

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (L) No. 14 of 2021

1. State of Chhattisgarh Through The Secretary, Panchayat And Rural Development Department, Mahanadi Bhawan, Mantralaya, Atat Nagar Raipur, District Raipur, Chhattisgarh
2. Executive Engineer Rural Engineering Services, Division Rajnandgaon, District Rajnandgaon Chhattisgarh.
3. Deputy Director Finance Rural Engineering Services, Development Commissioner Office, Chhattisgarh, Raipur Chhattisgarh.

---Petitioner(s)

Versus

1. Jaspal Singh Gaikwad S/o Shri Jagatram Gaikwad Aged About 32 Years Caste Satnami R/o Village Tedesara, Post Somani, Tahsil and District Rajnandgaon Chhattisgarh.

---Respondents

For Petitioners/State	:	Shri Sudeep Verma, Dy. Govt. Advocate.
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Hon'ble Shri Justice P. Sam Koshy

Order on Board

09.04.2021

1. Aggrieved of the award passed by the Labour Court, Rajnandgaon, dated 03.06.2019, the present writ petition has been filed. Vide the impugned award, the Labour Court has answered the Reference in favour of the respondent granting benefits of reinstatement without backwages.
2. Brief facts relevant for adjudication of the present dispute is that the respondent in the instant case was engaged as a Chowkidar at collector rate prevailing from time to time. The respondent worker was engaged in July, 2008 and was continued in employment till 01.12.2013 when his services were abruptly discontinued. The worker thereafter immediately raised industrial dispute where the case was registered as case No.17/ID Act/2014/Reference. The worker as also the petitioner herein entered appearance before the Labour Court and submitted their respective statement of claim and written statement. Thereafter evidences were recorded on behalf of either side. The worker had got examined himself.

On behalf of petitioners-State one Shri Shankar Lal Verma got examined. There was no documentary evidence which have been led before the Labour Court by the petitioner. The worker in the instant case having obtained various documents from the establishment under the Right to Information Act submitted a bunch of documents which were marked as Ex. P/1 to Ex. P/149 before the Labour Court.

3. The Labour Court after considering the evidence and the pleadings of the parties finally passed the impugned award and have ordered for reinstatement without backwages to the respondent worker. The award was passed as early as on 03.06.2018. The award was complied with and the respondent employee has been reinstated in service in compliance of the provisions of Section 17-B of the Industrial Disputes Act. Subsequently, the present writ petition now has been filed after more than 1 and ½ years in February 2021.
4. The contention of the petitioner assailing the impugned award is that the authorities concerned have not considered the contentions which the petitioners have raised in their written statement inasmuch as the nature of employment of the respondent, the respondent was not engaged or appointed following any rules of recruitment. Further, it is also contended that since the nature of engagement of the respondent was only for the period the work was available, the respondent worker would not be entitled for any protection under the provisions of the Industrial Disputes Act. It was also contended that the worker was not engaged against any sanctioned vacant post on account of which he would have got any right in his favour for claiming before any court of law. The counsel for the petitioner referred to judgment of Supreme Court in cases of State of Karnataka Vs. Uma Devi, 2006(4)SCC-1, Official Liquidator Vs. Dayanand

and Others, 2008(10)SCC-1 and also in case of Darbar Singh Porte and Another Vs. State of Chhattisgarh & Others, 2010(3)CGLJ.

5. However, on perusal of impugned award it would clearly reflect that the Labour Court in the course of scrutinizing the claim of the worker found that there were large number documents which have been produced and exhibited before the Labour Court to prove his employment and also documents whereby the salary payable to the respondent was being credited in his bank account regularly. There is also evidence of the respondent to the extent of respondents not being paid any salary in lieu of notice or any compensation as is required under the provisions of the Industrial Disputes Act much less retrenchment compensation in accordance with provisions of Chapter-V of the Industrial Disputes Act. All these documents which the respondent had produced before the Labour Court have also been duly exhibited and have been relied upon by the Labour Court in the course of reaching to the conclusion that the worker has proved his case so far as having put in continuous employment of more than 240 days before his services were terminated. Proof was also being there from the details of the bank which proves that the petitioner State was regularly paying salary to the respondent by depositing/crediting the same in the bank account of the worker.
6. The aforesaid two findings of the Labour Court makes it clear that the findings is firstly finding of fact and secondly the finding is based on evidence which have come on record to prove the case of the respondent worker. There does not seem to be any documentary proof which have produced before the Labour Court by the petitioner except for the oral submissions made by the witness appearing on behalf of the petitioner without any supporting documentary proof. The witness who appeared on behalf of the petitioner also has not disproved the documents which the

respondent worker has produced before the Labour Court. Thus, the finding of Labour Court cannot be said to be a perverse finding, nor can it be said to be a finding contrary to the evidence on record.

7. Under the given circumstances, what now has to be seen is as to what is the scope of interference left for this court in exercise of its power under Article 226 of the Constitution of India.
8. 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.
9. 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.
10. 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.....”

- 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 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.]”

- 13.** This view has further been reiterated in the case of **“Bhuvnesh Kumar**

Dwivedi v. Hindalco Industries Limited” reported in **(2014) 11 SCC 85**.

14. In view of aforesaid authoritative decisions of Supreme Court, this court does not find any strong case made out by the petitioner calling for an interference with the findings of Labour Court. The award of the Labour Court dated 03.06.2019 therefore is affirmed and the writ petition being devoid of merit deserves to be and is accordingly rejected.

Sd/--
(P. Sam Koshy)
Judge

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