

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WP(L) No. 115 of 2013**

1. State of Chhattisgarh through the Secretary, Department of Water Resources, Mahanadi Bhawan, Mantralaya, Raipur (CG)

(The petitioner no.1 was not a party before the learned Labour Court but has been impleaded as petitioner no.1 in the instant petition as the proper course is to implead the State Government through the Secretary of the concerned department)

2. The Executive Engineer, Water Resources Department, Chhuikhadan, P.S.Chhuikhadan, District Rajnandgaon (CG)

---- Petitioners**Versus**

1. Shri Ram Kumar S/o Suberam Gadariya, R/o Village Kaudiya, Post Dewaribhath, PS Khairagarh, Tahsil Khairagarh, District Rajnandgaon (CG)
2. The Labour Court Rajnandgaon, District Rajnandgaon, Chhattisgarh

---Respondent

For Petitioners	:	Ms. Sunita Jain, Govt. Advocate
For Respondent	:	Mr. Abhishek Sharma, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****13/09/2021**

1. Aggrieved by the award dated 09.10.2012 the present writ petition has been filed. The said award was pronounced on 10.12.2012 in Case No. 219/I.D.Act/Reference/2011. Vide the impugned award, the Labour Court has granted the relief of reinstatement without back wages in favour of the respondent-worker.
2. Pursuant to the award the respondent-worker has been taken back in

service w.e.f. 22.01.2013 and since then the worker has been continuously working with the respondents. As per the records available, as per the pleadings and also as per the award of the Labour Court, the case of the respondent-worker was that he was engaged by the department of the petitioners establishment between 04.05.1998 to 29.06.2007 and the respondent-worker had worked for a period of around 9 years. Thereafter, the services of the worker abruptly discontinued w.e.f. 30.06.2007. However, at the time of discontinuance, the worker was neither issued a show cause notice nor any salary in lieu of notice or was he paid any retrenchment compensation at that point of time. The respondent-worker immediately raised a dispute before the concerned labour department which was referred to the Labour Court where the matter was registered as Case No. 219/I.D.Act/Reference/2011. After the pleadings were complete and the evidences were recorded, the Labour Court vide its award dated 09.10.2012 answered the reference in favour of the respondent-worker and granted the relief of reinstatement without back wages. Subsequent to the award of the Labour Court, the worker has been reinstated in service w.e.f. 22.01.2013 and by now he has been put more than 8 years of continuous service. Thus, if the previous period of service is counted with the present period which the petitioner has worked, the total number of service rendered by the worker is almost 17-18 years.

3. The challenge to the award by the petitioners is on the basis of the evidence given by the witnesses of the Department before the Labour Court. According to the petitioners, the witnesses had categorically denied the employment of the worker at any point of time and they had

also made a statement that the department did not have a system of engaging daily wage workers and the works were executed by the department by awarding contract after the tenders were finalized.

4. The contention of the respondent-worker is that the award is a finding of fact and there is hardly any scope of interference. Secondly, it is contended that since the worker has already put in more than 8 ½ years of service after his reinstatement and he has also crossed the age of 50 years, it would not be proper to interfere with the award particularly when at this stage the worker would find it difficult in getting a different employment else where.
5. On perusal of pleadings and the contentions put forth by the petitioners and taking note of the finding of the Labour Court, this Court has no hesitation in reaching to the conclusion that the finding arrived at by the Labour Court is a finding of fact based upon the evidence both oral and documentary that has been brought before the Labour Court by either side. The department also has not produced any documentary evidence before the Labour Court to substantiate their contentions. There is nothing on record by which it can be said that the finding is a perverse finding or contrary to the evidences on record. Thus, the scope of interference to a finding of fact gets reduced to the minimal.
6. One has also to appreciate the fact that this Court while entertaining the writ petition under Article 226 of the constitution of India does not sit as an Appellate Authority over the finding of a Labour Court. The right conferred upon this Court is only to the extent of verifying whether there has been an excess of jurisdiction or any perversity on the part of the Labour Court while deciding the matter in the course of passing of

the impugned award. No such grounds strong enough have been made out by the petitioner calling for an interference to the award passed by the Labour Court.

7. It is settled position of law that this court while exercising the power of judicial review under Article 226 of the Constitution of India and while testing the veracity of an order passed by the Labour Court, the High Court would not sit as an appellate Court. It is also settled position of law that the High Court would not threadbare consider the entire evidence that has been adduced before the Labour Court and reach to a different conclusion which again is impermissible.
8. The scope of interference exercising the power of judicial review by the High Court is only in the event if the finding of the Labour Court is a perverse finding or is one which is contrary to the evidence which has come on record.
9. 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.....”
10. 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."

11. The Supreme Court in the case of "**Harjinder Singh v. Punjab State Warehousing Corpn.**" reported in **(2010) 3 SCC 192**, in paragraph 21 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.'

(A.I.R 1958 SC 923 [State of Mysore v. Workers of Gold Mines, AIR p.928, para 10.]"

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

13. As regards the contentions of the State Counsel so far as granting of lump sum compensation in lieu of reinstatement and the judgments relied upon by the State in this regard, this Court is of the opinion that those judgments can not be applied in the factual back-drop of this

case. Secondly, the cases referred to and relied by the Petitioners/State are those where the worker involved in a dispute had worked for a very few period of time as compared to the greater period of time he has remained out of employment. In the instant case, on the contrary, admittedly the worker had put in continuous 9 years of service between 1998 to 2007 and from the date of award also the worker has put in around 8 ½ years of service.

14. Moreover, it would be difficult at this juncture, when the petitioner has crossed the age of 50 to discontinue him from service after paying him lump sum compensation in lieu of reinstatement, as the worker would not be in a position of seeking a fresh employment elsewhere at this stage of his life.

15. For all the aforesaid reasons, this Court is of the opinion that no strong case as such has been made out calling for an interference with the impugned award. Thus affirming the impugned award the writ petition stands rejected.

16. No order as to cost. Consequences to follow.

Sd/--
(P. Sam Koshy)
Judge