

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (L) No. 6485 of 2011

Deputy Director, Chhattisgarh Rajya Krishi Vipnan Mandi Board, Bastar Division,
Behind Sodhi Petrol Pump, Jagdalpur, District Bastar, Chhattisgarh.

---Petitioner(s)

Versus

Nandkumar Kesharwani S/o late Vishalram Kesharwani, aged about 42 years,
Resident of Village Kikirmeta, Post Belhari, Tehsil Patan, Via Gunderdehi, District
Durg, Chhattisgarh.

---Respondents

For Petitioner	:	Shri Yashwant Singh Thakur, Advocate.
For Respondent	:	Shri B.P. Singh, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

23.02.2021

1. The challenge in the present writ petition is to the award passed by the Labour Court, Jagdalpur, in case No.11/ID Act/Reference/2009, dated 29.11.2010. Vide the said award the Labour Court had granted the relief of reinstatement without backwages in favour of the respondent-worker. The present writ petition has been filed by the petitioner questioning the order of reinstatement.
2. Today when the matter is taken up, the counsel for the respondent-worker produced an order dated 10.01.2018 whereby the respondent employee has been shown to have been regularized in service with the department.
3. The main challenge by the petitioner to the impugned award was on the fact that the respondent indisputably was initially engaged only in the capacity of a daily wage employee and since he was a daily wage employee, there was no indefeasible right which got created in his favour. It was also the contention of the petitioner that since the respondent was a daily wage employee engaged purely on the availability of work, there was no occasion for extending the benefits which are otherwise stipulated under the provisions of Industrial Disputes Act. It was also the contention

of the petitioner that the worker otherwise has also not been able to establish that before discontinuance he has continuously worked for 240 days in a calendar year so as to bring it within the ambit of violation under Chapter-V of the provisions of the Industrial Disputes Act.

4. Having considered the contentions put forth by the petitioner and on perusal of records, what is revealed is that, the findings of the Labour Court was based upon the evidence which was adduced by the either side. Before the Labour Court the worker himself had entered appearance and made a categorical statement of having been engaged by the petitioner for a period between 08.04.1991 to 09.06.2000 i.e. for more than a period of 10 years. It was the further contention of the worker that before discontinuance he has not been issued with any show cause notice nor was he paid any compensation as stipulated under the provisions of Industrial Disputes Act like retrenchment compensation etc. Per contra, the witness on behalf of the employer-management namely Bhaskar Dahate was examined and in the cross examination the said witness has accepted the contention of the worker to the extent of his being engaged for the period between April, 1991 to June, 2000 before being discontinued.
5. There is also admission by the witness of the management that before discontinuance, the worker was not paid with any retrenchment compensation, nor was any show cause notice, nor any opportunity of hearing was given to the worker. Given the admitted factual position brought on record, the Labour Court gave a finding of fact that discontinuance amounts to illegal termination under the provisions of Industrial Disputes Act.
6. Pending the writ petition now that the petitioner themselves have regularized the worker in service as early as on 10.01.2018 and the worker since then is discharging his duties as a regular employee under the

department. The equity runs in favour of the worker and the equity being in favour of the worker, the impugned award at this juncture does not warrant any interference. Moreover, after the impugned award having been passed by the Labour Court, the respondent has been taken back in service immediately in compliance of provisions of Section 17-B and after reinstatement also the worker has put in more than a decade of service and by now has reached the fag end of service career with only few years service left for retirement, therefore, particularly when the worker already stands regularized in service of the petitioner, this court does not find any strong case made out calling for an interference to the order of reinstatement granted by the Labour Court at this juncture.

7. Accordingly, the award of the Labour Court to the extent of granting reinstatement is affirmed and the writ petition to that extent stands rejected.

Sd/-
(P. Sam Koshy)
Judge

inder