

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPL No. 35 of 2014**

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

---- Petitioner**Versus**

Ganesh Sahu S/o Shri Gopal Sahu, R/o Paniyajob, P.S. Bortalab,
Tahsil Dongargarh, District Rajnandgaon (CG)

---- Respondent

For State/Petitioner : Ms. Sunita Jain, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****26/08/2021**

- 1.** Aggrieved by the award dated 20.03.2012, pronounced on 28.04.2012 in Case no. 14/ID Act/Reference/2010 the present writ petition has been filed. Vide the impugned award the learned labour Court has awarded reinstatement with 50% back-wages.
- 2.** As per the respondent-worker, he was engaged as a daily wage worker by the petitioner in 1986 and he continued to work under the petitioner till 17th March, 2009 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 petitioner was challenged by the respondent-worker by raising an industrial dispute under the provisions of Industrial Disputes Act. The State Government in the year 2010 made a reference to the Labour Court, Rajnandgaon for

answering the reference where the case was registered as 14/ID Act/Reference/2010.

- 3.** After either side before the Labour Court submitted their claim and written statement, it was ordered for giving evidence on either side. However, no evidence whatsoever was led by the employer State before the labour Court. Finally the 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.
- 4.** According to the petitioner, the finding of fact of labour Court is bad in law for the reason that the worker in the instant case is 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 calendar year preceding his discontinuance. It was also the contention of the State that even otherwise 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, the order of reinstatement as also granting of 50% backwages deserves to be interfered with.
- 5.** According to the respondent-worker, it is a case where the evidence led by the worker 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 worker, since the award is finding of fact, the scope of interference is minimal for this Court to interfere and that the petitioner has not made out the case of perverse finding or excess of jurisdiction by the labour Court in deciding the matter under which this Court can interfere with the award.

6. That immediately after the impugned award was pronounced on 28.04.2012, the State authorities have complied with the award and reinstated the worker on 12.06.2012 and since then he has been continuously working. The worker involved in the case as on date is more than 54 years of age.

7. 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 1986 to 2009 i.e. approximately 24 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 and after reinstatement also the worker has put about 9 years of service.

8. 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 bear 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 whether the finding is perverse, whether the finding is in excess of jurisdiction and whether the finding 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 the finding being in contravention to the evidence is made out.

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

10. In **(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 in para 17 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.....”

11. 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.”

12. 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 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.]”

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.

14. 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.

15. Under the circumstances, awarding of 50% back-wages by the labour Court does not seem to be proper, legal and justified. Moreover, from the plain reading of award, there also does not seem to be any justification or reasons provided by the labour Court while granting 50% back-wages.

16. Hon'ble Supreme Court has time and again laid down that 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 the award of labour Court granting the benefit of reinstatement is not interfered with and the same stands affirmed and granting of 50% backwages is set aside.

17. However, in case the 50% of back wages has not been paid till date, the award to the extent of awarding backwages would stand set aside/quashed. In case the 50% backwages has already been paid to

the worker, the order passed by this Court so far as quashing of backwages is concerned would loose its efficacy.

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

**Sd/-
(P. Sam Koshy)
Judge**

Khatai