

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION (L) NO. 24 OF 2012**

- Kaushal Prasad, S/o Shri Gandhu Prasad, aged about 45 years, at Post and Village - Bijapur, District Bijapur (C.G.)

... Petitioner**versus**

1. State of Chhattisgarh, through the Secretary, Forest Department, D.K.S. Bhawan, Raipur (C.G.)
2. Divisional Forest Officer, General Forest Division, Bijapur, District Bijapur (C.G.)
3. Conservator of Forest, Jagdalpur, District Bastar (C.G.)
4. Chief Conservator of Forest, Raipur (C.G.)

... Respondents

For Petitioner	:	Mr. S.P. Kale, Advocate.
For Respondents	:	Mr. Kunal Das, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****[23.08.2021]**

1. Aggrieved by the Award dated 10.2.2011 passed by the Labour Court, Jagdalpur in Case No.9/I.D.Act/Ref./2009, the instant Writ Petition has been filed by the Petitioner-Worker.
2. Vide the impugned Award, the Labour Court has answered the reference in the negative holding that the claim of the Petitioner-Worker was not sustainable and the same was accordingly rejected.
3. Brief facts relevant for the adjudication of the present dispute are that the Petitioner-Worker is said to have been engaged by the Respondent-State Government as a daily wage worker. He was assigned the work of a Chowkidar and he worked with the Respondents for the period of between December, 1990 to December, 2000.
4. Contention of the Petitioner-Worker was that he was uninterruptedly engaged by the Respondents for all this period of 10 years and he was working against the sanctioned vacant post and by efflux of time he has also attained the status of a permanent employee. However, without any

allegation of misconduct and unsatisfactory performance of duties, without any show-cause-notice, without any payment of salary in lieu of notice and without any payment of retrenchment compensation, he was abruptly discontinued from service. According to Petitioner-Worker, since he has put in 10 years of uninterrupted service, it is evident that he has put in more than 240 days of service in a calendar year immediately preceding the action of discontinuance from service. Thus, the action on the part of the Respondents amounts to an illegal termination and therefore he ought to have been granted the relief of reinstatement with back-wages.

5. Petitioner-Worker has raised an industrial dispute in the year 2009 against his alleged termination and the appropriate Government upon failure of the conciliation made a reference to the Labour Court, Jagdalpur on the following terms of reference:-

“Whether the termination of service of Shri Kaushal Prasad is legal and justified? If not, then for what relief the Applicant is entitled to get from the Non-applicant? In this regard, what directions can be issued to the Non-applicant?”

6. After completion of the pleadings, learned Labour Court vide the impugned Award dated 10.2.2011 reached to the conclusion that from the evidence it is clear that the Petitioner-Worker was paid retrenchment compensation for an amount of Rs.18,047/- and which he had also accepted and having not challenged the discontinuance immediately thereafter for a considerable long period of time, he was not entitled for any relief and as the requirement under the Industrial Disputes Act was complied with by the Department at the time of retrenchment and accordingly the claim was rejected.

7. Learned Counsel for Petitioner has assailed the impugned Award on the ground that the Labour Court has totally lost sight of the requirement under Chapter-V of the Industrial Disputes Act, particularly

Section 25G of the said Act. Learned Counsel for Petitioner also assailed the impugned Award on the ground that the Labour Court has not appreciated the fact that the condition precedent to the retrenchment of a workman as is required under Section 25G of the Industrial Disputes Act has not been adhered to.

8. It was also the contention of learned Counsel for Petitioner that undoubtedly as long as the Petitioner was in service of the Respondents for the period from December, 1990 to December, 2000 i.e. for a period of approximately 10 years, he has worked uninterruptedly and he has also worked for 240 days continuously preceding the period of his discontinuance in a calendar year and on this ground the Labour Court should not have refused to entertain the dispute. Learned Counsel for Petitioner thus prayed for the impugned Award to be modified and the Petitioner be ordered to be reinstated in service.

9. *Per contra*, learned Panel Lawyer appearing for the Respondents opposing the Petition submits that the impugned Award is a well reasoned Award and does not warrant any interference. He further submits that from the evidence which have come on record, admittedly, the Petitioner was paid the retrenchment compensation which he at that point of time had accepted. Further, having accepted the retrenchment compensation with wide open eyes and moreover accepting the same without any objection or demur, the Petitioner now cannot be permitted to turn around and assail the same that too after a period of a decade having lapsed.

10. Learned Panel Lawyer further submits that the Labour Court has taken into consideration all the material facts which have come before it and then has reached to the conclusion that in the given facts the Petitioner would not be entitled for any relief which can be granted at a belated stage and thus has rightly answered the reference in the negative.

Therefore, the scope of interference again on the finding of facts is not warranted, nor is there a scope left for this Court to re-appreciate the evidence and to reach to an another conclusion which also is not permissible.

11. Having heard the contentions put forth on either side and on perusal of record, what needs to be appreciated is the fact that the Petitioner seems to have worked between 1990 to 2000 under the Respondents. It is also not in dispute that the substantive nature of the engagement of the Petitioner was as a daily wage worker. The Petitioner was granted the retrenchment compensation of Rs.18,047 at the time of his discontinuance. The Petitioner for a period of well over 10 years of time did not have any grievance whatsoever so far the action of retrenchment is concerned.

12. It is a well settled position of law that a daily wage worker otherwise do not have an indefeasible right over the post that he was otherwise holding. The moment the service of a daily wage worker comes to an end at the end of the day, the employment also automatically comes to an end and unless and until he is called for work again he does not have a right to continue. It will also depend upon the availability of work.

13. In the instant case, considering the length of service that the Petitioner has put in, the Respondents had given the Petitioner one month's notice and also the retrenchment compensation was paid to him. Both of which was accepted by the Petitioner without any kind of protest whatsoever.

14. With the aforesaid admitted factual matrix of the case, it cannot be lost sight of the settled position of law that the High Court under Article 226 of the Constitution of India while hearing a Petition against the Award of the Labour Court/Tribunal would not be sitting over it as an Appellate

Authority. Nor would the High Court, exercising the Writ jurisdiction, scrutinize the Award of the Labour Court or the Tribunal as an Appellate Authority/Body. It is the settled position of law that the High Court would not threadbare re-appreciate the entire evidence to reach to a different conclusion. In exercise of its Writ jurisdiction, the High Court also is not permitted to substitute its opinion when the finding of the Court below is a finding of fact. It is also a settled position of law that in exercise of its Writ jurisdiction, the High Court would only entertain with the finding of the Labour Court/Tribunal in the event of there being a perversity in reaching to a conclusion or in the event of the finding being contrary to law and contrary to the evidence on record or the Award being without jurisdiction or in excess of jurisdiction. However, in the instant case none of the aforesaid grounds have been established. A plain perusal of the Award would show that it is strictly in accordance with the evidence which have come on record and as such the Award is a pure finding of fact.

15. The aforesaid view stands fortified from the case of “**Bhuvnesh Kumar Dwivedi v. Hindalco Industries Limited**” [2014 (11) SCC 85].

16. Recently, in “**Bharat Heavy Electricals Limited v. Mahendra Prasad Jakhmola & Others**” [2019 (13) SCC 82], a similar view has been reiterated :-

“26. Ms. Jain also pointed out three judgments of this Court in ‘Calcutta Port Shramik Union v. Calcutta River Transport Association and Others [1988 (Supp) SCC 768], Pepsico India Holding Private Limited v. Grocery Market and Shops Board and Others [2016 4 SCC 493] and ‘Harjinder Singh v. Punjab State Warehousing Corporation’ [(2010) 3 SCC 192] for the proposition that judicial review by the High Court under Article 226, particularly when it is asked to give relief of a writ of certiorari, is within well recognised limits, and that mere errors of law or fact are not sufficient to attract the jurisdiction of the High Court under Article 226. There is no doubt that the law laid down by these judgments is unexceptionable.”

17. Thus, for all the aforesaid reasons, this Court does not find a strong case made out by the Petitioner calling for an interference with the impugned Award passed by the Court below.

18. Writ Petition thus being devoid of merits the same deserves to be and is accordingly dismissed. No order as to costs.

/sbarad/

Sd/-
(P. Sam Koshy)
Judge