

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPL No. 4551 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 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. Chief Engineer, Mahanadi Pariyojna, Jal Sanshadhan Vibhag, Raipur

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

Kushkumar Singh S/o Bodhan Singh, R/o Kodapath, Tahsil Pamgarh,
Distt. Janjgir Champa, CG

---- **Respondent**

For Petitioner/State : Ms. Akansha Jain, Dy. GA

Hon'ble Shri Justice P. Sam Koshy**Order on Board****06/01/2021**

1. The challenge in the present writ petition is to the award passed by the Labour Court Raipur in case No. 45/I.D. Act/ Reference/ 2005.
2. Vide the said award the learned Labour Court has answered the reference in favour of the respondent employee and have granted the relief of reinstatement in service with 50% back wages.
3. When the writ petition was taken up for admission, this Court vide the impugned order dated 11.08.2011 had stayed the impugned order to the extent of awarding the back wages. However, it was also at the same time directed that respondent worker should be reinstated in service forth with.

4. Today when the matter is taken up counsel for the petitioner on instructions submits that respondent worker has been taken back in service and he is still continuing to discharge the duties as Daily Wage Employee. As such the respondent worker subsequent to the award being passed in his favour has now put in more than 10 years of service.
5. Perusal of the records further show that the respondent worker involved in the present writ petition in the year 2010 as per the pleadings seems to be around 48 years of age and as such by now he must have reached around 58 years of age and if that be so, it is just a couple of years of service left for the employee to discharge duties before retirement.
6. Challenge in the present writ petition is to the award is on the ground that from the evidence led by the parties and on admitted facts there was no discontinuance of service of the respondent on the part of the petitioner herein i.e. the employer. On the contrary there was a break in service by the worker himself on account of his getting arrested in a Criminal Case on the charge of having instigating his wife to commit suicide. The petitioner was also prosecuted for the offence under Section 306 & 498 A of the IPC. In the criminal case the petitioner received honorable acquittal vide the order dated 18.11.1997 in criminal Revision 455/1992. Thereafter he had approached the authorities for being taken back in service which was refused and which led to the raising of the Industrial Dispute wherein the impugned award has been passed.
7. Contention of the petitioner is that the instant case cannot be said to be one which would fall within the ambit of the Chapter V of the Industrial Disputes Act in as much as there has never been any retrenchment or laying off of the respondent worker in any case enabling him for the compensation or in anything as such under the provisions of Industrial Disputes Act. Contention of the petitioner is that the petitioner

substantively was only working as Daily Wage Worker on the availability of the work and the moment the worker leaves the establishment or the goes in the evening, there is a total break of employer and employee relationship between the two. That until and unless the worker reports for duty on the next day, there was no obligation on the part of the petitioner to retain him on the rolls of the establishment even if he reports for duty.

8. According to the petitioner admittedly he was implicated in a criminal case and also arrested for a brief period and all this period he has not reported for duty and therefore there was no illegality or irregularity on the part of the petitioner in discontinuing the services of the respondent worker. Thus, granting of award of reinstatement with 50% back wages is perse illegal, bad in law. It was further contention of the petitioner that even otherwise the respondent worker has not fully established of having worked continuously for 240 days in the year prior to his discontinuance which would enable him to benefits under Chapter V or for that matter for reinstatement with back wages. Thus, for all the reasons the counsel for the petitioner prayed for impugned order to be set aside and to hold that the respondent worker would not be entitled for any benefits and award be set aside to that extent.
9. Having heard the contentions put forth by the counsel for the petitioner admittedly it reveals that petitioner was initially engaged as Daily wage employee and has worked with the establishment between 1981-89 i.e. for a period of roughly about 9 years and then thereafter on account of a criminal case the respondent worker himself stopped coming to work because of the fact that he stood arrested in the criminal case and thereafter he was not taken back in service even on his return after bail and after acquittal. Further finding is that even immediately on getting the

bail from the concerned Criminal Court worker had tried to obtain the employment but which was refused.

10. Another admitted factual matrix of the case is that the Labour Court entertained the reference and has passed the award on 20.01.2011 which was pronounced on 03.02.2011 and present writ petition was filed on 09.08.2011. Meanwhile, the worker has been reinstated in service in the year 2011 itself and this Court also at the time of admitting the writ petition directed the petitioners to reinstate the respondent worker. The respondent/worker as of now after the admission of the writ petition has continued in employment for another period of 10 years and has now reached to the fag end of his service career with only a few years of service left to reach the age of retirement under the petitioner.

11. Taking into consideration the fact that respondent worker has reached an advance age of retirement and also the fact that before the discontinuance and also after reinstatement the petitioner has put in roughly about 10 years of service each and thus at this juncture the equity falls in favour of the respondent worker as quashment of the impugned award and removal of the respondent from employment would create irreparable loss to the respondent worker as also to his dependents. In view of the same this Court is not inclined to interfere with the award of the Labour Court to the extent of granting reinstatement is concerned.

12. However, what admittedly is established from the pleadings as also from the award of the Labour Court is that right from 1989 till the award was passed by the Labour Court in the year 2011 the respondent worker was not in employment and has not discharged his work with the petitioners. It is pertinent to take note of the fact that substantive appointment of the respondent worker was that of a Daily Wage Employee and as such there

was no infeasible right created in his favour so far as guarantee of his employment is concerned. Nor was the worker engaged by the petitioner following any specific recruitment rules or regulations and under the circumstances the granting of the back wages to the worker does not seem to be in any manner justified nor any plausible explanation or reasons have been provided by the learned labour Court while granting benefit of back wages.

13. Moreover, respondent worker would also not be entitled for grant of back wages for the reason that as the discontinuance from service as alleged was from 1989. The dispute for the first time has been raised by him under the provisions of I.D. Act in the year 2005 i.e. after a period of about 15-16 years and for which there does not seem to be any explanation given by the respondent worker before the Labour Court and granting of back wages in spite of there being inordinate delay on the part of the respondent in raising dispute before the Labour Court does not seem to be justified at all.

14. For the aforesaid reasons this Court is of the firm view that awarding of 50% back wages by the labour Court was not proper, legal or justified, the same therefore deserves to be and is accordingly set aside/quashed. The writ petition accordingly stands allowed to the extent that though there was no interference so far as granting of relief of reinstatement is concerned, however, awarding of 50% back wages being unjustified the same is set aside/quashed. The order of the labour Court has to be read as reinstatement without back wages.

15. The writ petition accordingly stands partly allowed. No order as to costs.

Sd/-
(P. Sam Koshy)
Judge