

c.f. 1002 (3)

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IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH AT BILASPUR

W.P.No. 1857/2004 ✓

PETITIONER:-

: Smt. Budhiyarin Bai
W/O Late Chhote Lal
Aged about 56 years,
R/O- TikaraPara Raipur (C.G.)

VERSUS

RESPONDENTS:-

- : 1) State of Chhattisgarh
Through, Secretary
Department of High Education
D.K.S. Bhawan, Raipur (C. G.)
- 2) Director,
Higher Education Department,
Raipur (C.G.)
- 3) Principal,
Govt. D.B. Post Graduate Girls
College, Raipur (C.G.)
- 4) Commissioner,
Higher Education Department
Raipur (C.G.)

P. R. No. 1866/04

Presented by Shri. N. Lalchandani

dated 2-7-04

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Clerk to A. G. Bilaspur

WRIT PETITION UNDER ARTICLE 226/ 227 OF THE CONSTITUTION
OF INDIA .

(64)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR**Single Bench: Hon'ble Shri Satish K. Agnihotri, J.****W. P. No. 1857 of 2004**

Petitioner : Smt. Budhiyarini Bai
Versus
Respondents : State of Chhattisgarh & another

Shri Y. C. Sharma, Advocate with Shri S. S. Mishra, Advocate for the petitioner.

Shri Arun Sao, Govt. Advocate for the respondents.

ORDER**(30th November, 2006)**

1. The petitioner was appointed as Hostel Servant (hostel fund) on 1.5.1984. Thereafter the services of the petitioner were regularized and she was promoted on the vacant post of Hostel Servant (contingency fund) w.e.f. 1.6.1989 in the pay scale of Rs. 725-10-735-855-15-900 vide order dated 27.5.1989 (Annexure A/1). The services of the petitioner was terminated vide order dated 26.2.2000 (Annexure A/4) pursuant to the direction issued by the Commissioner, Higher Education vide letter dated 3.2.2000, issued in compliance of the order dated 29.1.2000 passed by the General Administration Department.
2. The petitioner by this petition seeks quashing of the order dated 26.2.2000 and consequential benefits.
3. I have heard learned counsel appearing for the parties and perused the record.
4. A perusal of the minutes of the meeting of the Committee dated 26.2.2000 reveals that the appointment of the petitioner was not made in accordance with law and it was dehors the constitutional

scheme. The appointment of the petitioner was not through the advertisement or by inviting any application through any other means from all eligible candidates. It is well settled principle of law that the daily wagers, temporary or ad hoc employees have no right to the post seeking regularization and grant of regular pay scale, if their appointments were dehors the constitutional scheme or the rules made under the proviso to Article 309 of the Constitution of India.

5. In the case of **Secretary, State of Karnataka and others Vs. Umadevi (3) and others¹**, the Supreme Court has laid down clear enunciation of law which was followed later on in various decisions by the Supreme Court. Some are **Accounts Officer (A&I) A.P.SRTC and others vs. P. Chandra Sekhara Rao and others²**, **Surinder Prasad Tiwari vs. U.P. Rajya Krishi Utpadan Mandi Parishad and others³**, **Nagar Mahapalika (now Municipal Corpn.) vs. State of U.P. and others⁴** and **U.P. State Road Transport Corporation vs. Man Singh⁵**.
6. In the case of **Secretary, State of Karnataka and others** (Supra), the Supreme Court observed as under :-

"45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain - not at arm's length - since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view

that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible."

"47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission."

7. With regard to regularization of the post, the appointment was not made in accordance with law. The appointment of the petitioner is a back door appointment, which does not have any legal sanction.

8. The Supreme Court in the case of **State of M.P. and others Vs. Yogesh Chandra Dubey and others**⁶ observed in para 9, as under:-

"9. It is neither in doubt nor in dispute that the respondents were not appointed in terms of the statutory rules. Their services were taken by the officers only to meet the exigencies of situation. No post was sanctioned. Vacancies were not notified. It is now trite that a State within the meaning of Article 12 of the Constitution of India, while offering public employment, must comply with the constitutional as also statutory requirements. Appointments to the posts must be made in terms of the existing rules. Regularization is not a mode of appointment. If any

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recruitment is made by way of regularization, the same would mean a back door appointment, which does not have any legal sanction.

9. In the present case on hand, admittedly, the appointment of the petitioner was not in accordance with law, which was regularized subsequently, by order dated 27.5.1989 (Annexure A/1). She was granted payment of daily wagers from contingency fund and the same was treated as regularization/promotion on the basis of the recommendation of the selection committee. Since, the initial appointment of the petitioner was not in accordance with law and subsequently, regularization/promotion would mean a back door appointment, without having any legal sanction, therefore, the regularization/promotion is not a mode of recruitment.
10. As a result and for foregoing reasons, the writ petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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|---|-------------------|
| 1 | (2006) 4 SCC 1 |
| 2 | (2006) 7 SCC 488 |
| 3 | (2006) 7 SCC 684 |
| 4 | 2006 AIR SCW 2497 |
| 5 | 2006 AIR SCW 5159 |
| 6 | (2006) 8 SCC 67 |

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