

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****WPS No. 1459 of 2011**

1. Ku. Madhuri Jha.
2. Sanjay Kumar Netam S/o Shri Sukkdu Ram Neatam Occupation Assistant Grade Iii In Zilla Panchayat Bastar (Drda) Jagdalpur R/o Awantika Collony J/10 Jagdalpur Distt. Bastar Cg
3. Smt. Asha Kiran Lavang W/o Shri Narendra Kumar Lavang Occupation Assistant Grade Iii In Zilla Panchayat Bastar (Drda) Jagdalpur R/o Gandhi Nagar Ward Behind Mahatma Gandhi School Jagdalpur Distt. Bastar Cg
4. Ratnadeep Meshram S/o Late Shri Namdev Meshram Occupation Assistant Grade Iii In Zilla Panchayat Bastar (Drda) Jagdalpur R/o Near Awantika Colony H.No. C/10 Jagdalpur Distt. Bastar Cg
5. Gangadhar Sinha S/o Shri Ramlal Sinha Stenographer In Zilla Panchayat Bastar (Drda) Jagdalpur R/o Near Awantika Colony H.No. A/2 Jagdalpur Distt. Bastar Cg
6. Manoj Kumar Parte S/o Shri Raju Lal Parte Occupation Assistant Statistical Officer In Zilla Panchayat Bastar (Drda) Jagdalpur R/o Sargipalpara Kondagaon Distt. Bastar Cg
7. Virendra Kumar Thakur S/o Shri Govardhanlal Thakur Occupation Assistant Grade Iii In Zilla Panchayat Bastar (Drda) Jagdalpur R/o Bhagat Singh Ward Pathraguda Jagdalpur Distt. Bastar Cg
8. Raj Kumar Chourasiya S/o Shri S.P. Chourasiya Occupation Assistant Grade Iii In Zilla Panchayat Bastar Jagdalpur R/o Near Ambika Sao Mill Dalpat Sagar Ward Jagdalpur Distt. Bastar Cg
9. Suraj Dash S/o Shri B.B. Dash Occupation Assistant Grade Iii In Zilla Panchayat Bastar (Drda) Jagdalpur R/o Near Nehru Manch Civil Line Ward No. 7 Lalbagh Jagdalpur Distt. Bastar Cg

---- Petitioners**Versus**

1. State Of Chhattisgarh & Ors.
2. The Chief Executive Officer Zilla Panchayat Bastar Jagdalpur Distt. Bastar Cg
3. The Collector Bastar Distt. Bastar Cg

---- Respondents

{**Note:** Cause title has been reproduced as is available in the CIS Software}

For Petitioners	:	Shri JN Nande, Advocate
For Respondent-State	:	Shri S Majid Ali, PL for the State

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

10/08/2015

1. Petitioners have assailed the legality and validity of the impugned order Annexure P-1, passed by the Chief Executive Officer, Zila Panchayat, Jagdalpur (for short 'the CEO') cancelling their regularization on different class-III posts.
2. Pursuant to the advertisement dated 14.06.2007 (Annexure R-2), the petitioners were appointed on the post of Assistant Statistical Officer, AG-III and Stenographer, as the case may be, by different orders passed on 13.07.2006, 24.08.2007 and 8.11.2007. Subsequently, the Zila Panchayat desired to fill up the said posts on regular basis. In this connection, the CEO sought guidance from the State Government vide letter dated 13.05.2008, as to whether the petitioners, who are contract appointees, can be directly appointed on regular posts without subjecting them to a recruitment process/competition. There is nothing in the record as to whether the State Government accorded permission for absorption or regularization of the petitioners on regular posts, however, the General Administrative Committee of the Zila Panchayat passed a resolution for appointment of the petitioners on regular posts on which the CEO issued an order on 30.09.2008 appointing the petitioners on regular basis.
3. On 01.06.2009, the State Government issued a communication that under

the circular issued by the Government on 05.03.2008 only daily wagers and temporary employees who fulfill the requirement of the circular, can be regularized and the contract appointees are not to be regularized under that circular. Since the petitioners were earlier appointed as contract appointees and they have been subsequently appointed on regular basis without subjecting them to face any open competition, the CEO, pursuant to the order of the State Government cancelled the appointment/regularization.

4. Referring to Rule 7 of the Chhattisgarh (Discipline and Appeal) Rules, 1999, it is argued that the petitioners have been removed from services without holding any enquiry, therefore, the impugned order is *per se* illegal. It is also argued that the petitioners had already undergone the selection process at the time of their initial entry into the service as contract appointees, therefore, it is not a case of regularization, but it was a fresh appointment based on their performance as contract appointee and the State Government's circular dated 1.06.2009 is not applicable.
5. Per contra, learned State counsel would submit that before appointing the petitioners on regular basis, the posts were not advertised, therefore, the appointment is contrary to the constitutional scheme of appointment and the petitioners being probationers, they have rightly been discharged from services.
6. Material available in the record would clearly indicate that the petitioners' first entry into the service as a contract appointee was for a limited period, which continued till they were regularly appointed, however, before their regular appointment, the posts were not advertised.
7. It is settled law that appointment to a post under the Government or any other State Government instrumentality cannot be made without advertising

the post making it known to all eligible candidates for applying for the post. Any appointment made without following the process of advertisement and inviting applications would infringe Article 16 of the Constitution of India, therefore, such method of appointment cannot be termed as constitutionally valid. Mere fact that the posts were advertised when the petitioners were earlier appointed would not absolve the authorities of the requirement of issuing advertisement for making regular appointment. Issuing advertisement for contract appointment and following the constitutional scheme while making regular appointment are two separate and distinct requirements. Both cannot be inter-linked or amalgamated so as to make it appear as if the appointment is made after following constitutional scheme of appointment. Since admittedly, the petitioners were on probation and their appointment was not in conformity with the constitutional scheme, they have rightly been discharged from service. No case for interference is made out.

8. Accordingly, the writ petition is dismissed. No order as to costs.

Sd/-

Judge

Prashant Kumar Mishra

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