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Single Bench

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BEFORE THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (S) NO. 2765 /2009

Petitioner

Kedar Nath Yadav, S/o Parmeshwar  
@ Prema Nand Yadav, aged about 32  
years, occupation - Van Rakshak (Forest  
Guard), Van Parichhetra - Bagicha,  
Distt. Jashpur (CG)

VERSUS

RESPONDENTS

1. State of Chhattisgarh, through Secretary,  
Department of Forest, Dau Kalyan Singh  
Bhawan, Raipur (CG)
2. Principal Secretary, Deptt of Forest, Dau  
Kalyan Singh Bhawan, Raipur (CG)
3. Divisional Forest Officer, Division -  
Jashpur, Distt. Jashpur (CG)
4. Conservator of Forest, Forest Circle -  
Sarguja, Distt. Sarguja (CG)
5. Forest Range Officer, Range - Bagicha,  
Distt. Jashpur (CG)

2851/09  
Parmeshwar Kedar Nath Yadav  
05/06/09  
2851/09

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

01. PARTICULARS OF THE PETITIONER: As per cause title.
02. PARTICULARS OF THE RESPONDENTS:



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Clerk

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**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**Single Bench: Hon'ble Shri Justice Prashant Kumar Mishra**

**Writ Petition (S.) No.2530 of 2009**

Petitioner

Arjun Ram Yadav

versus

Respondents

State of Chhattisgarh and  
others

Present:

Shri V.K.Pandey, counsel for the petitioner.

Shri P.K.Bhaduri, Panel Lawyer for the State/respondents.

Writ Petition under Article 226 of the Constitution of India

**Writ Petition (S.) No.2532 of 2009**

Petitioner

Sonsai Singh

versus

Respondents

State of Chhattisgarh and  
others

Present:

Shri V.K.Pandey, counsel for the petitioner.

Shri P.K.Bhaduri, Panel Lawyer for the State/respondents.

Writ Petition under Article 226 of the Constitution of India

**Writ Petition (S.) No.2533 of 2009**

Petitioner

Johan Toppo

versus

Respondents

State of Chhattisgarh and  
others

Present:

Shri V.K.Pandey, counsel for the petitioner.

Shri P.K.Bhaduri, Panel Lawyer for the State/respondents.

Writ Petition under Article 226 of the Constitution of India

**Writ Petition (S.) No.2765 of 2009****Petitioner**

Kedar Nath Yadav

**versus****Respondents**State of Chhattisgarh and  
others**Present:**

Shri Pawan Kesharwani, counsel for the petitioner.

Shri P.K.Bhaduri, Panel Lawyer for the State/respondents.

**Writ Petition under Article 226/227 of the Constitution of India****ORAL ORDER**(Passed on 31<sup>st</sup> January, 2011)

Heard.

2. By this common order, Writ Petitions (S.) No.2530/2009, 2532/2009, 2533/2009 and 2765/2009 are disposed of analogously as these matters have been heard finally at motion stage with the consent of the parties in view of the order for analogous hearing passed in Writ Petition (S.) No.2765/2009.

3. The petitioners in all the four writ petitions have called in question the order dated 25-4-2009 (Annexure P-1) passed by the Divisional Forest Officer, Jashpur, Forest Division Jashpur (henceforth 'the DFO'). By the said impugned order, the DFO has terminated the services of the petitioners after holding that their order of regularization passed on different dates with respect to each of the petitioners was not passed in accordance with the State Government Circular as on the date of regularization they have not completed 10 years continuous service.

4. It is not in dispute that the petitioners were working as daily wagers in Forest Offices of Jashpur Forest Division. After the judgment rendered by the Hon'ble Supreme Court in **Secretary, State of Karnataka and others vs. Umadevi (3) and others, (2006) 4 SCC 1**, the State Government issued circular dated 5-3-2008 (Annexure P-10 in Writ Petition (S.) No.2530/2009) directing that in pursuance to the order passed by the Hon'ble Supreme Court in the matter of **Umadevi (3)** (supra) and only as one time measure such irregularly appointed daily wagers, who have completed services of 10 years or more shall be regularized. The conditions for regularization were mentioned in paragraph 2 of the circular, which provides that the candidate should possess the minimum qualification as per the service rules, post should be available, the person should have completed 10 years continuous service upto 31-12-1997 etc.

5. In terms of the said circular of the State Government, a committee was constituted by the State Government at the level of the Conservator of Forest of the concerned forest circle and thereafter the order of regularization was issued from the office of the Conservator of Forest, Surguja Forest Circle, Ambikapur on 10-9-2008 (Annexure P-3 in Writ Petition (S.) No.2530/2009). The report submitted by the scrutiny committee is at page 15 of the paper-book in Writ Petition (S.) No.2530/2009. Each of the petitioners joined at their place of posting after regularization of their service and were allowed permanent pension account number etc. Their pay-fixation was also made and they started receiving regular

pay on the scale admissible to the post on which each of them regularized.

6. The concerned DFO thereafter issued show cause notice on 27-1-2009 (Annexure P-8 in Writ Petition (S.) No.2530/2009, similar notices were issued to each of the petitioners) *inter alia* stating that on receipt of complaint against their regularization the matter was re-scrutinized and it was found that the petitioners have not rendered continued service as detailed in each of the notices and thereafter because of the break, their regularization is illegal and they should show cause as to why the regularization may not be cancelled and their services may not be terminated. Each of the petitioners submitted reply and stated that they have continuously worked for more than 10 years and their regularization does not suffer from any illegality, however, the DFO did not accept the explanation and has passed the impugned order of termination.

7. Learned counsel appearing for the petitioners would submit that once scrutiny of their eligibility was undertaken at the level of the Conservator of Forest and the appointment order issued by the said higher authority, the re-scrutiny was made behind the back of the petitioners and that the present is not a case of break in service as the petitioners were never removed or discontinued in service by any order of the concerned authority where they were working as daily wagers. According to the petitioners, the order of termination is absolutely illegal and arbitrary.

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8. Per contra, learned counsel appearing for the State/respondents would submit that there was break in service inasmuch as the petitioners failed to demonstrate that they have rendered services during the period which was mentioned in the show cause notice as the break was for more than one month.

9. This Court has heard learned counsel appearing for the parties at length and has perused the documents annexed with the writ petition. In the earlier scrutiny, it is mentioned against the name of Arjun Ram Yadav, petitioner in Writ Petition (S.) No.2530/2009 that he has worked for 10 years and 7 months. With respect to Kedar Nath Yadav, petitioner in Writ Petition (S.) No.2765/2009, it was mentioned that he has worked for 13 years and 4 days. With respect to Sonsai Singh, petitioner in Writ Petition (S.) No.2532/2009, it was mentioned that he has worked for 13 years and 1 month and with respect to Johan Toppo, petitioner in Writ Petition (S.) No.2533/2009, it was mentioned that he has worked for 13 years and 4 months. This previous scrutiny was made by the same DFO who has issued the show cause notice and has passed the impugned order of termination. Officers of the rank of DFO, SDO (Forest) along with 8 other officers/employees of the Forest Department were members of the scrutiny committee. The State/respondents have not submitted any report of the committee, who subsequently made the verification contradicting its own previous scrutiny. Thus, it is not clear as to what was the basis for arriving at a conclusion that the petitioners have rendered less than 10 years service. In all the cases, it is mentioned in the remark

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column of the table of days of working mentioned in the show cause notice, that such period of service in which the petitioners were engaged for part time duty has been treated as break in service. The impugned order does not record a finding in specific term as to the exact period which was treated as break in service. In the opinion of this Court, if a daily wager was engaged for part time duty and has not absented himself for more than a month or was disengaged by an order passed by the authority under whom he was working and was subsequently retained as daily wager, it may not be a case of break in service.

10. It is also to be noticed that in the matter of *Umadevi (3)* (supra), the Hon'ble Supreme Court has issued the following directions:

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *State of Mysore v. S.V.Narayanappa*, AIR 1967 SC 1071, *R.N.Nanjundappa v. T. Thimmiah*, (1972) 1 SCC 409 and *B.N.Nagarajan v. State of Karnataka*, (1979) 4 SCC 507 and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases aboveresferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such *irregularly*

appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

11. In the above quoted directions issued by the Hon'ble Supreme Court in the matter of *Umadevi (3)* (supra), it is nowhere mentioned that if a person has worked for more than 10 years, that is to say, even for 13-15 years and during this period the concerned daily wager has been engaged on part time basis for a few months, the said part time engagement would be treated as break in service. The direction issued by the Hon'ble Supreme Court has to be applied in its true spirit and more particularly when once the scrutiny committee found that the petitioners have worked for more than 10 years, treating the period of part time engagement as break in service is not appropriate.

12. In view of the above, the impugned order is set aside. All the four writ petitions stand allowed.

Sd/-  
**Prashant Kumar Mishra**  
Judge