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(2)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (S.) No. 1772/2012

- PETITIONERS
1. Kaushal Kumar Sahu aged about 45 years, S/o Late Tukaram Sahu, by Occupation Chowkidar R/o I.T.I Basna, Distt. Mahasamund
 2. Hulas Prasad aged about 43 years, S/o Lakhan Lal Jangade, By Occupation Chowkidar, R/o Village Tekari, Thana Abhanpur, Distt. Raipur

B. No. 1772/12
Recorded by Smt. N. Chandra
Dated 24.4.12

VERSUS

- RESPONDENTS
1. The State of Chhattisgarh through its Secretary, Employment and Training Welfare Department, D.K.S. Bhawan Raipur
 2. Director, Employment and Training Welfare Department, D.K.S. Bhawan Raipur



WRIT PETITION UNDER ARTICLE 226 AND 227 OF THE
CONSTITUTION OF INDIA



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HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (S) No. 1772 of 2012

PETITIONER : Kaushal Kumar Sahu & Another.
VERSUS
RESPONDENTS : The State of Chhattisgarh & Another.

WRIT PETITION UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION
OF INDIA

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

Present: Shri Parag Kotecha, Advocate for the petitioner.
Shri A.V.Shridhar, Panel Lawyer for the State/respondents.

ORDER

(Passed on 30th day of April, 2012)

1. The question involved in this petition is asto whether the petitioners, claiming to have been working for the last more than 10 years, are entitled to regularization in the light of memo dated 05.03.2008 (Annexure P/2).
2. Shri Kotecha, learned counsel appearing for the petitioners submits that the petitioners were appointed on daily wages on contact at Collector's rate since 1997 (Annexure P/1) and they continued thereafter. Thus, the petitioners are entitled to consideration for regularization pursuant to the circular dated 05.03.2008 (Annexure P/2).
3. Shri Kotecha places reliance on the decision of the Supreme Court in *State of Karnatka & Others v. M.L.Kesari & Others*¹, wherein it was held as under:

“11. The object behind the said direction in para 53 of *Umadevi* (3) is twofold. First is to ensure that those who have put in more than ten years of continuous service without the protection

¹ (2010) 9 SCC 247



of any interim orders of courts or tribunals, before the date of decision in *Umadevi* (3) was rendered, are considered for regularization in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad hoc/casual basis for long periods and then periodically regularize them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10-4-2006 [the date of decision in *Umadevi* (3)] without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularization. The fact that the employer has not undertaken such exercise of regularization within six months of the decision in *Umadevi* (3) or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularization in terms of the above directions in *Umadevi* (3) as in one-time measure”

4. The above question came up for consideration before this Court, in *Virendra Das Manikpuri & Others v. State of C.G. & Others*², wherein this Court held as under:

“8. The observations made in *Umadevi* (3) and *Others* and *Indian Drugs & Pharmaceuticals Ltd.* With approval, the Supreme Court in *Official Liquidator v. Dayanand & Others*, further explained about the rights of the daily wagers and regularization. Para 70 reads as under;

“70. The shift in the Court’s approach became more prominent in *A. Umarani v. Coop. Societies*, decided by a three-Judge Bench, wherein it was held that the State cannot invoke Article 162 of the Constitution for regularization of the appointments made in violation of the mandatory statutory provisions.”

and thereafter, it was directed that the respondent authorities to scrutinize case of each and every individual, as per the memo dated

² 2011 (3) CGLJ 352



05.03.2008 and in the light of the well settled principles of law, as aforestated.

5. In view of the above, the petition is disposed of in terms of the order passed in *Virendra Das Manikpuri (supra)* i.e. the respondent authorities are directed to scrutinize the case of the petitioners as per the memo dated 05.03.2008 and in the light of the well settled principles of law, as aforestated. It must be made clear, in view of the above that this Court is not directing to retain the employees, who have been illegally appointed dehors the constitutional scheme of employment.
6. No order asto costs.

Amit

Sd/-
Satish K. Agnihotri
Judge