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HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION No. 4362 of 2005

PETITIONER : Vinod Kumar Singh

VERSUS

RESPONDENTS : State of Chhattisgarh & Others.

AND

WRIT PETITION No. 4363 of 2005

PETITIONER : Munnalal Katiya

VERSUS

RESPONDENTS : State of Chhattisgarh & Others.

Post for pronouncement of judgment and order on 30.04.2009.

Sd/-
Satish K. Agnihotri
Judge

27.04.2009

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HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION No. 4362 of 2005

PETITIONER : Vinod Kumar Singh S/o Goverdhan Singh,
Aged about 47 years, R/o Dharampur
Jagdalpur, Dist: Bastar (C.G.)

VERSUS

RESPONDENTS : 1. State of Chhattisgarh Through The Secretary
Public Health Engineering Department,
Mantralaya, Raipur, Dist: Raipur (C.G.)
2. The Chief Engineering, E&M Public Health
Engineering Bhopal (M.P.)
3. The Executive Engineer E&M Public health
Engineering Department, Jagdalpur, Dist:
Bastar (C.G.)
4. The Asst. Engineer, Public Health Engineering
Department, Mechanical Sub Division,
Jagdalpur, Dist: Bastar (C.G.)
5. The State Industrial Court, Chhattisgarh
Raipur, Dist: Raipur (C.G.)
6. The Labour Court, Jagdalpur, Dist: Bastar
(C.G.)

WRIT PETITION No. 4363 of 2005

PETITIONER : Munnalal Katiya S/o Late Mulchand Katiya,
Aged about 40 years, R/o Dharampur
Jagdalpur, Dist: Bastar (C.G.)

VERSUS

RESPONDENTS : 1. State of Chhattisgarh Through The Secretary
Public Health Engineering Department,
Mantralaya, Raipur, Dist: Raipur (C.G.)
2. The Chief Engineering, E&M Public Health
Engineering Bhopal (M.P.)
3. The Executive Engineer E&M Public health
Engineering Department, Jagdalpur, Dist:



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Bastar (C.G.)

4. The Asst. Engineer, Public Health Engineering
Department, Mechanical Sub Division,
Jagdalpur, Dist: Bastar (C.G.)
5. The State Industrial Court, Chhattisgarh
Raipur, Dist: Raipur (C.G.)
6. The Labour Court, Jagdalpur, Dist: Bastar
(C.G.)

Present: Shri Prafull Bharat, Advocate for the petitioner.
Smt. Smita Ghai, Panel Lawyer for the State/respondents 1, 3 and 4.

WRIT PETITION U/A 226/227 OF THE CONSTITUTION OF INDIA

SB: Hon'ble Shri Satish K. Agnihotri, J.

JUDGMENT

(Passed on 30th day of April, 2009)

1. Both the petitions arise from the common judgment and order dated 21.6.2005 (Annexure P/3) passed by the Industrial Court, Raipur, having the common facts and question of law, thus, the same are being considered and decided by this common order.
2. The petitioners (in both the petitions) challenge the legality and validity of the order dated 21.6.2005 (Annexure P/3) passed by the Industrial Court, Raipur, whereby the appeal filed by the respondent-employer against the order dated 25.08.1999 passed by the Labour Court, Jagdalpur, in Case No. 19/97 MPIR Act (Annexure P/2 in W.P. No. 4362/2005) and the order dated 17.08.1999 Case No. 16/97/MPIR Act (Annexure P/2 in W.P. No. 4363/2005) have been allowed.
3. The facts, in nutshell, as projected by the petitioners (in both the petitions), are that the petitioners were initially appointed as Drill Operators on daily wages

basis in the year 1989. Thereafter, the petitioners continued in service till they were removed from service. Being aggrieved, the petitioners filed applications under Section 31 Rule 3 read with Section 62 of the M.P. Industrial Relations Act, 1960 in the Labour Court, Jagdalpur. The Labour Court, after having considered all the facts of the case, came to the conclusion that the order of removal dated 09.06.1997 was illegal and improper. Accordingly, the applications of the petitioners were allowed and the respondent-employer was directed to declare the petitioners as permanent employees with all consequential benefits. Being aggrieved, the respondent-employer preferred appeals being Civil Appeal No. 101/MPIR Act/A-II/99 and 103/MPIR Act/A-II/99 respectively, before the Industrial Court, Raipur. The Industrial Court, examined the judgment and order passed by the Labour Court at length and came to the conclusion that the petitioners have failed to establish that they have worked for more than 240 days in a year, particularly in the preceding year. Thus, the petitioners are not entitled to any benefit under the provisions of section 25.F of the Industrial Disputes Act, 1947.

4. Shri Bharat, learned counsel appearing for the petitioners would submit that it is an admitted position that the petitioners were appointed on daily wages basis. Since the petitioners were working with the respondent-employer since the year 1989, it was not required to establish that the petitioners have worked for more than 240 days. The approach of the learned Industrial Court was not in accordance with law as it is a clear case where the petitioners have worked since the year 1989 till removal. Shri Bharat further contends that since the petitioners have completed six months service, as per clause i(a) of the M.P. Industrial Employment (Standing Orders) Rules, 1963, they may be classified as permanent employees.



5. Per contra, learned counsel appearing for the State/respondents supports the impugned judgment and order.
6. I have heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto. It is evident that the petitioners-employees have failed to establish that they have worked for more than 240 days in a year, particularly in the preceding year before they were removed from services. Further, the petitioners were admittedly appointed on daily wages basis.
7. It is well-settled principle of law that an employee is not entitled to any benefit under the provisions of section 25.F of the Act, 1947 when the employee has failed to establish that he has worked for more than 240 days in the preceding year. (See. *R.M. Yellatti v. Assistant Executive Engineer*¹ and *BSNL and others v. Mahesh Chand*² and the judgment and order passed by this Court in *State of Chhattisgarh v. Poona Ram Yadav & another*³)
8. In *Telecom District Manager & Others v. Keshab Deb*⁴ wherein matter arose from the Labour Court, the Supreme Court observed in para 18 that “while, however, granting a relief, the superior courts should take into consideration the facts relevant therefore....” *inter alia* that employees being daily rated and casual employees did not have any right to continue in service.
9. The Supreme Court, in *Accounts Officer (A&I) AP SRTC and others v. K.V.Ramana and others*⁵, observed as under:

“9. In our opinion these appeals have to be allowed. It has been held by a Constitution Bench of this Court in *Secy. State of Karnataka v. Uma Devi* (3) that absorption, regularisation or permanent continuance of temporary contractual, casual, daily wage or ad hoc employees de hors the rules and constitutional scheme of public employment cannot be granted by the courts. As

¹ (2006) 1 SCC 106

² (2008) 3 SCC 474

³ W.P.(L) 2760 of 2008

⁴ JT 2008 (7) SC 257

⁵ (2007) 2 SCC 324



regards the circular dated 31.03.1998, the same cannot override Article 16 of the Constitution, and hence regularisation cannot be granted under the said circular. Even if the contract labourers or casual workers or ad hoc employees have worked for a long period they cannot be regularised *de hors* the rules for selection, as has been held in *Uma Devi case*."

10. Applying the well-settled principles of law to the facts of the cases on hand and in view of the foregoing, the petitioners are not entitled to any relief including classifying the petitioners as permanent on the basis of completion of six months service, when admittedly their appointments were on daily wages basis *dehors* the constitutional scheme of employment . They have failed to establish the fact that they have worked for more than 240 days in a calendar year and particularly in the preceding year as admittedly they were daily wages employees.
11. In view of foregoing and for the reasons stated hereinabove, the petitions are dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Amit