

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (L) No. 5111 of 2011

1. M.M. Khurshid, aged 56 years, S/o MK Hasan, R/o Baijnathpara, Raipur, Chhattisgarh.

---Petitioner(s)

Versus

1. Chhattisgarh Infrastructure Development Corporation through Managing Director, Shashtri Chowk, Raipur, Chhattisgarh.
2. State Industrial Court, Gadhi Chowk, Raipur, Chhattisgarh.
3. Labour Court through Presiding Officer Anand Nagar, Raipur, Chhattisgarh.

---Respondents

Writ Petition (L) No. 7048 of 2011

1. Chhattisgarh Infrastructure Development Corporation Raipur, Chhattisgarh.

---Petitioner(s)

Versus

4. M.M. Khurshid, aged about 56 years, S/o MK Hasan, R/o Baijnathpara, Raipur, Chhattisgarh.
5. State Industrial Court, Chhattisgarh, Raipur through its Registrar, Raipur, Chhattisgarh.
6. Labour Court Raipur through its Registrar, Raipur, Chhattisgarh.

---Respondents

For Petitioner-employee	:	Shri J. K. Gupta, Advocate.
For Respondent-CIDC	:	Shri Ashish Shrivastava and Shri Aman Saxena, Advocates.
For Respondent -CIDC	:	Shri Anup Majumdar, Advocate, in WPL No.5111 of 2011.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

09.02.2021.

1. These are two writ petitions assailing the order passed by the Labour Court, Raipur, in case No.283/02/MPIR Act dated 28.04.2010 and also the order which has been affirmed in appeal preferred by both the employee

as also by the employer in Civil Appeal No.44/CGIR Act/A/II/2010 and Civil Appeal No.45/CGIR Act/A/II/2010, decided on 09.06.2011.

2. The facts of the case is that the employee involved in the present dispute i.e. the petitioner in WPL No.5111 of 2011 and the respondent No.1 in WPL No.7048 of 2011 was appointed as Tool Keeper under the erstwhile Madhya Pradesh State Road Transport Corporation (in short, MPSRTC) on 01.01.1983. The said employee was posted at Baloda Bazar Depot at the relevant point of time.
3. On creation of State of Chhattisgarh by virtue of MP Reorganization Act, 2000, the place of posting of the employee fell in the territorial jurisdiction of the State of Chhattisgarh i.e. at Baloda Bazar itself. The employee was served with a charge sheet on 03.05.2002 and after completion of Departmental Enquiry he was inflicted with punishment of dismissal from service vide order dated 27.05.2002. All these period the employee was under MPSRTC. Subsequently, the State of Chhattisgarh decided not to have any State Road Transport in the State of Chhattisgarh and thereafter by way of notification brought the entire assets and liabilities of MPSRTC which fell within the territories of the State of Chhattisgarh under a Nodal agency i.e. Chhattisgarh Infrastructure Development Corporation (in short, CIDC) vide notifications dated 13.12.2002 and 27.12.2002.
4. The employee thereafter raised a dispute under Section 31(3) of the Madhya Pradesh Industrial Relations Act, 1960 (in short, MPIR Act) before the Labour Court at Raipur where the case was registered as case No.283/02/MPIR Act. The Labour Court at the first instance framed an issues for testing the veracity of the departmental enquiry conducted against the employee and vide order dated 03.02.2009 reached to a conclusion that departmental enquiry conducted against the employee was

in violation of the principles of natural justice and thereby vitiated the same and thereafter the matter stood fixed for the management/employer to lead evidence to prove the charges.

5. Perusal of award of the Labour Court would show that inspite of repeated opportunity being given to the employer, no evidence was adduced before the Labour Court to substantiate the allegations levelled against the employee and in the absence of any evidence led by the employer, the Labour Court granted the relief of reinstatement without backwages vide order dated 28.04.2010.
6. The said order of the Labour Court was subsequently questioned before the Industrial Court under Section 65 of the MPIR Act both by the employer as well as by the employee. The employee questioning non granting of backwages and the employer questioning the award of reinstatement.
7. The Industrial Court heard both the appeals and finally vide order dated 09.06.2011 rejected both the appeals of employee as well as that of employer leading to filing of these two writ petitions both by the employee as well as by the employer.
8. So far as the petitioner in WPL No.7048 of 2011 is concerned, their substantial stand is that they are not the employer of the employee as they are only a nodal agency appointed much subsequent to the order of termination being passed and that the entire action initiated against the employee including the order of termination was that by the MPSRTC and which would had been the responsible agency for complying with the order of Labour Court.
9. According to petitioner in WPL No.7048 of 2011 in the State of Chhattisgarh there was nothing like State Road Transport Corporation or

any successor corporation to the MPSRTC which could have inherited the entire assets and liabilities including the litigations and the compliance of the orders passed by the Labour Court and the Industrial Court. According to counsel for CIDC they were only a nodal agency taking care of the employees and assets which fell in the State of Chhattisgarh and welfare of existing employees and their rehabilitation plans and as such the CIDC could not be forced to take upon the liabilities of employees who are dismissed by the erstwhile MPSRTC and particularly in cases where the initial case itself was filed against the erstwhile MPSRTC.

- 10.** The contention of the employee i.e. the petitioner in WPL No.5111 of 2011 is that once when the findings of the Labour Court is that of employer having failed to lead evidence to prove the charges, it would be a case where the order of dismissal or the charges levelled against the petitioner stands not proved at all and in the absence of any proof of the allegations levelled against the employee in the charge sheet, the natural consequence would have been reinstatement with all consequential benefits including backwages which in the instant case has been denied both by the Labour Court as also by the Industrial Court and thus has filed the present writ petition claiming for consequential reliefs.
- 11.** A fact that needs to be referred at this juncture is that the employer that the CIDC inspite of sufficient opportunities had not led any evidence before the Labour Court by which the charges and the allegations could be established. The entire award of the Labour is based on the said finding of fact of their being no evidence on behalf of the CIDC.
- 12.** A hard reality which needs to be considered at this juncture is that the employee in the instant case at the time of award of the Labour Court as early as on 28.04.2010 itself was aged around 56 years and as per the

contention of the learned counsel for the employee, the employee in compliance of Section 65(3) of MPIR Act was reinstated in service and by efflux of time he has crossed the age of superannuation long back somewhere during 2015-16.

- 13.** Given the fact that by efflux of time the employee has crossed the age of superannuation during the course of pendency of these two writ petitions, this court at this juncture would not like to interfere with the award passed by the Labour Court or with the order passed by the Industrial Court. Even the principle of equity also runs in favour of the employee. Unsettling the two orders would amount to putting the employee to a considerable and irreparable loss, not just to the employee but also on all his dependants.
- 14.** The writ petition so far as employee is concerned, is also rejected at this juncture holding that the employee would not be entitled for any backwages applying the doctrine of 'No Work No Pay' for the intervening period. However, it is ordered that the employee should be treated to have been reinstated in service and he be granted all retiral benefits all that he would be entitled for, if the same has till date not paid to him.
- 15.** Accordingly both the Writ Petitions stand disposed of.

Sd/-
(P. Sam Koshy)
Judge