

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPL No. 32 of 2021

1. State Of Chhattisgarh Through- Secretary, Water Resources Department, Mahanadi, Atal Nagar, Naya Raipur, Chhattisgarh. (Petitioner No.1 Was Not A Party Before The Learned Labour Court, But Has Been Impleaded As Petitioner No. 1. Herein As It Is Necessary To Implead The State Govt. Through The Secretary Of Concerned Department.)
2. The Executive Engineer Water Resources Division, Chhuikhadan, District- Rajnandgaon, Chhattisgarh.

---- Petitioners

Versus

1. Ramprasad S/o Sarju Patel
 2. Silauram S/o Palturam Patel
 3. Rukhumlal S/o Pusau Patel
 4. Mahesh S/o Jhangal Patel
 5. Kanhaiyaram S/o Jhunau Patel
 6. Dujram S/o Sukhau Patel
 7. Mukesh S/o Narad Lodhi
 8. Kirtan S/o Babulal
 9. Bhuneshwar S/o Hiralal Patel
 10. Rameshwar S/o Sarjural
- All are R/o Village- Hatbanja, Tahsil- Chhuikhadan, District- Rajnandgaon, Chhattisgarh.
11. The Presiding Officer Labour Court, Rajnandgaon, District- Rajnandgaon, Chhattisgarh.

---- Respondents

For Petitioners-State : Mr. Sudeep Verma, Deputy G.A.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

13/04/2021

1. Aggrieved by the award dated 12.02.2020, passed by the Labour Court, Rajnandgaon in case No. 209/I.D.Act/2012/Reference, the present writ

petition has been filed. Vide the impugned award, the Labour Court has granted a relief of reinstatement without back wages.

2. The relevant facts for adjudication of the present writ petition is that the workers involved in the present dispute were engaged by the petitioners in the year 2004 and they continued to discharge their duties up till November, 2011 when abruptly without any notice, without any compensation or salary in lieu of notice, the services were discontinued. The workers immediately raised a dispute before the Labour Court, Rajnandgaon and the matter was registered as Case No. 209/I.D.Act/2012/Reference,. The parties to the dispute were noticed and the petitioners as also the respondents entered appearance and submitted their respective statement of claim and written statement.
3. In the course of evidence the workers examined two of the workers, however on behalf of the Department i.e. the State there was no evidence recorded whatsoever inspite of opportunity being granted. Thereafter, on the basis of the evidence of the workers and the documents produced by the workers, the impugned award has been passed of reinstatement without back wages.
4. The counsel for the petitioners submits that after the award was passed, the workers involved have been reinstated in service and they are discharging their duties as of now.
5. The Contentions of the counsel for the petitioner is that firstly the dispute ought to have been rejected by the Labour Court on the ground of the same having been raised at a belated stage. Secondly, the Labour Court has failed to appreciate the fact that there is no proper

appointment order issued in favour of the respondents nor was they selected appointed or engaged after following any due process of law or any proper selection procedure. Moreover, there was no work available with the petitioner establishment after the new State of Chhattisgarh was established as all the sawmills under the Corporation were all closed before the establishment of the State of Chhattisgarh itself and therefore the petitioner cannot be forced to take the respondents back in service. Moreover, further contention of the counsel for the petitioners is that even if the respondents were at any point of time engaged, the same was purely on daily wage basis on the availability of work and the moment the availability of work was not there, no right as such was available for the respondent to claim employment as a matter of right.

6. Perusal of the impugned award would reveal that in the course of couple of the workers being examined, they had produced before the Labour Court copy of the muster roll and have also produced other documentary proof to show the employment with the State Government. The petitioners inspite of several opportunities have not led any evidence before the Labour Court and in the absence of any evidence on behalf of the petitioners, the Labour Court went further to decide the matter on the basis of available materials. Thus, the finding given by the Labour Court becomes a finding of fact and also a finding based on the materials available on record. In the course of the evidence led by the workers and in the absence of any evidence in rebuttal, moreover the evidence of the workers also showing without any effective cross-examination to disprove the same, the employment

part stands established from the limited documents, which the workers could produce before the Labour Court. Further, it stands admitted that before the discontinuance of service of the workers, there was no notice issued to the workers, nor were they paid any compensation or salary in lieu of notice, etc. Based upon these findings of fact, the Labour Court has granted the relief of reinstatement without back wages.

7. It is also a settled position of law that under the writ jurisdiction, this Court would not interfere with the order passed by the Labour Court as if sitting as an Appellate Court particularly in a case under I.D. Act. The interference would be only to a limited extent whether there is perversity in the finding arrived at by the Court below or the Court has exercised its jurisdiction beyond the powers conferred upon it. The High Court can interfere with factual aspect only when it is convinced that the Labour Court has made patent mistakes in appreciating the evidence or the Court has committed a grave error in law in coming to its conclusions.
8. The jurisdiction under Article 226 of the Constitution of India in examining the correctness of the order of the Labour Court was confined to errors in the decision making process and not on the merits of the decision itself. This Court does not find any infirmity in the decision making process warranting interference.
9. The Supreme Court in the case of **Harjinder Singh v. Punjab State Warehousing Corporation [2010 (3) SCC 192]** 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.'

(State of Mysore v. Workers of Gold Mines (AIR 1958 SC 923), AIR p.928, para 10.)”

This view has further been reiterated in the case of **Bhuvnesh Kumar Dwivedi v. Hindalco Industries Limited [2014 (11) SCC 85]**.

10. The Petitioners through the present writ petition have failed to show either there being any perversity in the finding or the Court below having exceeded its jurisdiction. In the absence of the two, the finding arrived at by the Labour Court has to be accepted to be proper, legal and justified.

11. 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.....”

12. 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.”

13. In view of the aforesaid judgments, this Court does not find any strong case made by the State Government calling for an interference with the impugned award at this juncture. The writ petition thus deserves to be and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge

Ved