

HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION (L) NO. 105 OF 2020**

1. State of Chhattisgarh, through Secretary, Revenue Department, Mahanadi Bhawan, Mantralaya, Capital Complex, Atal Nagar, Raipur, District Raipur (CG). PIN: 492101.
2. The Collector, Balodabazar, District Balodabazar-Bhatapara (CG). PIN: 493332. **... Petitioners**

versus

- Ram Lochan Sahu, S/o Shri Jayram Sahu, aged about 38 years, R/o Moolchand Complex, Baba Tea Stall, behind Surya Hotel, Bus Stand, Bilaspur, Tehsil and District Bilaspur (CG). PIN: 495004. **... Respondent**

For Petitioners	:	Mr. Jitendra Pali, Dy. A.G.
For Respondent	:	Mr. Sunil Sahu, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****[15/09/2021]**

1. Aggrieved by Award dated 11.5.2016 passed by the Labour Court, Balodabazar-Bhatapara in Case No.7/P.W.Act/2015 and which has been subsequently affirmed by the Industrial Court, Raipur in an Appeal vide its Order dated 15.5.2017, the present Writ Petition has been filed by Petitioners.

2. Brief facts relevant for the disposal of the present Writ Petition are that the Respondent was appointed vide Order dated 16.12.2011 on the post of Peon in the Revenue Department of the then undivided District Raipur and was posted at the Office of the Sub Tahsildar, Lavan (presently under District Balodabazar-Bhatapara). At the time of appointment of Respondent, he was subjected to document verification and it was found that the certificate which the employee had obtained for employment was not proper and was a fake and forged document. The District Collector, Balodabazar-Bhatapara, therefore, vide its Order dated 3.12.2013 restrained the Respondent from discharging his duties. Thereafter, an enquiry was conducted and the Respondent employee was finally terminated from services vide Order dated 21.5.2015.

3. The aforesaid Order of termination has been challenged by Respondent worker neither before any Court of law nor on the administrative side. However, after much long duration of his termination, the Respondent moved an application under Section 15(2) of the Payment of Wages Act, 1936 before the Labour Court, Balodabazar-Bhatapara, i.e., the Authority under the Payment of Wages Act, claiming for wages for the period between December, 2013 and May, 2015 that is the period during which the Petitioner Department was conducting an enquiry before the order of dismissal was passed and the wages of Respondent in-fact was on an oral instructions of the District Collector stopped from the month of October, 2013 itself.

4. The Labour Court, Balodabazar-Bhatapara had registered the matter as Case No.7/P.W.Act/2015 and issued notice to the Petitioner Department, i.e., the Office of the Collector, District Balodabazar-Bhatapara. The Department on receipt of notice appeared before the Labour Court and both the parties submitted their respective Statement of Claim and the Written Statement. Thereafter, the said Department did not pursue the proceedings before the Labour Court. The Labour Court finally vide its Award dated 11.5.2016 (Annexure P-1) partly allowing the application of Respondent worker ordered the Department for payment of salary to the worker for the period between October, 2013 and May, 2015, i.e., to the tune of Rs.2,63,340/-. The Labour Court also imposed penalty for an amount equal to the amount awarded, that comes to total of Rs.5,26,680/-, to be paid within a period of 30 days failing which the Department shall be liable to pay interest at the rate of 12% thereon.

5. Since the Labour Court had passed an *ex parte* Order, the Department moved an application on 3.10.2016 for setting aside the said *ex parte* Order dated 11.5.2016. The Labour Court thereafter had rejected

the said application on 5.1.2017. Both these Orders were thereafter subjected to challenge by the Department in an Appeal under Section 17 of the Payment of Wages Act before the Industrial Court, Raipur. However, while preferring the Appeal, the Department did not comply with the statutory requirement of depositing of the entire amount awarded by the Labour Court, as is required under Section 17(1)(a) of the Act. The Industrial Court, therefore, since the Appeal was not properly constituted *inasmuch* as the receipt of depositing of the entire amount awarded by the Labour Court was not enclosed along with the memo of Appeal, rejected the Appeal of the Department vide its Order dated 15.5.2017 (Annexure P-1). Thus, the Award dated 11.5.2016 passed by the Labour Court attained its finality.

6. Petitioners i.e. the State Authorities thereafter after a lapse of three and half years suddenly woke up from slumber and filed the present Writ Petition on 16.10.2020. In between, the worker i.e. the Respondent had filed a Writ Petition i.e. W.P.(L) 153/2017 before this Court seeking for implementation of the Award passed by the Labour Court which this Court vide its Order dated 12.9.2017 had declined to interfere while reserving the right of the worker to initiate execution proceeding before the concerned Court. Even then the State Authorities did not take steps for challenging the Award of the Labour Court or for that matter the Industrial Court and finally the present Writ Petition has been filed, as stated earlier, on 16.10.2020.

7. Shri Jitendra Pali, learned Deputy Advocate General, appearing for Petitioners - State Authorities submits that the Award of the Labour Court is *per se* illegal and is not sustainable, for the reason that since the Respondent was an employee of the Revenue Department, the

application under the Payment of Wages Act itself would not have been maintainable before the Labour Court.

8. Further contention of learned Deputy Advocate General is that since the Respondent had obtained the employment by playing fraud and by relying upon the fake and fraudulent document, he would not be entitled for any relief as the entire payment of the worker would be without any legal sanctity. This aspect was not considered by the Labour Court.

9. It was also contended by learned Deputy Advocate General that the Award of the Labour Court warrants interference also on the ground that in addition to payment of wages for the period from October, 2013 to May, 2015, the Labour Court has also awarded penalty of one time of the total amount awarded, which again is without any justification, particularly when the facts are admitted of the worker having obtained the employment by playing fraud. He further submits that they are also aggrieved of the interest and the rate of interest awarded by the Labour Court, which firstly was not justified and secondly was on the higher side.

10. Shri Sunil Sahu, learned Counsel appearing for Respondent worker, submits that the present Writ Petition itself at this juncture is not sustainable as it suffers from delay and latches. Next he submits that the Writ Petition also is not maintainable, for the reason that the Appeal of the Department before the Industrial Court itself was not maintainable and the same has been rejected on technical ground of not being proper in terms of the requirement under Section 17(1)(a) of the Payment of Wages Act.

11. Further contention of Shri Sahu is that it is a case where the Order of the Industrial Court was passed on 15.5.2017 and the present Writ Petition has been filed by Petitioners on 16.10.2020 without giving any plausible and justifiable reason for not filing the petition earlier or the reason which prevented them from filing the petition earlier. According to

Shri Sahu, even otherwise the Award of the Labour Court is an *ex parte* Order, no justifiable reasons have been given by the Petitioners before the Court below for setting aside the said *ex parte* Order. He submits that the Petitioners were fully aware of the proceedings of the Labour Court and that the Petitioners having not contested to the proceedings, compelled the Labour Court for proceeding *ex parte* against them. Therefore, for all these finding of facts coupled with the laches of delay, the present Writ Petition deserves to be dismissed.

12. Having heard the contentions put forth on either side and on perusal of record, some of the admitted factual merits of the case, as its evident, are that the Respondent got appointed in the Revenue Department under the then undivided District Raipur and was posted at Sub Tahsil, Lavan (now under District Balodabazar-Bhatapara). After the appointment of Respondent it has been found that he had obtained the employment on the basis of fake and fraudulent document *inasmuch* as his certificate was not found genuine. After an enquiry the services of Respondent stood terminated from 21.5.2015. The said Order of termination has not been challenged by Respondent thereby the finding of fact that he had obtained the employment by fraud stands accepted by Respondent himself.

13. The only issue is, as to whether the Respondent worker would be entitled for the wages for the period between October, 2013 and May, 2015. The wages of the worker was stopped initially by an oral Order of the District Collector in the month of October, 2013 and thereafter vide a written Order of the District Collector passed in the month of December, 2013 he was restrained from discharging his duties. Finally, he stood terminated on 21.5.2015. There is no provision of law under the Service Rules by which the Disciplinary Authority can withhold the entire wages payable to an employee even pending the enquiry. In this case,

surprisingly, the Respondent was not even suspended pending the enquiry.

14. Moreover, one cannot lose sight of the fact that the order of appointment even had a specific clause that in the event of the certificates provided for employment were found to be false and fake, services of the employee concerned can be terminated without any further opportunity of hearing. This step also was not taken by Petitioner Department and they decided to conduct an enquiry with an intention for providing an opportunity of hearing and also for compliance of the principles of natural justice. During this period of enquiry, the status of Respondent would be that of an employee of Petitioner Department. The employer-employee relationship stood terminated only on the date of issuance of termination order on 21.5.2015. Therefore, in the opinion of this Court, there is no strong case made out by Petitioners in this case so far as the findings of the Labour Court for grant of salary for the period between October, 2013 and May, 2015 is concerned.

15. Now, we come to the second aspect as to whether the Labour Court was justified in awarding the penalty to the tune one time of the total amount awarded and also in awarding interest at the rate of 12%, if the amount is not paid within 30 days.

16. The Award of the Labour Court is that of May, 2016 by which time the services of Respondent already stood terminated. The Order of termination was not challenged. The ground of termination was of having obtained employment by fraud and also relying upon fabricated document. This being the factual matrix of the case, the question is whether in spite of all these should the Respondent be awarded premium on the unpaid salary which was withheld only on account of Respondent facing financial hardships. The fact that the Respondent has not challenged the Order of

termination is sufficient foundation of his acceptance of the findings of the Authorities that he had obtained the employment by playing fraud. In spite of that if the Respondent is further compensated by way of penalty of awarding equal amount would be giving a premium to Respondent worker in spite of his alleged act of misconduct.

17. As regards the awarding of interest is concerned, one may not lose sight of the fact that the Labour Court while granting interest also ought to have appreciated the rate of interest prevailing then. Undoubtedly, in 2016 when the Award was passed, 12% interest was not the normal rate of interest prevailing. In the entire Award of the Labour Court there is no justification given whatsoever justifying the compensation by way of penalty awarded to the tune of one time of the principal amount awarded. It goes without saying that the penalty is to be imposed in the event of there is a gross negligence on the part of the employer in releasing of payment or in avoiding the wages which the worker otherwise is legally entitled for. In the instant case it is explicit that the worker himself has accepted his termination Order and has not questioned the same on the administrative side or before any Court of law which establishes the fact that his initial appointment was by playing fraud. In that event the granting of compensation for the unpaid salary does not seem to be in any manner justified and reasonable and the same therefore to that extent deserves to be and is accordingly set-aside.

18. In the same factual backdrop what also has to be considered is, was it justified on the part of the Labour Court in granting interest at the rate of 12% upon not depositing the amount within 30 days. As discussed earlier, even at the time when the Order was passed by the Industrial Court the rate of interest prevailing at the nationalized Banks then was also around 6% per annum. Yet, however, the Labour Court while

imposing interest on the amount awarded, has fixed the rate of interest at 12% for which again there has been no explanation or justification or any reason shown in the impugned Award of the Labour Court for awarding the rate of interest on the higher side. The rate of interest so awarded therefore also is unjustified and this Court is of the opinion that the rate of interest which the Respondent worker would be entitled for has to be 6% per annum instead of 12% per annum and the Award of the Labour Court therefore to that extent also stands modified.

19. This Court is quite aware of the fact that true it is that the Appeal of Petitioner Department was not maintainable before the Industrial Court for non-compliance of the provisions of Section 17(1)(a) of the Payment of Wages Act and also is quite aware that the present Writ Petition suffers from inordinate delay and latches as it has been filed after three and half years of the Order passed by the Industrial Court. In spite of that, it strikes the very conscious of this Court that when such a huge amount of money which at the time of execution proceeding has crossed more than Rs.8.00 Lakh would have to be paid to the Respondent worker in spite of the fact that he had obtained the employment by playing fraud and the withholding of the wages was only for the period during which the enquiry was being conducted.

20. It would be relevant at this juncture to take note of the decision of the Hon'ble Supreme Court in the case of "State of Bihar & Ors. Vs. Devendra Sharma" [2020 (15) SCC 466] where in para-36 & 37 it has been held as under:-

"36) We do not find any merit in the said argument. A Full Bench of the High Court in Rita Mishra & Ors. v. Director, Primary Education, Bihar & Ors., while dealing with appointment in the education department claiming salary despite the fact that letter of appointment was forged, fraudulent or illegal, declined such claim. It was held that the right to salary *stricto sensu* springs from a legal right to validly

hold the post for which salary is claimed. It is a right consequential to a valid appointment to such post. Therefore, where the very root is non-existent, there cannot subsist a branch thereof in the shape of a claim to salary. The rights to salary, pension and other service benefits are entirely statutory in nature in public service. Therefore, these rights, including the right to salary, spring from a valid and legal appointment to the post. Once it is found that the very appointment is illegal and is non est in the eye of law, no statutory entitlement for salary or consequential rights of pension and other monetary benefits can arise.

37) Such judgment of the Full Bench was approved by the three-Judge Bench of this Court in *R. Vishwanatha Pillai v. State of Kerala & Ors.* This Court held as under: 11 AIR 1988 Patna 26 : (2004) 2 SCC 105

“17. The point was again examined by a Full Bench of the Patna High Court in *Rita Mishra v. Director, Primary Education, Bihar* [AIR 1988 Pat 26 : 1988 Lab IC 907 : 1987 BBCJ 701 (FB)]. The question posed before the Full Bench was whether a public servant was entitled to payment of salary to him for the work done despite the fact that his letter of appointment was forged, fraudulent or illegal. The Full Bench held: (AIR p. 32, para 13)

“13. It is manifest from the above that the rights to salary, pension and other service benefits are entirely statutory in nature in public service. Therefore, these rights, including the right to salary, spring from a valid and legal appointment to the post. Once it is found that the very appointment is illegal and is non est in the eye of the law, no statutory entitlement for salary or consequential rights of pension and other monetary benefits can arise. In particular, if the very appointment is rested on forgery, no statutory right can flow from it.”

18. We agree with the view taken by the Patna High Court in the aforesaid cases.”

21. Respondent would be entitled for the salary during the said period also for the reason that during this period also the Petitioner Department has taken work from the Respondent and as such the Respondent has also discharged his duties till the Order of termination was passed except for payment of salary which was withheld by the Order of the District Collector.

22. Accordingly, the Writ Petition is partly allowed. The Award of the Labour Court stands modified to the extent that the Respondent worker would be entitled for only the wages between October, 2013 and May, 2015 that is to an amount of Rs.2,63,340/- with interest thereon at the rate of 6% per annum from the date of Order of termination till the payment has been made by Petitioner Department before the execution Court. The execution Court is directed to make necessary calculation accordingly and distribute the amount to the worker to that extent and the balance of amount lying with the execution Court shall be refunded back to Petitioner Department forthwith.

23. Writ Petition accordingly stands allowed in part.

Sd/-
(P. Sam Koshy)
Judge

/sbarad/