

W.P. No.8757/2010 (S)**Date: 29.2.2012**

Shri Rahul Sethi, learned counsel for the petitioner.

Ms. Vinita Phaye, learned Deputy Government Advocate for the respondents.

The petition is heard finally with consent of the counsel for the parties.

1/ The petitioner was initially appointed as Peon on 27/10/1990 and in terms of the Circular dated 17.03.1978. On the basis of the recommendations of the departmental committee on completion of five years in the contingency service, the petitioner was regularized on the post by order dated 14.05.1996 alongwith other similarly situated employees and was granted the Pay Scale of Rs.750-945. Thereafter the order dated 8.10.2004 (Annexure P-2) was passed cancelling the order of regularization which was challenged by some of the employees before the High Court in W.P. No.1512 of 2004 (Baliram Baghel vs. The State of M.P. & others and connected writ petitions). This Court vide order dated 14.09.2005 had allowed the writ petition and quashed the impugned order dated 8.10.2004 on the ground that it was passed without affording any opportunity of hearing. The said order of the learned Single Judge was challenged before the Division Bench and the writ appeal was dismissed and thereafter the SLP was also dismissed by the Supreme Court. The petitioner had also challenged the order dated 8.10.2004 by filing W.P. No.4000 of 2008 (S), which was allowed by order dated 8/9/2008 by quashing

the order dated 8.10.2004. In the meanwhile, the petitioner was given a show cause notice and afforded an opportunity of hearing and thereafter, fresh adverse order dated 17.1.2009 was passed against him, therefore, this Court vide order dated 8/9/2008 had given liberty to the petitioner to challenge the order which was passed in the meanwhile and further direction was issued that the petitioner would be entitled for the benefits accrued to him from the order dated 14.05.1996 till the date when the respondents had taken the fresh decision. The present writ petition has been filed by the petitioner challenging fresh order dated 17.1.2009 which has been passed by the respondents denying the claim of the petitioner on the basis of the subsequent circular.

2/ Learned counsel appearing for the petitioner submitted that the case of the petitioner is squarely covered by the order dated 8.10.2010 passed by the Single Bench in W.P. No.7901 of 2010 (S) (**Suresh Chand Hirve vs. State of M.P. and others**) which was affirmed by the Division Bench by the order dated 13.07.2011 in W.A. No.348 of 2011. He has submitted that the facts of the present matter are identical to that of the matter of **Suresh Chand Hirve** (supra).

3/ Learned counsel for the respondents has not disputed the aforesaid submission that the present matter is identical to that of **Suresh Chand Hirve** (supra) which has already been decided by this Court.

4/ The learned Single Bench in the matter of **Suresh Chandra Hirve** (supra) after noting the controversy and the

question involved in the matter vide order dated 8.10.2010 has held as follows :-

“This Court has carefully gone through the order dated 14.05.1996 as well as order dated 17.12.2008 and the order dated 14.05.1996 reveals that cases of those employees who have completed 5 years' service in the contingency establishment were considered for grant of regular pay scale in the light of circular dated 17.03.1978 and as many as 68 persons were granted regular pay scale including the petitioner alongwith Shri Baliram Baghel, petitioner of W.P. No.1512 of 2004. The petitioner at the relevant point of time was having 5 years' of experience and he was granted regular pay scale and not the benefit of regularisation. The learned counsel for the petitioner confined his prayer in the present writ petition for grant of regular pay scale as has been granted to Shri Baliram Baghel by virtue of order dated 14.05.1996 and has also reserved his right to take appropriate action in accordance with law for ventilating his grievance in respect of regularisation.

This Court has carefully gone through impugned order dated 17.12.2008 (annexure P-10) as well as annexure R-3 issued by General Administration Department. Annexure R-3 nowhere reflects that the earlier circular of the State Government dated 17.03.1978 has been withdrawn. The circular of General Administration Department dated 09.01.1990 imposes a ban in respect of appointment of contingency paid employees in a establishment where no sanctioned post is available. It does not

deal with grant of regular pay scale at all and the fact remains that identically placed persons have been granted regular pay scale by virtue of various orders passed by this Court from time to time including Shri Baliram Baghel, petitioner of writ petitioner No.1512 of 2004.

This Court is of the considered opinion that as the name of the petitioner was also included in the order dated 14.05.1996 along with Baliram Baghel, therefore, he cannot be discriminated in the matter of grant of regular pay scale as has been granted to Shri Baliram Baghel and other identically placed persons and, therefore, once the benefit has been extended to identically placed persons and they are enjoying the regular pay scale, there appears to be no justification in denying the benefit of regular pay scale to the present petitioner. Resultantly, the impugned order dated 17.12.2008 is hereby quashed.”

5/ The aforesaid order was challenged by the respondent State before the Division Bench in W.A. No.348 of 2011. The Division Bench vide order dated 13.07.2011 has dismissed the writ appeal and confirmed the order of the Single Bench by observing as under :-

“5. Learned counsel for the appellants – State has fairly conceded that the case of the appellants is identical and similar to the case of Baliram Baghel and after dismissal of his writ appeal the SLP was filed by the State Government *i.e.* State of Madhya Pradesh, which was also dismissed by the Apex Court. The learned Single Judge considered the circular dated

17.3.1978 and circular (Annexure R/3) issued by the General Administration Department of the State Government and passed the following order -

“17. This Court has carefully gone through impugned order dated 17.12.2008 (Annexure P/07) as well as Annexure R-3 issued by General Administration Department. Annexure R/3 nowhere reflects that the earlier circular of the State Government dated 17.03.1978 has been withdrawn. The circular of General Administration Department dated 09.01.1990 imposes a ban in respect of appointment of contingency paid employees in a establishment where no sanctioned post is available. It does not deal with grant of regular pay scale at all and the fact remains that identically placed persons have been granted regular pay scale by virtue of various orders passed by this Court from time to time including Shri Baliram Baghel, petitioner of writ petition No.1512 of 2004.

18. This Court is of the considered opinion that as the name of the petitioner was also included in the order dated 14.5.1996 along with Baliram Baghel, therefore, he cannot be discriminated in the matter of grant of regular pay

scale as has been granted to Shri Baliram Baghel and other identically placed persons and, therefore, once the benefit has been extended to identically placed persons and they are enjoying the regular pay scale, there appears to be no justification in denying the benefit of regular pay scale to the present petitioner. Resultantly, the impugned order dated 17.12.2008 is hereby quashed.”

6. In view of the fact that the name of respondent – Suresh Chandra Hirve was also included in the order dated 14.5.96 along with Baliram Baghel, therefore, we are of the view that the learned writ Court rightly granted the benefit of regular pay-scale as the same benefit has been extended to the identical placed persons and they are enjoying the regular pay-scale. The learned Single Judge after examining the matter at length and taking into consideration that identically placed employee Baliram Baghel is receiving regular pay-scale held that the denial of the same pay-scale to the petitioner would be violative of Article 21 of the Constitution of India. He also took into consideration that the pay-scale was granted by the State Government vide order dated 14.5.1996 to those employees who have completed five years of service in contingency establishment in the light of the Circular dated 17.3.1978 allowed the writ petition noticing the fact that the State Government never withdrew the circular dated 17.03.1978 and the Circular dated 09.01.1990 imposing ban in respect of

appointment will not come in the way for grant of regular pay-scale made on the basis of the Circular dated 17.3.1978.

7 After hearing the arguments of learned counsel for the parties, we are of the view that learned Single Judge has rightly dealt with the matter and the impugned order needs no interference in this intra Court appeal.

8. In view of the aforesaid, the appeal filed by the appellants – State has no merit and is hereby dismissed.

6/ It has also been pointed out by the learned counsel for the petitioner that another set of writ petition was decided by the learned Single Bench of this Court vide order dated 17.08.2010 in W.P. No.1848 of 2009 (S) (Santosh Yadav vs. State of Madhya Pradesh and others) and other connected matters, setting aside the similar impugned order on the same analogy and the Division Bench of this Court on the examination of the matter in W.A. No.217 of 2011 vide order dated 18.05.2011 had dismissed the writ appeal by observing as under :-

The learned Single Judge after examining the matter at length and taking into consideration that identically placed employee Baliram Baghel is receiving regular pay scale held that the denial of the same pay scale to the petitioner would be violative of Article 21 of the Constitution of India. He also took into consideration that the pay

scale was granted by the State Government vide order dated 14.05.1996 to those employees who have completed five years of service in contingency establishment in the light of the Circular dated 17.03.1978 allowed the writ petition noticing the fact that the State Government never withdrew the Circular dated 17.03.1978 and the Circular dated 09.01.1990 imposing ban in respect of appointment will not come in the way for grant of regular pay scale made on the basis of the Circular dated 17.03.1978.

Having considered the submissions made by the learned Dy. Govt. Advocate and learned counsel appearing for the respondent, we are of the view that learned Single Judge has rightly dealt with the matter and the impugned order needs no interference in this intra court appeal.

Accordingly, the appeal fails and is hereby dismissed.”

7/ It is also undisputed that a number of identical placed employees have already been extended the benefits by this Court and petitioner also stands on the same footing.

8/ Since the controversy involved in the present matter has already been settled by the order of the Division Bench in the matter of **Suresh Chand Hirve** (supra) and **Santosh Yadav** (supra) and claims of several such employees have already been allowed, therefore, the writ petition which has been preferred by the present petitioner deserves to be allowed on the same lines.

9/ Accordingly, the impugned order dated 17.1.2009 (Annexure P/10) is set aside. The writ petition is accordingly, allowed.

C.c. as per rules.

(Prakash Shrivastava)
J u d g e

Trilok/-