

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WP(L) No. 4685 of 2010**

1. State of Chhattisgarh through Chief Engineer, Mahanadi Godavari Kachhar, Water resources Department, Raipur Chhattisgarh.
2. The Deputy Director Hydrometeorology Division No. 4., Raipur Chhattisgarh.
3. The Sub Divisional Officer, No. 14 Mahanadi Godavari Kacchar, Sub Division Bilaspur.

---- Petitioner**Versus**

1. Devendra Kumar Verma, S/o Late Shri Pyarelal Verma, R/o -Village Bhiloni, Post -Tohda, Thana -Nevra, Tahsil -tilda, District Raipur Chhattisgarh.
2. The presiding Officer, Labour Court Bilaspur Chhattisgarh

---Respondent

For Petitioner	:	Ms. Akanksha Jain, Dy. G.A.
For Respondents	:	Mr. S. P. Kale, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****07/06/2021**

1. Aggrieved by the order passed by the Labour Court Bilaspur 01.05.2010 in case No, 56/I.D.A./2009 (Ref.), the present writ petition has been filed.
2. Vide the impugned award, the Learned Labour Court Bilaspur has answered the reference in the affirmative holding that the discontinuance of service of the respondent- worker by the petitioner were in violation of Chapter V of the Industrial Dispute Act and while allowing the reference has ordered for reinstatement without back wages.

3. The writ petition is of the year 2010 and we are taking up the writ petition in the year 2021, neither the petitioner/State Government nor the counsel for the respondents-worker has been able to make a categorical statement that respondent-worker has been reinstated in service or not. The initial order-sheet of this Court would show that there was an interim order in favour of the State subject to their complying with the provision of Section 17B of the Industrial Disputes Act 1947 and which according to the learned counsel for the State is being complied with.
4. The admitted factual position as it stands from the evidence led by the either party, the respondent-worker was engaged as a daily wage employee continuously for the period between 15.06.1990 to 31.01.2000. The services of the respondent-worker was abruptly discontinued w.e.f. 01.02.2000.
5. Another admitted factual position as would be evident from the evidences of the witness on behalf of the petitioners-State before the Labour Court is that before discontinuing the service of the respondent-worker, no prior notice or salary in lieu of notice paid to the worker. Similarly, the witness of the State before the Labour Court has also admitted the fact that before the discontinuance was made, no retrenchment compensation whatsoever was paid, though the witness subsequently says that it was later on paid, but there was no evidence to this effect before the Labour Court. The witness of the State has also accepted the fact that he was not aware whether the principle of "last come first go" was followed before

discontinuing the service of the worker.

6. Further from the evidences of the parties before the Court, it also stands established that after the State Government had initially taken a decision to discontinue the daily wage employees, they had themselves thereafter taken a policy decision to reengaged those daily wages workers who were discontinued in the past. The finding of the Labour Court also shows that as per the memo of the Executive Engineer of Public works Department Division No. 1 Bilaspur, there were sanctioned vacant posts available, there were also availability of work for daily wage workers. Inspite of all this, the Petitioners/State did not either take back the respondent-worker in service nor were they given any preferential rights or treatment to be reengaged.
7. Given the aforesaid factual admitted position as is proved from the evidences given by either side, the issue now to be considered is, can the said finding of fact held to be a perverse finding or a finding contrary to the evidence on record ?.
8. On perusal of pleadings and the contentions put forth by the petitioners and taking note of the finding of the Labour Court, this Court has no hesitation in reaching to the conclusion that the finding arrived at by the Labour Court is a finding of fact based upon the evidence both oral and documentary that has been brought before the Labour Court by either side. There is nothing on record by which it can be said that the finding is a perverse finding or contrary to the evidences on record. Thus, the scope of interference to a finding of

fact gets reduced to the minimal.

9. One has also to appreciate the fact that this Court while entertaining the writ petition under Article 226 of the constitution of India does not sit as an Appellate Authority over the finding of a Labour Court. The right conferred upon this Court is only to the extent of verifying whether there has been an excess of jurisdiction or any perversity on the part of the Labour Court while deciding the matter in the course of passing of the impugned award. No such grounds strong enough have been made out by the petitioner calling for an interference to the award passed by the Labour Court.
10. It is settled position of law that this court while exercising the power of judicial review under Article 226 of the Constitution of India and while testing the veracity of an order passed by the Labour Court, the High Court would not sit as an appellate court. It is also settled position of law that the High Court would not threadbare consider the entire evidence that has been adduced before the Labour Court and reach to a different conclusion which again is impermissible.
11. 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.
12. 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.....”

13. 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.”

14. 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 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.]”

15. This view has further been reiterated in the case of “**Bhuvnesh Kumar Dwivedi v. Hindalco Industries Limited**” reported in (2014) **11 SCC 85**.

16. As regards the contentions of the State Counsel so far as granting of lump sum compensation in lieu of reinstatement and the judgments relied upon by the State in this regard, this Court is of the opinion that those judgments can not be applied in the factual backdrop of this case for two reasons; firstly, for the reason that the State Government itself is not in a position to say as to whether the respondent-worker has been reinstated or not, they are still in doubt. Secondly, the cases referred to and relied by the Petitioners/State are those where the worker involved in a dispute had worked for a very few period of time as compared to the greater period of time he has remained out of employment. In the instant case, on the contrary and admittedly the worker had put in continuous 10 years of service i.e. a decade of service between 1990 to 2000 and from the date of award also if the records are to be believed, the State has complied with the provision of Section 17B of the Industrial Dispute Act.

17. Moreover, it would be difficult at this juncture, when the petitioner has crossed the age of 50 to discontinue him from service after

paying him lump sum compensation in lieu of reinstatement, as the worker would not be in a position of seeking a fresh employment elsewhere at this stage of his life.

18. For all the aforesaid reasons, this Court is of the opinion that no strong case as such has been made out calling for an interference with the impugned award, thus affirming the award the writ petition stands rejected.

19. No order as to cost. Consequences to follow.

Sd/-
(P. Sam Koshy)
Judge

Jyotijha