

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (L) No. 3715 of 2011**

1. State of Chhattisgarh through the Secretary, Public Works Department, D.K.S. Bhawan, Mantralaya, Raipur (CG)

(The petitioner no.1 was not a party before the learned 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. Superintending Engineer, Public Works Department, Division Ambikapur, District Sarguja (CG)

---- Petitioners

Versus

Sukrata Bai W/o Pawan Sai, R/o near Marine Drive, Ambikapur,
District Sarguja (CG)

---- Respondent

For Petitioners	:	Mr. Rahul Jha, Govt. Advocate
For Respondent	:	Mr. Manoj Paranjpe, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****11.06.2021**

1. Aggrieved by the award dated 24.12.2010 passed in case No. 7/ID Act/ 2010/Ref. by the Labour Court, Ambikapur the present writ petition has been filed.
2. The relevant facts for adjudication of the dispute are that the respondent-worker was engaged by the petitioners as a daily wage employee way back in the year 2005 and she continued to work under the petitioners till April 2009 when the services of the respondent-worker abruptly discontinued after having continuously worked for a

period of 4 years. The petitioner was discharging the duties of a peon under the petitioners.

3. According to the respondent-worker, she had also completed more than 240 days continuous service before she was discontinued and since she was not granted any compensation before discontinuance, she had raised a dispute under Section 10 of the Industrial Disputes Act and the dispute was referred by the State Gov. to the Labour Court, Ambikapur. After completion of the pleadings and recording of the evidences on either side, the Labour Court vide impugned award has awarded reinstatement without back wages in favour of the respondent-worker.
4. The order of the reinstatement was immediately complied with by the petitioner-State by immediately taking back the worker in service. According to the petitioners, the worker was reinstated in service on 03.03.2011 and since then she has been continuously working with the petitioners even till date as would be evident from the document which the worker has brought on record.
5. The challenge by the State to the impugned award is on the ground that the Labour Court has not properly appreciated the provisions of the Industrial Disputes Act before passing of the award. It is also the contention of the petitioners-State that once when the finding of the Labour Court is that the worker was engaged as a daily wage employee, this itself is sufficient to establish the fact that there is no indefeasible right created in favour of the worker nor would the provisions of the Industrial Disputes Act be applicable in the event of discontinuance of a daily wage employee. Further contention of the learned counsel for the petitioners is that the worker in the present

case has miserably failed to show continuous employment of 240 days before discontinuance and thus prayed for setting aside of the impugned award.

6. On the other hand, learned counsel for the the respondent-worker opposing the petition submits that the finding given by the Labour Court is a finding of fact based upon the evidence which has come on record on either side. It is also the contention that the finding of the Labour Court is after due appreciation of the evidence adduced on either side as would be evident from the pleadings of the award where the evidence of the witnesses have been duly appreciated by the presiding officer in his award. Thus, the finding of fact based on the evidence on record cannot be lightly interfered by this Court while exercising writ jurisdiction under Article 226 of the Constitution of India. Learned counsel for the respondent further submits that even otherwise as on date equity also falls in favour of the respondent-worker inasmuch as the petitioner-State have reinstated the worker as early as on 03.03.2011 and now it is more than 10 years that the worker has been reinstated and continuing in service and she has also crossed the age of 50 years and at this stage it would not be justified interfering with the award removing the worker from employment which may have a serious repercussion not only upon the respondent-worker but also upon all the dependents to the worker. Moreover, the respondent-worker at this stage of her life, would also not be able to get an alternative employment else where. For all the reasons, the impugned award does not warrant any interference.
7. Having heard the contentions put forth on either side and on perusal of record undisputedly the present writ petition has been preferred

assailing the award passed by the Labour Court on 24.12.2010. It is settled position of law that this Court while entertaining the writ petition testing the veracity of an award passed by the Labour Court would not be sitting as an appellate Court over the award of the Labour Court neither could it be proper for this Court in exercise of its writ jurisdiction to threadbare scrutinize the evidence and reach to a different conclusion than what has been arrived at by the Labour court. Under the writ jurisdiction, the only scope of interference by way of judicial review by this Court is in the event of the finding of the Labour Court being totally perverse, contrary to evidence and in excess of its jurisdiction. A plain reading of the award particularly from paragraph-13 onwards it would clearly reveal that the Labour Court in fact has duly considered the evidence which has come on record and has appreciated the same while reaching to the finding that has been arrived at. Thus, the finding of the Labour Court becomes a finding of fact.

8. The Hon'ble Supreme Court in a series of judgments has dealt with the issue of the scope of interference by the High Court in an award of Labour Court exercising the writ jurisdiction. 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)**, the Hon'ble Supreme Court has 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.....”

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

10. The Supreme Court in the case of “**Harjinder Singh v. Punjab State Warehousing Corpn.**” reported in (2010) 3 SCC 192, in paragraph 21 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.’

(A.I.R 1958 SC 923 [State of Mysore v. Workers of Gold Mines, AIR p.928, para 10.]”

- 11.** This view has further been reiterated in the case of “**Bhuvnesh Kumar Dwivedi v. Hindalco Industries Limited**” reported in **(2014) 11 SCC 85**.
- 12.** Having considered the aforesaid judicial pronouncements and also taking note of the finding by the Labour Court more particularly taking note of the fact that for the last more than 10 years the worker has been in continuous service upon her reinstated on 03.03.2011 and that she has also crossed more than 50 years of age, it would not be equitable at this juncture to interfere with the order of reinstatement awarded by the Labour Court and which has already been implemented by the petitioners.
- 13.** Under the circumstances, without interfering with the award of the Labour Court as regards granting of reinstatement without back wages, the writ petition at this juncture stands rejected.

**Sd/-
P. Sam Koshy
Judge**