

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPL No. 7063 of 2011**

1. The State of Chhattisgarh, through, The Executive Engineer, Public Work Department, Khairagarh, District Rajnandgaon, Chhattisgarh.

Represented though: Shri H. R. Dhruw, aged about 48 years, S/o Shri Dhruw, presently posted as Executive Engineer, Public Works Department, Khairagarh, District Rajnandgaon Chhattisgarh and OIC of the case for petitioner/State. **---- Petitioner**

Versus

1. Atma Ram S/o Dhanuk R/o Village Chindari Post Chuikhadan Tah. Chuikhadan Distt. Rajndnagon CG R/o C/o Through Shri Navjeet Kumar Raman Advocate 25/12 Nehru Nagar Bhilai Distt. Durg Cg

---- Respondent

For Petitioner	:	Shri Rahul Jha, G.A.
For Respondent/s	:	Shri Saket Pandey, on behalf of Shri Anoop Majumdar, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****05/03/2021**

1. The challenge in the present writ petition is to the order Annexures P/1 & P/2 dated 25.01.2011 and 10.03.2008 passed by the Industrial Court as also by the Labour Court, Rajnandgaon, respectively.
2. The facts of the case in brief is that the respondent-worker has approached the Labour Court Rajnandgaon under Section 31(3) of the Chhattisgarh Industrial Relations Act, 1960 (in short, IR Act) against the alleged discontinuance of his service by the petitioner herein. The contention of the worker before the Labour Court was that he was initially appointed at Chhuikhadan Section of the Public Works Department, Khairagarh Sub Division in the year, 1992 and he continued to work under the petitioner continuously up till the year, 1996 when his services were abruptly discontinued.

According to the worker he had put in more than four years of service and have worked continuously for a period of 240 days before his discontinuance. Before discontinuance in the year, 1996 he was not issued with any show cause notice, nor compensation of any nature even retrenchment compensation was not paid. The worker thereafter had approached the Labour Court. After a prolonged litigation, the Labour Court finally vide order dated 10.03.2008 allowed the application which the petitioner has filed and granted the relief of reinstatement with 50 percent backwages.

3. The said order of the Labour Court was subjected to challenge in an appeal under Section 65 of the CGIR Act before the Industrial Court, Raipur where the case was registered as Civil Appeal No. 36/CGIR Act/A/II/2008. The Industrial Court also after considering all the contentions raised by the petitioner herein rejected the appeal of the petitioner maintaining the order passed by the Labour Court which has led to the filing of the present writ petition.
4. The contention of the petitioner is that the Labour Court has failed to appreciate the evidence which have come on record and have also ignored the pleadings that have been brought by the authorities before the Labour Court and as such the finding was per se contrary to evidence and also is a perverse finding. He also submits that the worker involved in the present dispute has failed to establish the fact that he continuously worked for a period of 240 days prior to date of discontinuance of his service by leading cogent evidence. Moreover, the nature of engagement of the worker was purely temporary in nature and he did not have any

substantial or infeasible right created in his favour for claiming the benefit that he has sought for.

5. Learned counsel for the respondent-worker on the other hand submits that from the plain reading of the impugned orders it clearly reflects that the award passed by the Labour Court and which has been affirmed by the Industrial Court are based on finding of fact which does not warrant any interference. The contention also is that even otherwise pursuant to the order passed by the Labour Court at the first instance the worker stands reinstated in service way back in the year, 2005 and since then he has been continuously working with the petitioner and as such he has now put in about 16 years of service after reinstatement and therefore applying the doctrine of equity the impugned orders do not warrant any interference at this juncture. According to the worker at this stage if the impugned awards are interfered with, the worker would not only lose his employment but also would not be able to get any employment elsewhere considering the age that he has reached by efflux of time. Thus, prayed for rejection of the writ petition.
6. Very recently, the Supreme Court in the matter of Mohd. Ali v. State of H.P. and others, 2018 (5)SCALE 717 dealing the similar issue emphasized the need for working 240 days in one calendar year preceding the date of termination held as under:-

“9. It is a well known fact that the Industrial Disputes Act is a welfare legislation. The intention behind the enactment of this Act was to protect the employees from arbitrary retrenchments. For this reason only, in a case of retrenchment of an employee who has worked for a year or more, Section 25F provides a safeguard in the form of giving one month's prior notice indicating the reasons for retrenchment to the employee and also provides for wages for the period of notice. Section 25B of the Act provides that when a person can be said to have worked for one year and the very reading of the said provisions makes it clear that if a person has worked for a period of

240 days in the last preceding year, he is deemed to have worked for a year. The theory of 240 days for continuous service is that a workman is deemed to be in continuous service for a period of one year, if he, during the period of twelve calendar months preceding the date of retrenchment has actually worked under the employer for not less than 240 days.

12. Further, it is an admitted position that though the appellant worked as such till 1991 under different work/schemes i.e. Rabi and Kharif and completed 240 days in a calendar year only during the years 1980, 1981, 1982 and 1986 to 1989 but he worked only for 195 days in the year 1990 and 19.5 days in the immediate preceding year of his dismissal which is below the required 240 days of working in the period of 12 calendar months preceding the date of dismissal, therefore, he is not entitled to take the benefits of the provisions of Section 25F of the Act and Division Bench of the High Court was right in dismissing the appeal of the present appellant."

7. The Labour Court has clearly recorded a finding that the respondent/workman has worked for continuous period of 240 days in one calendar year preceding the date of termination, which is finding of fact based on material available on record. I do not find any illegality or perversity in the said part of order.
8. So far as order directing regularisation is concerned, the State counsel would rely upon the judgment of the Supreme Court in the matter of Secretary, State of Karnataka and others v. Umadevi (3) and others, 2006(4)SCC 1 and submit that the Labour Court has no jurisdiction to direct regularisation when the workman has not been appointed in accordance with the constitutional scheme. Therefore, order directing regularisation deserves to be quashed.
9. The Supreme Court in State of Karnataka (supra) has clearly held that daily wagers have no fundamental right to be absorbed in service as they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution of India. The decision in State of Karnataka (supra)

has been followed recently by the Supreme Court in the matter of State of Tamil Nadu Through Secretary to Government, Commercial Taxes and Registration Department, Secretariat and another v. A. Singamuthu, 2017(4)SCC 113, in which in paragraph 15, Their Lordships of the Supreme Court observed as under: -

“15. In a similar issue, concerning part-time sweepers, the State of Tamil Nadu has filed an appeal before this Court, and those appeals were allowed by this Court by judgment dated 21-2-2014 in School Education Deptt., State of T.N. v. R. Govindaswamy. After referring to various judgments on this issue, in paras 5 to 7, this Court held as under: (SCC pp. 770-71)

“5. The issue involved here remains restricted as to whether the services of the part-time sweepers could have been directed by the High Court to be regularised. The is no more res integra.

6. In State of Karnataka v. Umadevi (3) (supra) this Court held as under: (SCC p.40, para 48) '48. ... There is no fundamental right in those who have been employed on dailywages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily-wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules.'

7. In Union of India v. A.S. Pillai⁹ this Court dealt with the issue of regularisation of part-time employees and the Court refused the relief on the ground that part-timers are free to get themselves engaged elsewhere and they are not restrained from working elsewhere when they are not working for the authority/employer. Being the part-time employees, they are not subject to service rules or other regulations which govern and control the regularly appointed staff of the department. Therefore, the question of giving them equal pay for equal work or considering their case for regularisation would not arise.”

10. Admittedly, the respondent's appointment is not in accordance with the constitutional scheme by regular advertisement and he is merely a daily-wager who has been directed to be regularised by the Labour Court. The order of the

Labour Court runs contrary to the decision of the Supreme Court in State of Karnataka (supra) followed in A. Singamuthu's case (supra).

11. Applying the aforesaid principles of law laid down by the Supreme Court in the aforesaid cases, the present writ petition stands partly allowed to the extent that the impugned order does not warrant any interference to the order of reinstatement. However, so far as grant of 50 percent backwages is concerned, the writ petitions of the State so far as two other workers whose cases were also decided along with the order under challenge in the present writ petition i.e. WPL No.7069 of 2011 and 7347 of 2011, wherein this court had already decided the same upholding the order of reinstatement with 50 percent backwages, however, the order of regularization was set aside. Therefore, in view of the identical matters already being disposed of this High Court in the aforesaid two writ petitions vide judgment dated 01.08.2018, the present writ petition also deserves to be and is accordingly partly allowed in similar terms i.e. the order of reinstatement with 50 percent backwages is affirmed, however, the order of regularization stands set aside/quashed.
12. The writ petition accordingly stands partly allowed and disposed of.

Sd/-

(P. Sam Koshy)
Judge