
(2019) 02 CHH CK 0173
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 924 Of 2019

Kismat Rao More

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision : 13-02-2019

Acts Referred:

Citation : (2019) 02 CHH CK 0173

Hon'ble Judges : P. Sam Koshy, J

Bench : Single Bench

Advocate : Sumit Shrivastava, Arvind Dubey

Final Decision : Disposed Of

Judgement

P. Sam Koshy, J

1. The challenge in this petition is to the order dated 05.10.2018 (Annexure P/1) whereby the claim of the the petitioner for regularization has been rejected.

Â 2. Present is the second round of litigation. The earlier round of litigation was WPS No.7288 of 2017 which got disposed of on 02.01.2018 whereby

this court had directed the respondents to consider the case of the petitioner for regularization as per circular dated 05.03.2008. The impugned order of

rejection has been passed on the ground that the petitioner has not worked continuous between the period 1989 to 1997 and there was also period of

employment rendered by the petitioner as daily wage worker and therefore he was not entitled for the benefit of circular dated 05.03.2008.

3. The petitioner took the court through the facts of the case where it is contended by the petitioner that he was initially engaged as daily wage

employee in the year 1987 and continuous in employment till December, 1999

when his services stood discontinued. The petitioner thereafter raised industrial dispute and the matter stood referred to the Labour Court, Rajnandgaon vide case No.137/ID Act/Ref./2012. The Labour Court vide its award dated 09.11.2012 granted the relief of reinstatement in service without back wages treating discontinuance of service of the petitioner from 1999 to be bad in law.

4. According to the petitioner, since the Labour Court has held that discontinuance of the services of the petitioner was bad in law, for all practical purposes, the services of the petitioner from the date of discontinuance till the date of reinstatement has to be treated in continuous employment.

Pursuant to the award dated 09.11.2012, the petitioner has been reinstated in service w.e.f. 01.01.2013 and since then he is in continuous employment.

5. According to the counsel for the petitioner, the said award of the labour Court has not been challenged before any other forum and as such the

award has become final. Counsel for the petitioner further submits that in the light of the judgment of Division Bench of this Court in the case of

Tukaram Vs. State of Chhattisgarh, WPS No. 1703/2015 and others, analogous writ petitions decided on 16.05.2017, the petitioner has to be given the

advantage of counting his service from the date of his initial appointment till date and the entire intervening period has to be treated as continuous

service and thereby the case of the petitioner should have been considered, in the light of the circular dated 05.03.2008.

6. The State counsel however opposing the petitioner, submits that the petitioner would not be entitled for any relief as sought and the impugned order,

Annexure (P-1) seems to be a factually justified order. State counsel further submits that it is a case where the petitioner has raised a claim before the

labour Court after about 13 years and therefore that intervening 13 years period cannot be counted. He further refers to the judgment of Tukaram

(Supra) wherein he submits that judgment would also state that it is the period during which the petitioner was litigating before the labour Court that

would be counted for continuity in service, not for the date during which he had not raised the industrial dispute.

7. Given the aforesaid facts and the circumstances of the case, it would be relevant at this juncture to refer to the paragraph 26 of the judgment of

Tukaram (Supra). For ready reference, it has been reproduced herein under :-

26. Accordingly, these Writ Petitions are allowed. The question of law discussed earlier to be decided in these petitions is answered in the affirmative

in favour of the petitioners-workers holding that they would not fall in the category of litigious worker and that they would be entitled for continuity of service for the period they were out of employment while they were litigating before the Labour Court.

8. From the aforesaid observations, it is abruptly clear that this Court's decision was clear on this count that it is the litigating period for which the

petitioner would be entitled for the benefit. Facts of the present case when considered from the judgment of the labour Court, it appears that he has

worked between 1987 to 1999 thereafter he was removed. The removal has been held illegal by an order passed on 09.11.2012. Thereafter, he has

been reinstated. The dispute was raised by the petitioner for the first time in the year 2012, when the reference was made to the labour Court.

Between 1999 to 2012, the petitioner had infact not worked with the department neither had he challenged his removal before any forum. Keeping in

view the judgment of the Division Bench in the case of Tukaram (Supra), it would clearly reflect that the litigating period for petitioner would be from

2012. Thus, it is only from 2012 onwards, the petitioner would be deemed to be in continuous service. In the aforesaid factual back drop the total

length of service so far as the petitioner is concerned, would be between 1987 to December, 1999 and thereafter from the year 2012 till date. As he

has since been reinstated after the award of the labour Court, if we take the said two periods that is from 1987 to 1999 and 2012 till date apparently

the petitioner has put in more than 10 years of service and the initial appointment of the petitioner was prior to 31.12.1997, therefore, the respondent

authorities would have to accordingly reconsider the case of the petitioner and pass a fresh order, so far as his claim for regularization is concerned

keeping in view the circular dated 05.03.2008.

9. The writ petition accordingly stands disposed off and the impugned order (Annexure P-1) to that extent stands set aside/quashed. Let a fresh order

be passed by the respondent authorities within a period of 90 days from the date of receipt of copy of this order.