

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 1018 of 2021

- Ranjan Das S/o Shri Jagnudas Aged About 61 Years R/o Village- Baghimar, Post- Lagra, Tahsil- Lormi, Police Station- Fastarpur, District-Mungeli, Chhattisgarh., District : Mungeli, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary Department Of Forest, Mantralaya, Naya Raipur, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
2. Chief Conservator Of Forest Bilaspur Circle Jharabhata Bilaspur, District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh
3. Divisional Forest Officer Forest Division- Mungeli, District- Mungeli, Chhattisgarh., District : Mungeli, Chhattisgarh
4. Forest Range Officer Forest Range- Khudia, District- Mungeli, Chhattisgarh., District : Mungeli, Chhattisgarh

---- Respondents

For petitioner : Mr. K.P.S. Gandhi, Advocate.

For Respondent/State : Mr. Vaibhav Singh, PL.

Hon'ble Shri Justice Narendra Kumar Vyas.

Order on Board

(29-08-2022)

1. The petitioner has filed this Writ Petition assailing the order dated 20-04-2020 (Annexure P/1) by which the petitioner's claim for regularization has been denied by the respondent authority on the count that he has not completed the requisite service as provided in the circular dated 05-03-2008.
2. The brief facts as reflected from the record are that the petitioner is working as daily wager from 1985 to 1995 in the office of Forest Range officer, Forest Range Khudia, District Mungeli. The services of the petitioner were terminated in the year 1998 but after 16 years he has

raised an industrial dispute on 03-12-2014 which was subsequently registered before the Labour Court as Reference Case No. 18/DA/2014. Learned Labour Court Bilaspur, vide its award dated 12-02-2018 directed reinstatement of the petitioner without back-wages. Thereafter, the petitioner has filed an application for regularization and the same was rejected by the respondent authority vide order dated 20-05-2019. Therefore, he has filed the writ petition before this Court which is registered as WPS No. 5082 of 2019. This Court vide order dated 15-07-2019 has disposed of the writ petition and passed the following order.

“5. Given the said facts, this Court is of the opinion that the findings of the respondent No. 3 dated 20-05-2019 so far as it pertains to petitioner is concerned, is not sustainable. The same is liable to be and is accordingly set aside. The matter stands remitted back to the respondent No. 3 to reconsider the case of the petitioner accepting the petitioner to have worked with the department between 1985 to 1995 as is the finding of the Labour Court in its award dated 12-02-2018 so far as petitioner is concerned.

“6. Needless to mention that since the petitioner after 1995 or 1998 as the case may be, did not raise dispute before the Labour Court till 2014, the intervening period i.e. from the date of discontinuance till the petitioner filed the case before the Labour Court, the same would not be treated as period spent on duty. Leaving aside that intervening period, treating other period to have worked as in service, the respondents may take a fresh decision so far as the claim of petitioner for regularization is concerned at the earliest preferably within a period of 4 months from the date of receipt of copy of this order”.

3. Again the case of the petitioner was re-examined by the respondent authority and by the impugned order dated 20-04-2021 again it has been rejected on the count that petitioner has not completed requisite service of 10 years as provided in the circular dated 05-03-2008.
4. Learned Counsel for the petitioner would submit that finding recorded by the respondent that he has not completed 10 years of service is contrary to law and facts as the petitioner has worked from 1985 to 1995, therefore, he has completed full 10 years of service, as such the finding recorded by the respondent by rejecting the representation of petitioner is erroneous finding and deserves to be set aside. He would further submit that the respondents may be directed to consider the case of the petitioner for regularization. In support of his arguments he has relied upon the decision of Hon'ble Supreme Court in the case of Narendra Kumar Tiwari and others versus State of Jharkhand and others reported in 2018(2) SCC 472. and **Secretary, State of Karnataka and others vs. Uma Devi and others, reported in 2006 (4) SCC 1.**
5. On the other hand Learned State Counsel opposing the submissions made by Learned Counsel for petitioners would submit that since the petitioner has not completed 10 years of service as provided in circular dated 05-03-2008, therefore, the order passed by the authority is legal, justified and does not warrant any interference by this Court.

6. I have heard learned Counsel for the parties and perused the record with utmost satisfaction.
7. Before deciding the controversy it is expedient for this Court to extract the Circular dated 05-03-2008 issued by the Government of Chhattisgarh which reads as under.

“छत्तीसगढ़ शासन
सामान्य प्रशासन विभाग
मंत्रालय

दाऊ कल्याण सिंह भवन, रायपुर

क्र. एफ 12-1 / 2007 / 1-3

रायपुर, दिनांक 05 मार्च, 2008

प्रति,

शासन के समस्त विभाग,

अध्यक्ष, छत्तीसगढ़ राजस्व मण्डल बिलासपुर,
समस्त विभागाध्यक्ष
समस्त कलेक्टर्स,
छत्तीसगढ़।

विषय :- दैनिक वेतन पर अथवा तदर्थ रूप से नियुक्त तृतीय एवं चतुर्थ श्रेणी कर्मचारियों का नियमितकरण बाबत।

(अ) दिनांक 31.12.1988 के पूर्व के दैनिक वेतन भोगी/तदर्थ नियुक्त कर्मचारियों का नियमितकरण बाबत।

राज्य शासन द्वारा दिनांक 31.12.1988 के पूर्व नियुक्त उपरोक्त श्रेणी के कर्मचारियों के नियमितकरण के लिये परिपत्र क्र. 16/11/88/1/वेआप्र/69 दिनांक 9 जनवरी 1990 तथा बाद में भी योग्य निर्देश प्रसारित किये गये हैं। सुलभ संदर्भ हेतु प्रतियां संलग्न हैं। उक्त परिपत्रों अनुसार दिनांक 31.12.1988 तक के दैनिक वेतन भोगी अथवा तदर्थ रूप से नियुक्त कर्मचारियों को नियमित करने के संबंध में स्पष्ट किया गया है कि कर्मचारियों एवं आकस्मिकता सेवा में पदों की व्यवस्था नहीं है तो उन्हें नियमित स्थापना में नियुक्ति दी जाय और नियमित स्थापना में पद उपलब्ध न हो आवश्यकतानुसार अतिरिक्त अतिरिक्त पद सृजित किये जाने की कार्यवाही की जाय। अतः दिनांक 31.12.1988 तक के दैनिक वेतन भोगी/तदर्थ कर्मचारियों की नियमित करने के संबंध में उक्त परिपत्रों में दिये गये प्रावधान अनुसार नियमितकरण की कार्यवाही की जाय।

यह स्पष्ट किया जाता है कि अब कार्य विभागों में कार्यरत गैंगमेन/श्रमिक भी नियमितकरण की परिधि में आवेंगे।

(ब) दिनांक 01.01.1980 से दिनांक 31.12.1997 तक की अवधि में नियुक्त दैनिक वेतन भोगी/ तदर्थ नियुक्त कर्मचारियों का नियमितकरण

माननीय सर्वोच्च न्यायालय द्वारा सचिव कर्नाटक राज्य एवं अन्य विरुद्ध उषादेवी एवं अन्य (2006) 4 एस.सी.सी. के प्रकरण में दिनांक 10.04.2006 को आदेश पारित कर यह सामान्य निर्देश दिया है कि केवल एक बार/एक समय के लिये 10 वर्षों या अधिक समय से नियमानुसार स्वीकृत पदों पर लगातार कार्यरत दैनिक वेतन भोगी/तदर्थ/अस्थाई कर्मचारियों की अनियमित नियुक्ति (IRREGULAR APPOINTMENTS) को नियमित करने की कार्यवाही की जानी चाहिए।

2/ उपरोक्त माननीय उच्चतम न्यायालय के निर्णय के परिप्रेक्ष्य में राज्य शासन द्वारा सहानुभूतिपूर्वक विचार कर दैनिक वेतन भोगी/ तदर्थ रूप में नियुक्त कर्मचारियों की नियमितिकरण की प्रक्रिया निम्नानुसार निर्धारित की जाती है:-

(i) व्यक्ति, रिक्त/स्वीकृत नियमित पद के विरुद्ध पदस्थ किया गया हो और विभागीय भरती नियमों में निर्धारित शैक्षणिक एवं अन्य योग्यताएं रखता हो तो ही नियमित करने योग्य है।

(ii) दैनिक वेतन पर, तदर्थ रूप से अथवा कलेक्टर दर पर (दैनिक वेतन पर) जब नियुक्ति हुई तब से अब तक उस पद की आवश्यकता रही है और आगे भी उस पद की आवश्यकता हो तो संबंधित पद के विरुद्ध ऐसे व्यक्ति को पदस्थ मानते हुए विचार किया जा सकेगा।

8. The petitioner has completed 10 years of service from 1985 to 1995 but he has not completed the 10 years of service from 01-01-1989 to 31-12-1999 which is paramount consideration for regularization of service of the petitioner and this fact is not in dispute as the petitioner has raised the dispute after lapse of 16 years from the date of his termination in the year 1998. In the evidence adduced before the Labour Court he has stated that he has worked from 1985 to 1995 but neither he has pleaded before the Labour Court that he has worked from 1995-97 nor there is any material placed by the petitioner establish that he has worked from 1995-97 before the respondent also. In absence of any material this Court cannot record the finding that the petitioner has worked from 1995-97 and it cannot be said that the finding recorded by the authority that the petitioner has not

completed 10 years of service prior to 31-12-1997 is erroneous finding of fact.

9. Hon'ble Supreme Court in the case of Secretary, State of Karnataka and others versus Uma Devi (supra) has held in paragraph 53 which reads as under.

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 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 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 above referred 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 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 subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme”.

10. Even the Circular was issued in pursuance of the judgment passed by the Hon'ble Supreme Court in the matter of Secretary and State of

Karnataka versus Uma Devi (supra) and in paragraph 53 of the judgment, Hon'ble Supreme Court has directed to frame one time of scheme and in pursuance of the order passed by the Hon'ble Supreme Court the State has issued this Circular on 05-03-2008, therefore, this Court cannot relax any condition which has been set by the respondent while regularizing the service of daily wagers working in the Government. As such, there is no perversity or illegality in the impugned order warranting any interference by this Court.

11. Accordingly this writ petition being devoid of merit is liable to be and is hereby dismissed. No order as to costs.

Sd/-

(Narendra Kumar Vyas)

JUDGE