

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION (S) NO. 6581 OF 2010

Narrendra Kumar Kherwar, S/o Shri Hira Singh, aged about 33 years,
R/o Gram Dongaama, Post-Nonberra, Tehsil- Kartala, District-Korba
(C.G.)

... Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Tribal Welfare Department, D.K.S. Bhawan, Raipur (C.G.)
2. The Secretary, School Education Department, D.K.S. Bhawan, Raipur (C.G.)
3. Assistant Commissioner, Tribal Welfare Department, Korba (C.G.)
4. Block Education Officer, Kartala, District- Korba (C.G.)

... Respondents

For Petitioner	:	Mr. Mateen Siddiqui, Advocate.
For Respondent-State	:	Ms. Madhunisha Singh, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

07/12/2015

1. Grievance of the Petitioner in the present case is the order dated 21.12.2009, Annexure P-1, whereby his claim for regularization has been rejected by the Respondents.
2. The perusal of Annexure P-1 shows that the claim for regularization was rejected purely on the ground that since the basic appointment of the Petitioner was that of a part time peon and therefore part time peon cannot be considered for regularization.
3. The writ petition is of the year 2010 and notices were also issued to the Respondents but till date no reply has been filed on behalf of the State Government. Though the Counsel for the State submits that reply perhaps has been filed, however there is no such reply on record.
4. Counsel for the Petitioner during the course of arguments submitted that pending the writ petition there has been subsequent developments to the extent that on 6.2.2012 the Assistant Commissioner,

Tribal Welfare Department, Korba issued an order specifically ordering that the service of the Petitioner is being engaged against the sanctioned vacant post. The Counsel for the Petitioner also submits that again on 22.6.2013 there has been another order passed by the Assistant Commissioner, Tribal Welfare Department, Korba holding that the sanctioned vacant post of Peon on Collector Rate stands merged with the Contingency Establishment Peons under the Scheme of Rationalization, and after issuance of order of regularization the Petitioner has been transferred from Madwani to Balak Ashram Rampur at Kartala Block.

5. According to the Counsel for the Petitioner now that the Petitioner has been working against the sanctioned vacant post as is evident from the order dated 6.2.2012, the State authorities may reconsider the case of the Petitioner in accordance with the circular of the State Government regarding regularization of service, dated 5.3.2008. Counsel for the Petitioner further submits that though on an earlier occasion, this Court in Writ Petition (S) No. 4984 of 2009 while disposing the same on 3.9.2009 had ordered for deciding the representation of the Petitioner for regularization, but since the status of the Petitioner was that of a part time employee substantially at that point of time his case has been rejected and now in the changed circumstances his matter may be reconsidered afresh in the light of the circular dated 5.3.2008 as he stands appointed on regular basis against the sanctioned vacant post.

6. Counsel for the Petitioner submits that the Petitioner though on papers was shown to be a part time employee but in fact the Respondents indisputably had been taking full work of the whole day from the Petitioner.

7. Counsel for the Petitioner relies upon a recent judgement of the Supreme Court reported in 2015 (8) SCC 265 (Amarkant Rai v. State of Bihar & Others) wherein also the employee who was initially appointed against unsanctioned post but was later on appointed on sanctioned post and still the Supreme Court has ordered for regularization.

8. True it is that regularization is not a matter of right of an employee particularly when his initial appointment itself is not in accordance with the constitutional scheme framed by the Government. But, the fact that the Petitioner has been selected with the full knowledge, permission, approval of the competent authority under the State Government and continues to work on the said post for decades, it gives a great amount of legitimate expectation in the mindset of the employee of being regularized in the services of the State Government.

9. In the instant case of the Petitioner, from the order of appointment dated 29.7.1997 itself is established that there was a clear approval, permission and sanction from the higher authorities. It was also issued by the competent authority and the Petitioner continued on the said post with effect from 29.7.1997 and is still discharging his duties and in due course of time the authorities have also passed an order holding that the Petitioner is in fact working against the sanctioned vacant post and now the post on which the Petitioner was working, have been brought into the cadre of a contingency establishment employee. All these cumulatively if taken into consideration would lead to safely infer that the appointment of the Petitioner cannot be termed to be illegal but was only an irregular appointment.

10. Further, the State of Chhattisgarh in the light of the judgement of the Supreme Court in 2006 (4) SCC 1 (State of Karnataka v. Umadevi] had issued a circular on 5.3.2008 taking a policy decision of

regularization of those daily wage workers engaged with the employer prior to 31.12.1997 and who have put in 10 years of services. There is no material placed on record by the Respondents that the appointment is lacking any qualification or eligibility on the post on which the Petitioner is working for being regularized. It is a known fact that persons who have been employed much after the Petitioner, engaged in the various department of the State Government including that of the Respondents, have been regularized and only for the nomenclature of the Petitioner being a part time employee his representation has been rejected holding it to be outside the purview of the circular dated 5.3.2008. The order dated 6.2.2012 further strengthens the case of the Petitioner of his working against the sanctioned vacant post.

11. The Supreme Court in the case of Amarkant Rai (supra) in para 10 has held that “as noticed earlier, the case of the appellant was referred to a three-member Committee and the three-member Committee rejected the claim of the appellant declaring that his appointment is not in consonance with the ratio of the decision laid down by this Court in *Umadevi case*. In *Umadevi case*, even though this Court has held that the appointments made against temporary or ad hoc are not to be regularized, in para 53 of the judgement, it provided that irregular appointment of duly qualified persons in duly sanctioned posts who have worked for 20 years or more can be considered on merits and steps to be taken as a one-time measure to regularize them. The objective behind exception carved out in this case was to permit regularization of such appointments, which are irregular but not illegal, and to ensure security of employment of those persons who had served the State Government and their instrumentalities for more than ten years”.

12. The Supreme Court again reiterating the principles laid down by the Supreme Court in *M.L. Kesari* case in para 11 has held as under:-

“11. Elaborating upon the principles laid down in *Umadevi* case and explaining the difference between irregular and illegal appointments in *State of Karnataka v. M.L. Kesari*, this Court held as under:

“7. It is evident from the above that there is an exception to the general principles against 'regularization' enunciated in *Umadevi*, if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.”

13. Accordingly, the present writ petition is disposed of and is being sent back to Respondent No.1 in the changed facts and circumstances of the case and also keeping in view the judgement of the Supreme Court in *Amarkant Rai* (supra). Respondent No.1 is directed to reconsider the case of the Petitioner as expeditiously as possible.

14. Needless to mention that it is expected that the Respondents shall pass a reasoned order while deciding the representation of the Petitioner for regularization.

15. The writ petition stands disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge