

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPL No. 96 of 2012**

State Of Chhattisgarh, through Divisional Forest Officer, Forest Division
(Territorial), Khairagarh District Rajnandgaon, (C.G.)

---- Petitioner**-Versus-**

Sita Ram Tandkar, S/o. Narottam, Resident & Post Dhara, Tahsil
Dongargarh, District Rajnandgaon (CG)

---- Respondent

For State/Petitioner	:	Ms. Sunita Jain, G.A.
For Respondent	:	Mr. F.S. Khare, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****11/06/2021**

1. Aggrieved by the award dated 16.11.2011, pronounced on 05.01.2012 in case no. 197/IDA/Reference/2008 the present writ petition has been filed. Vide the impugned award the learned labour Court has awarded reinstatement with 50% backwages.
2. The facts in brief is that as per the respondent worker he was engaged as daily wage worker by the petitioners in 1990 and worker discontinued to work under the petitioners for a period of about 14 years till 2004 when his services were abruptly discontinued in total contravention to the provisions of the Industrial Disputes Act, particularly the provisions of Chapter V of the Industrial Disputes Act. The discontinuance from service by the petitioners was challenged by the respondent worker by raising the industrial dispute under the provisions of Industrial

disputes Act and State Government in the year 2008 made a reference to the labour Court, Rajnandgaon for answering the reference where the case was registered as 197/IDA/Reference/2008. After either side before the labour Court submitted their claim and written statement, it was ordered for giving evidence on either side. The worker got himself examined and in support of his contention he has also got examined another witness namely, Itwari Ram Baghav. Thereafter, the petitioner State as the second party before the labour Court was asked to lead evidence. However, no evidence whatsoever was led by the employer State before the labour Court and finally matter was heard on merits with available records and evidences adduced by the worker and relying upon the evidences learned labour Court has passed the impugned award of reinstatement with 50% backwages. It is this award which is under challenge.

3. According to the petitioner the finding of fact of labour Court is bad in law for the reason that worker in the instant case has failed to prove his case by leading cogent and material documentary proof in respect of firstly his employment with the petitioner and secondly his having worked continuously for a period of more than 240 days in a calender year preceding his discontinuance. It was also the contention of the State that even otherwise since the worker was substantially a daily wage worker and on each date his employment stood discontinued till he was engaged on the next day. The awarding of 50% backwages is therefore, unreasonable and is without any basis whatsoever. It was also the contention of the petitioner that even otherwise granting of backwages ought to have been rejected only on the

ground of no work no pay. Thus, order of reinstatement as also granting of 50% backwages deserves to be interfered with.

4. Per contra, Mr. F. S. Khare appearing for the worker submits that it is a case where the evidence led by the worker supported by the statement of another witness namely Itwari Ram Baghav has gone unrebutted before the labour Court inasmuch as, in spite of opportunity, no evidence has been led by the petitioner employer before the labour Court. Thus, the evidence of the worker has been accepted by the labour Court and has given finding of fact. According to the counsel for the worker since the award is finding of fact the scope of interference is minimal for this Court to interfere and that the petitioners have not made out the case of perverse finding of or excess of jurisdiction by the labour Court in deciding the matter under which this Court can interfere with the award.
5. It was further contention of the Mr. Khare that immediately after the impugned award was pronounced on 05.01.2012 the State authorities have complied with the award and have reinstated the worker on 23.01.2012 and since then he has been continuously working. According to Mr. Khare he has now put in about 10 years of service after reinstatement, Equity also therefore goes in favour of the worker and impugned award does not warrant any interference including that of reinstatement as according to the counsel for the worker he has been deliberately deprived of any work during the said period, therefore the Court below was justified in granting backwages.

6. Having heard the contentions put forth on either side and on perusal of record admittedly from the pleading it appears that respondent worker has worked under the petitioner for a period between 1990 to 2004 i.e. approximately 14 years, thereafter, he was discontinued. Before discontinuance of his services, there is no proof of any compensation, show cause notice or any notice of discontinuance or salary in lieu of notice issued to the worker. The worker has also not been paid any retrenchment compensation before discontinuance. Coupled with the aforesaid factual matrix the award also shows that in spite of the opportunity being given to the employer State authorities have also not led any evidence before the labour Court to substantiate their contentions. Thus, there is not evidence in rebuttal to the evidence led by the worker.
7. As regards the scope of interference it is by now well settled proposition of law that High Court under Article 226 would not be sitting over under Industrial Disputes Act as the Appellate Court. The High Court also would not conduct a thread bare enquiry to test the finding of facts arrived at by the labour Court while exercising the Writ Jurisdiction. The Scope of judicial review against the award of the labour Court is confined to finding which is perverse, a finding which is in excess of jurisdiction and a finding which is contrary to the evidence on record. In the instant case in the absence of any evidence by the petitioner before the labour Court, none of the grounds of perversity or excess of jurisdiction or a finding being in contravention to the evidence is made out.

8. The scope of interference exercising the power of judicial review by the High Court is only in the event if the finding of the labour Court is a perverse finding or is one which is contrary to the evidence which has come on record.

9. 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.....”

10. 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.”

11. 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.]”

12. This view has further been reiterated in the case of **“Bhuvnesh Kumar Dwivedi v. Hindalco Industries Limited”** reported in **(2014) 11 SCC 85.**\
13. Given the fact, this Court does not find any strong case made out calling for an interference with the order of reinstatement by the labour Court. However, from the pleadings and the evidence which has been led by the worker before the labour Court, there is no dispute that he was engaged by the petitioner as daily wage worker. The status of a daily wage worker is that of getting employment on daily wage basis and in the evening after the day's work is over, the employment stands automatically discontinued till he is engaged on the next day, if there is availability of work. The worker has not been appointed or engaged in accordance with any statutory scheme applicable in the petitioner's establishment. The work of a daily wager is purely temporary in nature.
14. Under the circumstances, awarding of 50% of backwages by the labour Court does not seem to be proper, legal and justified. Moreover, from the plain reading of the award, there also does not seem to be any justification or reasons provided by the labour Court while granting 50% of backwages.
15. Hon'ble Supreme Court has time and again laid down that the upon the order of reinstatement the granting of backwages is not automatic, there has to be specific reasons and findings of fact justifying the awarding of backwages which in the instant case is missing. In view of the same the awarding of backwages by the

labour Court being improper, the same deserves to be and is accordingly set aside/quashed. The writ petition thus is partly allowed to the extent that award of labour Court granting the benefit of reinstatement is not interfered with. However, awarding of backwages stands set aside.

16. The writ petition thus stands partly allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

Ved