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SINGLE BENCH

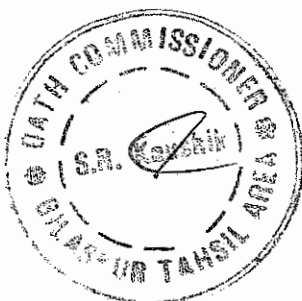
IN THE HIGH COURT OF CHHATTISGARH, AT - BILASPUR

WRIT PETITION (S) NO. 417 OF 2010

PETITIONERS :

1. Durjan Ram Songer, aged - 50 years,
S/O Shri S. R. Songer,
R/o Village - Chataud, P.O.-Kondapar
Tehsil - Kurud, Distt. Dhamtari, (C. G.)
2. Bhaiya Ram Sahu, aged - 47 years,
S/o Shri Mani Ram
R/o Village - Bhendri, Teh. - Rajim,
District - Raipur (C. G.)
3. Rupram Patel, aged - 49 years,
Ram Lal Pate,
Village & P. O. - Kopara,
Tehsil - Rajim, Distt. - Raipur (C. G.)
4. Prahlad Ram Dewangan,
aged - 56 years,
S/o Shri Mansha Ram Dewangan,
R/o Village - Jamahi, P. O.- Tarighat,
Tehsil - Fingeshwar,
District - Raipur (C. G.)
5. Vishnu Ram Sahu, aged - 46 years,
S/o Shri Uday Ram Sahu,
R/o Village - Bhendri,
Tehsil - Gariyaband,
District - Raipur (C. G.)
6. Om Prakash Sahu, aged - 46 years,
S/o Shri Bhurwa Ram Sahu,
R/o Bhendri (Loharshi),
Tehsil - Gariyaband,
District - Raipur (C. G.)

334/2010
M.K. Bhattacharya,
20/1/2010



Rehabur Singh
Sd/-

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7. Kuleshwar Prasad Sharma,
aged - 53 years,
S/o Shri Dwarika Prasad Sharma,
R/o Koundkera, Tehsil - Rajim,
District - Raipur (C. G.)
8. Thanu Ram Sahu, aged - 47 years,
S/o Shri Salik Ram Sahu,
R/o Rohina, Tehsil - Rajim,
District - Raipur (C. G.)
9. Smt. Devkunwar Verma,
aged - 48 years,
W/o Shri Bisheshwar Verma,
R/o Village - Tunduwa, Tehsil - Tilda,
District - Raipur (C. G.)
10. Hukum Lal Sahu, aged - 52 years,
S/o Shri Ram Lal Sahu,
R/o Vill. & P. O. - Kutena (Panduka),
Tehsil - Chhura,
District - Raipur (C. G.)
11. Dinesh Kumar Baghel,
aged - 50 years,
S/o - Late Shri Mant Ram Baghel,
Village - Bhimbhori,
Tehsil - Baikunth,
District - Raipur (C. G.)
12. Laxman Prasad Sahu, aged - 52 years
S/o Shri Harihar Prasad Sahu,
R/o Village - Dhobani, Tehsil -
Bilaigarh, District - Raipur (C. G.)



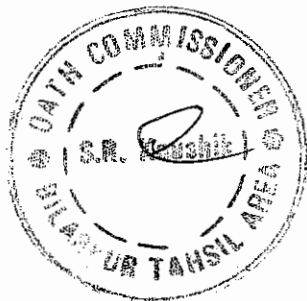
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13. Bhajo Ram Patel, aged – 44 years,
S/o Shri Ram Ratan Patel,
R/o Vill. Bamdadih, P. O. – Salhetarai,
The. & District – Mahasamund (C.G.)
14. Ramnarayan Pandey,
aged – 45 years,
S/o Shri Ganga Ram Pandey,
Village & P. O. – Garhphuljhar,
Tehsil – Basna,
District – Mahasamund (C. G.)
15. Sultana Begum Khan, aged – 53 years
D/o Shri Abdul Sattar Khan,
Raju Rickshaw Garage, Behind Police
Quarter, Near City Kotwali, Masjid
Road, Baijnath Para, Raipur,
District – Raipur (C. G.)
16. Ku. Ujjawala Gaikwad,
aged – 50 years,
D/o Shri Yashwant Rao Gaikwad,
R/o Jijamgoan, Teh. – Kurud,
District – Dhamtari (C. G.)
17. Devraj Sahu, aged – 48 years,
S/o Late Pustam Sahu,
R/o Village – Ansula, P. O. – Rikokala,
District – Mahasamund (C. G.)
18. Vishnu Prasad Naik, aged – 53 years,
S/o Shri Bholsai Naik,
R/o Village – Sankara (Jonk)
Tehsil – Basna,
District – Mahasamund (C. G.)



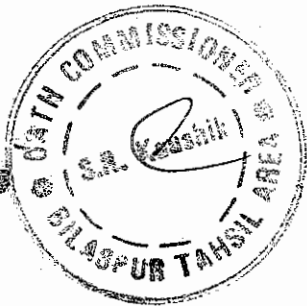
Rudra Prasad Naik

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19. Shrinivas Agrawal, aged - 55 years,
S/o Shri Moti Lal Agrawal,
R/o Village - Bundeli,
Tehsil - Pithoura,
District - Mahasamund (C. G.)
20. Sheshnarayan Diwan, aged - years,
S/o Shri Ramadhar Diwan,
R/o Village & P. O. - Kirwai,
Tehsil - Gariyaband,
District - Raipur (C. G.)
21. Mela Ram Mahilange, aged - 49 yrs.,
S/o Late Mangal Prasad Mahilange,
R/o Village - Korkoti, Teh. -
Bilaigarh, District - Raipur (C. G.)
22. Ghasi Ram Hirwani, aged - 46 years,
S/o Shri Makund Ram Hirwani,
R/o Village - Chhapora, P. O. -
Dharasiv, Teh. - Bilaigarh,
District - Raipur (C. G.)
23. Kuber Ram Patkar, aged - 48 years,
S/o Ram Bagas Patkar,
R/o Village - Khouli, Teh. - Arang,
District - Raipur (C. G.)



VERSUS

RESPONDENTS :

1. State Of Chhattisgarh,
Through - its Secretary,
Department of School Education,
Mantralaya, D. K. S. BHAWAN,
Raipur.

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2. ✓ The Commissioner/Director,
Public Instructions, Chhattisgarh,
H. Q. – Raipur (C. G.)
3. The Collector,
District – Raipur (C. G.)
4. ✓ Statutory Committee,
Through –the Chairman/the Collector,
District – Raipur (C. G.)
5. ✓ The Additional Collector,
District – Raipur (C. G.)
6. ✓ The District Education Officer,
Raipur (C. G.)

Writ Petition under Article – 226 of the
Constitution of India.

~~Particulars of the petitioners~~



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HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (S) No. 417 of 2010

PETITIONERS : Durjan Ram Songer & 22 Others.

VERSUS

RESPONDENTS : State of Chhattisgarh & 5 Others.

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

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

Present : Shri R.K.Kesharwani, Advocate for the petitioners.
Shri N.N.Roy, Panel Lawyer for the State/respondents.

ORDER (ORAL)

(Passed on 29th day of January, 2010)

1. By this petition, the petitioners seek to challenge the decision of the Statutory Committee dated 31.01.2009 communicated to the Commissioner, Public Instructions, vide letter dated 6.3.2009 (Annexure P/1) and further to direct the respondent authorities to consider and decide the representations of the petitioners afresh in light of the order dated 7.9.2006 passed in W.P. (S) No. 1588/2005 (*Murali Prasad Kashyap & Others v. State of M.P. & Others*) (Annexure P/5).
2. The facts, in brief, as projected by the petitioners are that the petitioners were appointed as Teacher on *ad hoc* basis vide order dated 7.12.1982 (Annexure P/2). All of a sudden, their services were terminated. Some of the similarly situated teachers filed Original Application before the Madhya Pradesh State Administrative Tribunal at Jabalpur (*for short 'the SAT'*). Pursuant to the order passed by the SAT, the similarly situated persons were taken back in regular service. Thereafter, the petitioners also approached the SAT wherein vide order dated 09.01.1998 (Annexure P/3), the petitioners were directed to appear before the Selection Committee and it was further directed to consider



the case of the petitioners and if they were found fit, they should be considered for appointment/reappointment keeping in view the availability of the vacancies. Pursuant to the said order, the similarly situated persons made a representation to the Selection Committee upon which the State Government respondent authorities issued a memo dated 9.6.2008 (Annexure P/4) to all the Collectors and District Education Officers, stating that the *ad hoc* teachers whose services have come to an end, their representations may be decided within a period of one month if their cases are similar to that of *Murli Prasad Kashyap (supra)*. In such cases, if reappointment is made, those persons shall not be entitled to the salary for the period they were out of service on the basis of 'no work-no pay'.

3. Shri Kesharwani, learned counsel appearing for the petitioners submits that pursuant to the memo dated 9.6.2008 (Annexure P/4) the petitioners have made representations to the District Education Officer, Raipur which was forwarded to the Collector. Thereafter, the Collector, Raipur, instead of deciding the said representations, referred the same to the Additional Collector. The petitioners were informed to appear before him alongwith relevant documents. The petitioners appeared before the authorities alongwith relevant documents. Their cases were considered by the Statutory Committee and vide the impugned order dated 06.03.2009 (Annexure P/1), the District Education Officer, Raipur, informed the Commissioner, Public Instructions, Chhattisgarh, that the Statutory Committee has taken a decision on 31.01.2009 that it would not be proper to reappoint the *ad hoc* teachers in service.
4. Shri Kesharwani further submits that the action of the respondent authorities is in contravention of the order passed by this Court in *Murli Prasad*



Kashyap (supra). The petitioners ought to have been reappointed on the post of Teacher.

5. Per contra, Shri Roy, learned counsel appearing for the State/respondents submits that the petitioners were not appointed in accordance with the constitutional scheme of employment.
6. The question which arises in the present petition is asto whether the petitioners appointed on *ad hoc* basis can continue on the posts or be reinstated in service when their services have been discontinued or disengaged thereafter.
7. The issue involved in the present petition is no longer *res integra* as the Supreme Court, in a catena of decisions has made clear that the employees appointed on *ad hoc* basis have no right to continue in service or reinstatement. The appointment itself is *de hors* the constitutional scheme of employment.
8. Admittedly, the petitioners were appointed on *ad hoc* basis and not in accordance with the constitutional scheme of employment. The appointment of the petitioners was purely on temporary basis. A temporary, *ad hoc* employee/daily wager cannot claim regularization, continuance or reinstatement in service on the basis of appointment, which was temporary and not in accordance with law and the same was *de hors* the constitutional scheme of employment. (See *Secretary, State of Karnataka and Others vs. Umadevi (3) and Others*¹, *Indian Drugs & Pharmaceuticals Ltd. v. Workmen, Indian Drugs & Pharmaceuticals Ltd.*², *Official Liquidator v. Dayanand and others*³ and *State of Punjab and Others v. Surjit Singh and Others*⁴).

¹ (2006) 4 SCC 1

² 2007 (1) SCC 408

³ (2008) 10 SCC 1

⁴ (2009) 9 SCC 514

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9. With regard to regularisation of the employees working on temporary basis, the Supreme Court in *Umadevi* (supra), observed as under:

“Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee.”

10. The above ratio laid down by the Supreme Court has been reiterated by this Court in *Ashwani Kumar Verma & Others v. State of Chhattigarh & Another*⁵ and *Somendra Pratap Singh v. The State of M.P. & others*⁶. Against the order passed in *Somendra Pratap Singh (supra)*, the petitioner therein preferred a writ appeal being W.A. (PR) No. 2077/2008, which was dismissed by the Division Bench of this Court by order dated 29.04.2008 affirming the order passed by the Single Bench. Thereagainst, the matter was taken upto the Supreme Court by filing Special Leave Petition being S.L.P.(C) No. 27190/2008 (*Somendra Pratap Singh v. State of Chhattisgarh & Others*), which was also dismissed by the Supreme Court affirming the view taken by this Court, vide its order dated 23.03.2009.
11. This Court in *Sanjay Patil v. State of Chhattisgarh & Another*⁷, while dealing with similar issue observed that “if the State Government has regularized some of the daily wagers, not appointed in accordance with the constitutional

⁵ WP (S) No.1743 of 2009 decided on 28-4-2009

⁶ W.P.(S) No. 1347 of 2005 decided on 26-2-2008

⁷ WP (S) No.5845 of 2009 decided on 9-10-2009

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scheme of employment, this Court cannot issue a positive direction to legalise the illegal appointment on the ground that certain illegal appointments have been legalized/regularized by the employer.

12. In this context, the Supreme Court, in *Ashok Kumar Sonkar v. Union of India*⁸, observed as under:

“34. It is not a case where appointment was irregular. If an appointment is irregular, the same can be regularised. The Court may not take serious note of an irregularity within the meaning of the provisions of the Act. But if an appointment is illegal, it is non est in the eye of law, which renders the appointment to be a nullity.”

13. Further, in *State of Punjab & another v. Surjit Singh & Others*⁹, the Supreme Court reaffirmed the above ratio in the following terms:

“39. We would, however, before parting make an observation that the submission of the learned counsel that only because some juniors have got the benefit, the same by itself cannot be a ground for extending the same benefit to the respondents herein. It is now well known that the equality clause contained in Article 14 should be invoked only where the parties are similarly situated and where orders passed in their favour are legal and not illegal. It has a positive concept.”

14. For the reasons stated hereinabove and applying the well settled principles of law to the facts of the present case wherein the petitioners were appointed purely on temporary basis, they are not entitled to any relief of in-instatement /reappointment.

15. - Resultantly, the writ petition fails and is dismissed.

16. - No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

⁸ (2007) 4 SCC 54

⁹ (2009) 9 SCC 514