rajnandgaon

---- **Petitioners**

Versus

1. Chhattisgarh P.W.D. Mazdoor Sangh, through : Shri Yashwant Sahu, Mahamantri, CG. P.W.D. Mazdoor Sangh, Durg (CG) Presently address through Meghnath, Gram Aamgaon, Post Rampur, Tah. Chhuikhadan, P.S. Salwarad, Distt. Rajnandgaon (CG)
2. Teras, S/o Hirau aged about 38 years, R/o Aamgaon, Post Rampur, P.S.Salewara, Tah. Chhuikhadan, District Rajnandgaon (C.G.)
3. Jagannath S/o Mehatar, aged about 36 years, R/o Aamgaon, Post Rampur P.S.Salewara, Tah. Chhuikhadan, District Rajnandgaon (C.G.)
4. Sawant, S/o Udavan, aged about 41 years , R/o Aamgaon, Post Rampur P.S.Salewara, Tah. Chhuikhadan, District Rajnandgaon (C.G.)
5. Gaunu, S/o Udavan aged about 45 years, R/o Aamgaon, Post Rampur P.S.Salewara, Tah. Chhuikhadan, District Rajnandgaon (C.G.)
6. Meghnath, S/o Mehatar, aged about 38 years, R/o Aamgaon, Post Rampur P.S.Salewara, Tah. Chhuikhadan, District Rajnandgaon (C.G.)
7. Premlal, S/o Samun Singh, aged about 37 years, R/o Aamgaon, Post Rampur P.S.Salewara, Tah. Chhuikhadan, District Rajnandgaon (C.G.)

---- **Respondents**

For State/Petitioner	:	Mr. Sudeep Verma, Dy. GA
For Respondent/s	:	Mr. N. K. Vyas, Advocate

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

08/01/2021

1. The challenge in the present writ petition is to the rejection of the appeal preferred by the petitioner i.e. Civil Appeal No. 82/CGIRA/A/11/2007 decided by the Industrial Court at Raipur on 05.08.2010 and challenge also is to the order of the Industrial Court passed in Civil Appeal No. 80/CGIRA/A/2011/2007. Vide the common order passed in the aforementioned two Civil Appeals the learned Industrial Court has rejected the appeal preferred by the State under Section 65 of the Industrial Relations Act, 1960 so far as challenge to the order of reinstatement by the Labour Court is concerned and at the same time has partly allowed the appeal of the workers Union which had raised the dispute and had modified the order of the Labour Court whereby in addition to reinstatement the Industrial Court has also granted 50% back wages to the workers involved in the dispute.
2. Facts of the case in brief is that the workers of Union had raised the dispute on behalf of all the workers before the Labour Court claiming for regularization in service vide case No.47/MPIR/1995. The claim application before the Labour Court was that since the workers involved in the dispute were engaged by the authorities way back in the year 1987 and by efflux of time they were entitled for being regularized in service. Pending the claim for regularization, the services of the workers stood discontinued on 27.04 1996. Subsequently the workers had amended the petition before the Labour Court and had challenged the subsequent termination order.

3. The Labour Court initially allowed the application of the workers vide order dated 31.10.2007 and ordered for reinstatement without back wages without there being any relief of regularization. The order of the labour Court dated 31.10.2007 was subjected to challenge by both, the union representing the workers vide case No. 80/CGIRA/A/2011/2007 claiming for consequential benefits on the order of reinstatement and it was also challenged by the State vide case No.82/ CGIRA/A/2011/2007 challenging the order of reinstatement. The Industrial Court clubbed both the appeals together and passed the impugned order on 05.08.2010 rejecting the appeal that was preferred by the State and the appeal of the Union was partly allowed to the extent of modifying the order of Labour Court to reinstatement with 50% back wages instead of reinstatement without back wages.
4. Learned counsel appearing for the State/petitioner assailing the said award submits that the findings of the Labour Court is bad in law to the extent that the court below has not properly appreciated the evidence which have come on record and has wrongly reached to the conclusion that termination is violative of provisions of the Industrial Disputes Act. According to him, the admitted position is that the status of the respondents was that of a daily wage worker who do not have any indefeasible right attached to the regular post. According to the State counsel, the daily wage workers were being engaged on day to day work and payment basis, therefore, there was no necessity for the statutory compliance of provisions of the Industrial Disputes Act and the court below has committed an error of law in holding that the termination of services of the respondents are contrary to the provisions of Industrial Disputes Act and has awarded reinstatement of the respondents with 50 percent back wages.

5. In addition to the order of reinstatement, counsel for the State assailing the status of the respondents submits that admittedly they were daily wage worker/casual workers, and therefore, their engagement was only subject to availability of work and therefore the question of grant of backwages to such employee does not exist at all and the court below has again committed an error of law and thus, the award of Labour Court deserves to be set aside/quashed.
6. Counsel appearing for the petitioner submits that in any case the order of Industrial Court to the extent of awarding of back wages was fully unjustified for the reason that admittedly the services of the petitioner was that of a Daily Wage Employee and that during the entire period of their discontinuance they had not discharged their duties and therefore the Industrial Court ought to have applied the principle of No Work No pay and should not have awarded back wages.
7. Learned counsel appearing for the respondent workers submits that it is a case where immediately after the Labour court had granted the order of reinstatement petitioner herein have reinstated all the workers as early as in January, 2008 itself and since then all the workers have been continuously discharging their duties till now. That all the workers have crossed the middle age and are on the verge of retirement in two years of come. It was further contention of the learned counsel for the respondent that from the pleadings and evidences which have come on record it shows that workers involved were working with the respondents for a period of about 10 years before they were discontinued in the year 1996 and subsequent to reinstatement in January, 2008 they have again put in 13 years of service and as such the workers have been working with the department for more than 22-23 years. That at this juncture the equity falls in their favour and order of reinstatement does not warrant any interference.

8. Having heard the contentions put forth on either side and on perusal of records so far as pleading of the Labour Court is concerned, it has come in the evidence so far as workers have been working as Daily Wage Employee from 1987 onwards and that they were discontinued on 27.04.1996 on account of Policy Decision by the State Authorities. Another admitted factual matrix of the case is that before discontinuance services of the workers, necessary compliance that were supposed to be followed like payment of compensation on their being retrenched, similarly following the principle of Last Come First Go were not followed as has been established from the pleadings.
9. Moreover, from the pleadings it also establishes that finding of the Labour Court was based upon the finding of the fact on the basis of evidence which was brought before the Labour Court and it is settled position of law that the finding of fact should not be interfered with without there being substantial strong cogent grounds and reasons. That the petitioners also have to justify the finding to be fully erroneous or contrary to the evidence. The power of this court under Article 226 is not that of an appellate court but only a supervisory power would be to the extent whether there has been any erroneous finding arrived at by the Labour Court or where finding is either in excess or without jurisdiction.
10. From the pleadings raised by the parties there does not appear to be any contentions so far as order being in excess or without jurisdiction in their pleading or to the fact that the same is contrary to the evidence which has come on record. Coupled with the aforesaid facts is the situation where the workers involved in the instant case has already worked with the Department for the last 13 years continuously and have now crossed middle age and only a few years are left for retirement and at this juncture of their life unsettling the settled position would be detrimental not just to the workers alone but also to the dependents on these workers. Therefore

applying the law of equity the order of reinstatement granted by the Labour Court and which has been affirmed by the Industrial Court does not warrant any interference. However, this Court is of the opinion that finding of the Industrial Court modifying the order of reinstatement by awarding 50% back wages does not seem to be justified in the given factual matrix of the case. Admittedly the workers were Daily Wage Workers and who were paid wages only for the period they had worked and not for the period they had not worked. Undoubtedly the workers in the present case had not discharged their duties for the intervening period during which their services were out of employment between 1996 till 31.10.2007 when there was order of reinstatement.

11. Undoubtedly, the principle of No Work No Pay had to be applied by the Industrial Court while considering the relief of grant of back wages is concerned. The Supreme Court also time and again held that backwages would not be awarded as a matter of routine unless there is a specific finding with sufficient reasons given. Therefore the order of the industrial Court so far as granting of 50% back wages is concerned being not justified is liable to be and is hereby set aside/quashed maintaining the order of reinstatement granted by the two Courts and which has already been implemented also by the respondents.

12. In view of the same the workers would be entitled for reinstatement without back wages. The writ petition of State accordingly stands partly allowed to the extent that order of reinstatement is not interfered with and order of awarding 50% back wages stands set aside/quashed.

Sd/-
(P. Sam Koshy)
Judge

Rohit