

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3642 of 2009

Saurabh Sahu, aged about 46 years, S/o Shri K.R. Sahu, Sub Engineer (Civil)
Office Of Suptdt. Engineer Public Works Department Durg Division, Durg Tah.
And Distt. Durg (CG)

---- Petitioner

Versus

1. State Of Chhattisgarh through : Principal Secretary Public Works Department,
Govt. of Chhattisgarh, Secretariat, DKS Bhawan, Raipur (CG).
2. Engineer In Chief, Public Works Department, Sirpur Bhawan, Raipur (CG)

---- Respondents

For Petitioner	:	Shri V.G. Tamaskar, Advocate
For Respondent/State	:	Ms. Sunita Jain, Panel Lawyer

SB: Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

07/10/2015

Heard.

1. The petitioner has filed this petition for a direction to respondents to fix the seniority on the post of Assistant Engineer by granting him benefit of service rendered as daily wage employee with effect from 16.4.1991.
2. Learned counsel for the petitioner submits that the petitioner was initially appointed as Daily Wage Sub-Engineer against a vacant post in the Public Works Department with effect from 16.4.1991. Thereafter, the petitioner continued to serve the State.
3. As the petitioner's claims for regularization was not being paid any heed to and on the other hand, petitioner was terminated, the petitioner filed petition before the State Administrative Tribunal (for short "*the Tribunal*"). By an interim order passed on 11.10.1995, the Tribunal allowed the petitioner to continue in service. The petition stood transferred to this Court upon abolition of the Tribunal. The petition

was registered as WPS No.1219 of 2005. The aforesaid petition was finally disposed off vide order dated 25th July, 2006. This Court allowed the petitioner to continue in service with a clear stipulation that the interim order of continuance of the petitioner in service is confirmed. Learned counsel for the petitioner submits that the consequence of this order is that the order of termination cannot be given effect to in perpetuity and for all purposes, order of termination is rendered ineffective and unconstitutional. Later on, the service of the petitioner were regularized vide order dated 26.8.2008 (Annexure P-6), in compliance of Govt. policy of regularization promulgated vide order dated 5.3.2008.

4. Learned counsel for the petitioner submitted that in this background, the petitioner is entitled to count the seniority on the post with effect from his initial date of appointment as daily wage employee. It is further submitted that the effect of the order passed on 25th July, 2006 is that since that date, the petitioner cannot be treated as daily wage employee but his status is coveted with judicial protection. He further argues that in similar cases, the State has adopted a different approach. One U.K. Dewangan was granted seniority with effect from 1.6.1992. This is clearly reflected from order passed in his case on 3rd July, 2014 in WPS 2558 of 2011.
5. On the other hand, learned counsel for the State opposes and submits that the period of service rendered by the petitioner as daily wage employee cannot be counted for the purpose of seniority. This is neither permissible under the Rules nor is there any policy of the State to grant such seniority. Learned State counsel submits that the petitioner cannot claim negative equality. According to learned counsel for the State, the said order passed in the case of U.K. Dewangan does not indicate under what circumstances U.K. Dewangan was granted seniority from 1.6.1992.
6. It is well settled legal position that in order to claim seniority, one has to establish that his initial appointment was in accordance with the statutory rule governing appointment. The Supreme Court in its celebrated decision in the case of **Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra and ors.** (1990) 2 SCC 715, has settled the controversy that seniority cannot be claimed from a date prior to the date from which a person has been appointed according to rules. In the case in hand, the appointment was without following any procedure prescribed for regular appointment on the post of Engineer. Subsequent regularization under the Govt. policy would not entitle the petitioner

to seniority from the initial date of daily wage appointment. There is no material on record to show that the Govt., by relaxing the Rules relating to seniority, decided to grant seniority to daily wage employees from their initial date of appointment.

7. True it is that the interim order against the termination of the petitioner was continued and finally confirmed and made absolute by this Court vide order dated 25th July, 2006, at the same time, it cannot be said that the order had the effect of changing the nature of appointment of the petitioner. The effect of confirming the interim order and disposing off the petition would only mean that petitioner's termination would not be given effect to. However, his status as Daily wage Engineer would not get altered to any other exalted status in the absence of there being any order in his favour. Therefore, argument, in this regard cannot be accepted.
8. A serious grievance has been raised that the State has adopted pick and choose policy by illustrating the example of one U.K Dewangan that he was also Daily Wage Engineer and was granted seniority from initial date of appointment. This submission of learned counsel for the petitioner only seeks to enforce negative equality which is not permissible. The Supreme Court in the case of **Hari Ram and Anr. Vs. State of Haryana & Ors.** (2010) 3 SCC 621, clearly held that the writ Court would not enforce negative equality in the sense that if some illegality has been committed that could not be enforced in-judicial proceedings. Unless there is specific provision entitling the Daily Wage Employee to count his past seniority upon regularization, the benefit cannot be granted.
9. At the last, learned counsel for the petitioner submitted that subsequent to filing of this petition, some of the persons who are otherwise junior to the petitioner even on the basis of seniority which is assigned to him upon regularization, have been placed over and above the petitioner, which grievance the petitioner seeks to redress through representation and/or taking recourse to remedy of law.

Clarifying that this order shall not come in the way of the petitioner in seeking enforcement of right other than the issue which has been decided by this Court, the petition is dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge