

HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION (L) NO. 104 OF 2012**

State of Chhattisgarh through the Executive Engineer, Water Resources Department, Division Chuikhadan, District Rajnandgaon (CG)

... Petitioner

versus

1. Neelembur S/o Khedu Teli, R/o village Mudhipar, Tahsil Khairagarh, district Rajnandgaon (CG)
2. Shyam Singh S/o Jhagru Gond, R/o village Mudhipar, Tahsil Khairagarh, district Rajnandgaon (CG)

... Respondents

For Petitioner	:	Ms. Sunita Jain, Govt. Advocate
For Respondents	:	Mr. Shikhar Sharma, Advocate.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

28/06/2021

1. The challenge in the present writ petition is to the award dated 05.12.2011 passed in Case No. 61/I.D.Act/2009(Ref.) whereby the Labour Court, Rajnandgaon has granted the relief of reinstatement without back-wages.

2. The brief facts of the case are that the respondents were engaged as daily wage worker under the petitioner-establishment between 03.05.1990 to 04.06.2004 i.e. for a period of roughly 14 years. However, abruptly the services of the respondents were discontinued and the said discontinuance from employment was questioned by way of a dispute raised under the Industrial Disputes Act where the case was registered as Case No.61/I.D.Act/2009(Ref.).

After the pleadings were complete the workers led their evidence. However, though sufficient opportunity for leading evidence to the State was granted, no witness was examined on behalf of the State before the Labour Court. Finally, on the basis of the pleadings and evidences that were brought before the Labour Court, an award was passed on 05.12.2011 ordering reinstatement without backwages.

3. The impugned award was passed on 05.12.2011 and it is stated by the learned counsel for the State that the workers have since been reinstated in service on 27.04.2012 itself and since then they have been continuously working under the petitioners.

4. Learned counsel for the petitioner assailing the impugned order would submit that the Court below has committed an error of law inasmuch as it has not appreciated the contention of delay and latches raised by the department in its proper perspective. According to the counsel for the petitioner, the services of the respondents were discontinued in the year 2004 and they raised a dispute in the year 2009. As such, there is a delay of about 5 years in raising the dispute and no justified reason or explanation has been given by the respondents for not raising the dispute within 5 years of time. Therefore, the reference should have been answered against the respondents and thus prayed for the quashment of the award.

5. However, learned counsel appearing for the respondents-employee opposes the petition on the ground that the award passed by the Labour Court is a well reasoned and speaking order and the same does not warrant any interference. He submits that since the finding of the Labour Court is based on the evidence which has come on record, it would amount to the finding of fact which cannot again

be interfered lightly by this Court. He further submits that the petitioner-establishment have not been able to show any perversity in the finding of the Labour Court and unless there is a perverse finding, the writ Court should not interfere with the order of the Labour Court. Thus, prayed for the dismissal of the writ petition.

6. Having considered the rival contentions put forth by the counsel appearing on either side and on perusal of the record, so far as the first contention of the petitioner in respect of delay is concerned, the issue stands well settled by a catena of decisions of the Hon'ble Supreme Court starting from the case of **Ajaib Singh v. Sirhind Cooperative Marketing-cum-processing Service Society Limited and another**¹, **Gurmail Singh v. Principal, Govt. College of Education and others**² and **Kuldeep Singh v. General Manager, Instrument Design Development and Facilities Centre and another**³.

7. In view of the aforesaid legal pronouncements of the Hon'ble Supreme Court, this Court does not find the issue of delay decided by the Labour Court as bad in law or perverse in any manner. So far as the order of reinstatement is concerned, there was a specific averment on the part of the petitioner-establishment themselves who had engaged the respondents on 03.05.1990 and this fact is not disputed, rather admitted. They have also admitted the fact that the respondents had continued in employment till 04.06.2004 which amounts to the respondents having put in service for almost 14 years. This is sufficient to draw an inference that the respondents must have worked continuously for a period of 240 days in a calendar year. In

1 (1999) 6 SCC 82

2 (2000) 9 SCC 496

3 (2010) 14 SCC 176

the given factual matrix of the case, if the Labour Court reaches to the conclusion that the discontinuance/termination of the respondents is bad in law, the same cannot be held to be contrary to the evidence which has come on record.

8. 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 Authority particularly in a case under the Industrial Disputes 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 admitting evidence illegally or the Court has committed a grave error in law in coming to its conclusions.

9. 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.

10. The Hon'ble 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 Mines⁴, 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]**.

11. The petitioner-establishment 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.

12. It is made clear that since the respondents had not challenged their discontinuance in the year 2004 for a period of 5 years and admittedly during the said period they would be in employment, they may not be entitled for the benefit of continuity of service for the said 5 years of period, that is, between 2004 to 2009.

13. This Court is also reluctant to set aside the impugned order of the Labour Court for the reason that pursuant to the award, the petitioner State Government reinstated the workers in service in the year 2012 and since then they have been continuously working. As such, they have by now put in service for almost 10 years after the award was passed.

14. In this view of the matter, this Court does not find any strong case to be made out on behalf of the petitioners calling for an

4 AIR 1958 SC 923

interference with the impugned award of the Labour Court and the writ petition being devoid of merits, the same is accordingly dismissed.

Sd/-
(P. Sam Koshy)
JUDGE

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