

## Mukesh Kumar Choubey Vs State Of Chhattisgarh And Ors

**Court:** Chhattisgarh High Court

**Date of Decision:** Aug. 23, 2019

**Hon'ble Judges:** P. Sam Koshy, J

**Bench:** Single Bench

**Advocate:** F.S. Khare, Chandresh Shrivastava

**Final Decision:** Disposed Of

### Judgement

P. Sam Koshy, J

1. The challenge in the present writ petition is to the order dated 5.5.2018 (Annexure P-1) whereby the claim for regularization of the petitioner has

been rejected by the respondents.

2. The rejection was on the ground that the petitioner do not fulfill the requirements under the circular dated 5.3.2008 and moreover the said benefit

was extended as a one time measure for those persons eligible when the circular was published.

3. Learned counsel for the petitioner submits that so far as the service of the petitioner is concerned, there is an order in his favour by the Labour

Court, Rajnandgaon, dated 2.11.2010, wherein it has been categorically held that the petitioner was working as Chowkidar from January, 1990 to

November, 1997 when he was abruptly discontinued. The discontinuance was subjected to challenge before the Labour Court and the Labour Court

vide its award dated 2.11.2010 held that the discontinuance is bad in law and thus ordered for reinstatement of the petitioner in service on his previous

post. Pursuant to the award dated 2.11.2010, the petitioner has been reinstated in service in the year 2011 and since then he is in continuous

employment.

4. 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 a Division Bench of this High Court in the case

of Tukaram Vs. State of Chhattisgarh (WPS No. 1703/2015 and other 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 5.3.2008.

5. The State counsel however opposing the petition submits that the petitioner would not be entitled for any relief as sought and the impugned award

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

Court after about 12 years and therefore that intervening period of 12 years cannot be counted. He refers to the judgment of Tukaram (supra) and

submits that the said 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 the period during which he had not raised the industrial dispute.

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

(supra). For ready reference, paragraph 26 is being 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.

7. From the aforesaid observations, it is evidently 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 benefits. Facts of the present case when considered from the judgment of the Labour Court, it appears that the

petitioner has worked between 1990 to 1997 when he was removed. The removal has been held illegal by the award passed in the year 2010 and

thereafter the petitioner has been reinstated in service. The dispute was raised by the petitioner for the first time in the year 2009 when the reference

was made to the Labour Court. Between 1997 to 2009, the petitioner had in fact not worked anywhere 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 between 2009 to 2010. Thus, it is only from 2009 onwards that the petitioner would be deemed to be in continuous service.

8. In the aforesaid factual backdrop, the total length of service so far as the petitioner is concerned would be between January, 1990 to November,

1997 and from 14.1.2009 to till date. As he has since been reinstated in service after the award of the Labour Court, if we take the said two periods

that is from 1990 to 1997 and from 2009 to 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 and 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.

9. Keeping in view the circular dated 5.3.2008, the writ petition is disposed of and the impugned award (Annexure P-1) to that extent stands set

aside/quashed.

10. 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.