

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION (L) NO. 35 OF 2013**

- Manoj Kumar Ray, S/o Shri Devendra Ray, aged about 39 years, R/o Village Kasmadi, P.O. Asawar, Tahsil Yusupur, District Gajipur (U.P.). At present, R/o Camp No.1, Bhilai, Shastri Nagar, Ward No.18, Ray Kirana Shop, P.S., Tahsil and District Durg (C.G.)

... Petitioner**versus**

1. State of Chhattisgarh, through the Secretary, P.W.D. Department, Mahanadi, Mantralaya, New Raipur, District Raipur (C.G.)
2. Excise Engineer, P.W.D., Division No.1, Durg, Tahsil and District Durg (C.G.)

... Respondents

For Petitioner	:	Mr. B.P. Singh, Advocate.
For Respondents	:	Mr. Jitendra Pali, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****[13.07.2021]**

1. Present is a Writ Petition filed by Petitioner aggrieved by the Award dated 5.10.2012 passed by the Labour Court, Durg in Case No.04/I.D.Act/2010(Reference).
2. Vide the impugned Award, the Labour Court has answered the reference in the negative holding that the Petitioner was not entitled for any relief and had accordingly rejected his claim.
3. Brief facts relevant for the adjudication of the present dispute are that the Petitioner had raised an industrial dispute in the year 2010 questioning his discontinuance from service of the Respondent Department. The State Government after having the conciliation meeting between the disputing parties and upon failure of that conciliation made a reference to the Labour Court, Durg on the following terms of reference:-

“Whether the retrenchment of Shri Manoj Kumar Ray S/o Shri Devendra Ray from work is legal and proper? If not, to what relief he is entitled for? And what direction can be issued to the Non-applicant in this regard?”

4. The aforesaid reference was registered as Case No.04/I.D.Act/2010(Reference) before the Labour Court, Durg. Notice was issued to the other side. The Petitioner/Worker, i.e., the first party before the Labour Court, submitted his Statement of Claim. As per the Statement of Claim, it was contended by the Petitioner that he was working under the Respondent Department as Time Keeper on daily wage basis prior to 1988 onwards. In 1988-89, he was engaged as a Telephone Attendant again as a daily wage worker. However, on 14.3.2000 he was retrenched from work and it is this retrenchment which was assailed by him as an industrial dispute against which the afore-stated terms of reference was made by the appropriate Government to the Labour Court, Durg.

5. Contention of the Petitioner further was that the alleged discontinuance of his service since 14.3.2000 onwards amounts to an illegal termination as it was in direct contravention to the provisions of the Industrial Disputes Act. The statutory requirement as is envisaged in Chapter-V of the Industrial Disputes Act has also not been complied or followed with while discontinuing his service. Further, having worked with the Respondent Department from a period prior to 1988 till 14.3.2000 continuously and uninterruptedly as a daily wage worker, it stands established that he was there with the Respondent Department for a continuous period of 240 days immediately preceding the date of his discontinuance. Moreover, since he has worked continuously for all this period, he had attained the status of a permanent employee and therefore he could not have been discontinued without any notice or a departmental enquiry or without the payment of retrenchment compensation.

6. After due consideration of all the evidence that have come on record and the contentions which were put forth on behalf of either side, the Labour Court vide the impugned Award answered the reference in the

negative holding that the Petitioner/Worker was not entitled for any relief whatsoever.

7. It is this Award dated 5.10.2012 passed by the Labour Court, Durg which is under challenge in the present Writ Petition.

8. Learned Counsel for Petitioner/Worker submits that the Labour Court has not properly appreciated the evidence which have been adduced on behalf of the Petitioner. The foremost contention of learned Counsel for Petitioner is that the Labour Court had on identical set of facts allowed various claims made by identically placed persons, but in the case of the present Petitioner the Labour Court has taken an entirely different view.

9. Further contention of learned Counsel for Petitioner is that, from the evidence that have come on record it is apparently clear that the Petitioner had worked uninterruptedly for a period prior to 1988 till March, 2000 and that at the time of his discontinuance he was neither issued with a show-cause-notice or the salary in lieu of notice nor was his service discontinued for unsatisfactory work or for any misconduct. Neither was it after an enquiry duly conducted.

10. As regards the ground of the dispute having been raised belatedly by the Petitioner/Worker before the State Authorities, the contention of learned Counsel for Petitioner has been that the Labour Court could have molded the relief suitably and could have still granted the relief of reinstatement and at best the Petitioner could have been denied the wages for the period he had not raised the dispute, as has been held in many cases by the Hon'ble Supreme Court.

11. Per contra, learned Deputy Advocate General appearing for the Respondents/State Government, opposing the Petition submits that the finding given by the Labour Court is strictly in accordance with the

evidence which have been adduced by either of the parties and the finding of the Labour Court is purely the finding of fact and therefore it does not warrant any interference. That, there is no perversity pointed out by the Petitioner calling for an interference nor has the Petitioner been able to show the finding to be contrary to the evidence.

12. Learned Deputy Advocate General further emphasized on the fact that undisputedly the Petitioner if at all was engaged he was engaged on daily wage basis. That, a daily wage worker otherwise does not have an indefeasible right or claim beyond a day's work and having received the wages for the period he has already worked. He further highlighted the aspect that in the instant case the Petitioner was also paid retrenchment compensation which he had without any demur accepted and he had not questioned the discontinuance for well over a period of 10 years' time. Thus, the Petitioner had accepted the decision of the Respondent Department so far as the discontinuance of his service is concerned and it is only at an inordinately belated stage that he has raised the industrial dispute. For all these reasons also, the finding of the Labour Court does not warrant any interference or else it could amount to opening of a Pandora Box for all those workers who stand discontinued and who would now become entitled to raise a dispute with inordinate delay.

13. It was also submitted by learned Deputy Advocate General that since the Petitioner has already accepted the retrenchment compensation paid by the Department, there is nothing more which could be given at this juncture. Moreover, since the Petitioner is out of employment from March, 2000 till now, i.e., for a period of more than 21 years, the question of reinstatement at this stage also is neither practicable nor advisable. Thus, prayed for the rejection of the present Writ Petition.

14. Having heard the contentions put forth on either side and on perusal of the record, particularly taking note of the fact that the Petitioner/Worker in the instant case stood discontinued from service since March, 2000 onwards, by now he is out of employment of the Respondents for well over a period of 21 years. When his statement was recorded before the Labour Court in the year 2011, he had claimed himself to be aged about 40 years, which means now he is well over 50 years of age. Further, it is also not disputed that for whatever period the Petitioner was working with the Respondents, his substantive nature of employment was as a daily wage worker.

15. A daily wage worker as such does not have an indefeasible right for either continuance in service or for regularization or for absorption etc. The engagement of the Petitioner was not following any recruitment process nor was he engaged following any recruitment rules framed under the rules governing the field or under any constitutional scheme. From the date of his discontinuance also for a period of almost a decade, the Petitioner had not raised any dispute questioning his alleged discontinuance from service. From the evidence itself it is evidently clear that he has also received the retrenchment compensation and even at that point of time he had not raised any objection or a dispute.

16. 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-appreciated 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 though raised 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.

17. The Hon'ble Supreme Court in the case of "**Harjinder Singh v. Punjab State Warehousing Corporation**" [2010 (3) SCC 192] 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.'

(State of Mysore v. Workers of Gold Mines, AIR 1958 SC 923, p.928, para 10.)"

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

19. 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.”

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

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

Sd/-
(P. Sam Koshy)
Judge