

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**WA No. 517 of 2017**

{Arising out of Order dated 10/01/2017 passed in Writ Petitions No. 4037 / 2003 & 3808/2003 by the learned Single Judge}

- Smt. Bittu Sharma W/o Govind Sharma, aged about 58 years, R/o Ajad Chowk, Suhaga Mandir Road, Raipur, Chhattisgarh

-----Appellant/ Petitioner**VERSUS**

1. State of Chhattisgarh through the Secretary, Deptt. of Public Works, D.K.S. Bhavan, Raipur Chhattisgarh Now, Mahanadi Bhawan, Mantralaya, New Raipur Chhattisgarh
2. Chief Engineer, PWD, National Highway, Nalgarh Chowk, Raipur Chhattisgarh
3. The Sub-Divisional Officer National Highway Sub-Division, PWD, Pension Bada, Raipur Chhattisgarh
4. Industrial Court, Chhattisgarh, Raipur Chhattisgarh

-----Respondents

For Appellant	: Mr. Bharat Rajput, Advocate.
For Respondent-State	: Mr. Ashish Tiwari, Govt. Adv.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge**
Judgment on Board**Per Parth Prateem Sahu, J.****16/03/2021**

1. Challenge in this appeal is to the order dated 10.01.2017 passed by learned Single Judge in Writ Petition No. 4037/2003 whereby learned Single Judge dismissed the writ petition filed by appellant.
2. Writ Appeal has been filed on 22.10.2017, challenging the order dated 10.01.2017 along with an application for condonation of delay in filing the appeal. The reason assigned for condoning the delay in filing the appeal is that the appellant was not aware of the procedure prescribed for filing appeal. This application for condonation of delay was replied by the Respondent-State, pleading therein that there is no proper explanation of

delay in filing the appeal, hence, application as well as appeal is liable to be dismissed.

3. Upon going through the contents of the application filed by the appellant for condonation of delay, except the ground that the appellant is not aware about the procedure prescribed for filing appeal, no other ground is mentioned therein. Ignorance of law is not a ground for condoning the delay in filing the appeal. As there is no proper explanation, much less the satisfactory explanation offered by the appellant for condoning the delay in filing the appeal, application for condonation of delay in filing the appeal is dismissed.

4. On merits of the case, upon perusal of the record would show that the case of the appellant is that, she was engaged by the respondent since 01.11.1989 on daily wages on the post as 'Copyist', her services were terminated on 05.10.1995 without any prior notice to her. Appellant filed an application under Section 31(3) read with Section 62 of the Madhya Pradesh Industrial Relations Act, 1960 (now Chhattisgarh Industrial Relations Act, 1960). Initially the application was dismissed on the ground of delay which was challenged before the Industrial Court. Appeal before the Industrial Court also came to be dismissed. The order of Industrial Court was challenged before the High Court, which was allowed, remitted back the case with direction to decide the case on its merits. The Labour Court after getting the case back on remand has given opportunity of hearing to all the parties concerned, recorded evidence and allowed the application of the appellant on the ground that no notice was issued prior to terminating of the service of appellant. Appellant worked for about 5 years, as such, under the Industrial Standing Order, appellant accrued her right of permanent employment and ordered for her reinstatement. The order of labour Court was put to challenge in an appeal before the Industrial Court by Respondent-employer. The Industrial Court partly allowed the appeal,

while setting aside the order of Labour Court directing Respondent for reinstatement of appellant as permanent employee on earlier post, has affirmed the order of Labour Court for reinstatement of appellant as the termination was made without any prior notice to her. The appellant and respondent have challenged the order of Industrial Court before the High Court by filing separate writ petitions. Learned Single Judge by impugned order dismissed both the writ petitions holding that the appellant is not entitled for classification as a permanent employee as she could not able to prove her engagement by the respondent-employer on a clear vacant post. Writ petition filed by the respondent was dismissed on the ground that the employer failed to prove that the appellant has not worked for 240 days in one calendar year preceding her termination by placing cogent evidence. Learned Single Judge taking into consideration the ruling of Hon'ble Supreme Court in the case of **Gopal, Krishnaji Ketkar v. Mahomed Haji Latif and others, AIR 1968 SC 1413** affirmed the order of courts below of drawing adverse inference against the respondent-employer for not placing on record the best evidence available with them to prove that the appellant has worked less than 240 days in one calendar year preceding her termination. Aggrieved by the aforementioned order passed by learned Single Judge, appellant employee has filed this appeal with a prayer of setting aside the impugned order passed in WP No. 4037/2003 and to restore the order dated 12.08.2002 passed by the Labour Court.

5. Mr. Bharat Rajput, learned counsel for the appellant would submit that the appellant has continuously worked since 01.11.1989 to 05.10.1995 for about five-years, hence, in view of the definition abstracted by the Industrial Court in its order of permanent employee, appellant is entitled for classification of status of permanent employee. He submits that the appellant has worked for about 6 months continuously and as per the definition, if any employee has continuously worked for six-months, he/ she

attains deemed status of permanent employee. He further submits that in pursuance of the order passed by this Court on 07.03.2019, she has filed an application for taking additional documents on record, along with which, two documents (Document- No.1 & Document No.2) are placed on record, from which it is apparent that the appellant has been working on the vacant post. He submits that the additional documents be taken into consideration and the order of Labour Court be restored.

6. Mr. Ashish Tiwari, learned counsel representing the State, while opposing the submissions made by learned counsel for the appellant, submits that the Industrial Court and the learned Single Judge, after taking into consideration the definition of employee, has correctly arrived at a finding that the appellant has not attained the status of permanent employee. He submits that merely working for more than 6 months, appellant cannot get the status of permanent employee. Pre-condition for an employee for getting status of permanent employee upon working continuously for more than six-months is that the said employee to be engaged on a clear vacant post and in this case, appellant had not proved before the courts below that she had been working against a clear vacant post. He further contended that the documents placed on record by the appellant, prima facie, from its face, appears to be concocted document. He submits that in Document No.1, date of letter is mentioned as 31.12.1988, whereas in the details mentioned under the head of reference, the date of letter has been shown as 04.08.2000. He submits that if the letter/ Document No.1 is dated 30.12.1988 then there cannot be a date of 10 years advance ie. 04.08.2000 under the heading reference. He further pointed out that Document No. 2 is incomplete document as the entire document has not been properly photocopied. From perusal of last column, it appears that the entry has been made as “स्वीकृत नहीं था” (*post was not sanctioned*). He submits that there is no merit in the appeal as well, hence, the appeal be

dismissed.

7. We have heard learned counsel for the respective parties and also perused the record of writ petition as well as writ appeal.
8. Perusal of the order Annexure P-2 dated 12.08.2002, passed by labour court, would show that learned Labour Court considering Rule 2(iv) of M.P./ C.G. Industrial Employment (Standing Order) Rule, 1963 (for short "Rules, 1963"), has classified the appellant to be permanent employee, only upon considering that the appellant has worked for more than six-months. Industrial Court had considered the definition of a permanent employee as defined under Rule 2 of Rules, 1963 and came to a conclusion that the appellant failed to prove that she was engaged against a clear vacancy and held that the appellant is not entitled for classification to be a permanent employee.
9. To appreciate the submission made by learned counsel for the appellant with regard to the finding recorded by the Labour Court and Industrial Court, we find it appropriate to extract the definition of a 'permanent employee' under Rule 2(i) and 'Temporary Employee' under Rule 2(vi) of the Rules, 1963 which is as under:

"2. Classification of Employees. - Employees shall be classified as— (i) permanent, (ii) permanent seasonal, (iii) probationer, (iv) Badlies, (v) apprentices, and (vi) temporary:

(i) A 'permanent" employee is one who has completed six months' satisfactory service in a clear vacance in one or more posts whether as a probationer or otherwise, or a person whose name has been entered in the muster roll and who is given a ticket of permanent employee;

(ii) x x x x

(iii) x x x x

(iv) x x x x

(v) x x x x

(vi) 'temporary employee' means an employee who has been employed for work which is essentially of a temporary character, or who is temporarily employed as an additional employee

in connection with the temporary increase in the work of a permanent nature; provided that in case such employee is required to work continuously for more than six months he shall be deemed to be a permanent employee, within the meaning of clause (i) above."

10. Bare perusal of the definitions as above, would show that for becoming a permanent employee, two specific conditions have been formulated ie. an employee who has completed six-months satisfactory service and second, the said service to be in a clear vacancy, meaning thereby that for becoming a permanent employee, employee has to fulfill both conditions as enumerated under Rule 2 of Rules, 1963. Under Rule 2(vi), after defining the Temporary employee, it further defines that the temporary employee who continuously worked for more than six-months shall be deemed to be a permanent employee. If Rule 2(vi) of Rules, 1963 is read as it is, it will lead to absurdity, both the rules are to be applied harmoniously to achieve the very object of Rules, 1963. Further the facts of the case under which the appellant has approached the Labour Court only after her termination of service, from bare perusal of document which is placed on record by the appellant would show that the date mentioned in Document No. 1 appears to have been written by some other person in comparison to the figures and the dates mentioned in the body of the letter. From perusal of the contents of the letter would show that the letter has been written after 04.08.2000 as mentioned in the reference heading, whereas the date of letter as appearing in Document No. 1 is 30.12.1988. In view of apparent flaw in the letter, it cannot be accepted as it is. The other document placed on record is the information/details of the employees who were given appointment after 31.12.1988 i.e. of Deep Kumar Tiwari, appellant Bittu Sharma and one another person. The date of engagement of all the persons has been shown as 10.03.1989, 01.11.1989 and 12.05.1989 respectively. A separate column has been mentioned for the 'post sanctioned' and the 'post not sanctioned' in front of all the three employees who have been shown to be engaged in the year 1989. The

entry made in front of name of appellant would show the entry "post not sanctioned". Appellant, on the date of filing of appeal ie. in the year 2017, is shown to be 58 years.

11. For the foregoing reasons, taking into consideration the facts and circumstances of the case as well as the definition of an employee as 'permanent employee' under Rules, 1963, we are of the considered view that the appellant failed to prove that she was engaged against the clear vacancy. In the aforementioned facts and provisions, we do not find any infirmity in the order passed by learned Single Judge.
12. Appeal being devoid of any substance, which is liable to be and is hereby dismissed accordingly.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge