

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 4572 of 2014

1. Arun Meshram S/o Adaku Meshram aged about 47 years, posted as a Daily Wages Employee at Borai Ware Housing Corporation, Rajnandgaon, Police Station Borai, Civil & Revenue Distt Rajnandgaon, (CG)

---- Petitioner

Versus

1. Chhattisgarh State Ware Housing Corporation, Managing Director, Ward Housing Corporation, Raipur, Dist Raipur, (CG)
2. Branch Manager Chhattisgarh State Ware Housing Corporation Borai, Distt Rajnandgaon, (CG)
3. Karmik Manager Ware Housing Corporation, Raipur, Dist Raipur, (CG)

---- Respondents

For Petitioner:
For Respondents:

Shri Awadh Tripathi, Advocate
Shri B.D. Guru, Advocate

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

07/12/2015

1. By this petition the petitioner has prayed for a direction to the respondents to consider his case for regularization on the post of Peon in accordance with the circular of the State Government dated 05.03.2008 as has been done in the case of other similarly situated persons.
2. Counsel for the petitioner submits that the petitioner is working with the respondent Corporation since 1.2.1993 without there being any break in service and thus entitled for regularization in accordance with the circular of the State Government dated 5.3.2008, but the respondents are not regularizing him.
3. Counsel for the respondents submits that the petitioner was absent from

duty from 13.8.2013 to 4.12.2013 on medical ground and since this period of absent has been treated as 'no work no pay', which amounts to break in service, the petitioner is not entitled for regularization as according to the circular dated 5.3.2008, there should not be a break of more than one month in service in a year for consideration of regularization.

4. Counsel for the petitioner submits that once the period of absent is treated as the period without wages, that would not amount to be a break in service as the continuity of service automatically got restored at the moment the petitioner was permitted to resume his duty on his submitting medical certificate. Therefore, the petitioner was liable to be considered for regularization in accordance with the Circular dated 5.3.2008, as has been done in the case of other similarly placed persons. He further submits that in the identical matter i.e. W.P. (S) No.922/2015, this Court vide order dated 4.11.2015 has held that *decision of the respondents in refusing the case of the petitioner for regularization only on account of the petitioner being absent from duty on medical ground is apparently arbitrary and illegal and is also not in accordance with the Circular dated 05.03.2008 of the State Government and directed the respondents to consider the case of the petitioner for regularization.*

5. Heard learned counsel for the parties and perused the material on record.
6. While dealing with the identical issue the coordinate Bench of this Court vide order dated 4.11.2015 passed in W.P. (S) No.922/2015 has held thus;-

“4. Considering the rival submissions put forth by the counsel appearing on either side and on perusal of the record itself it is evidently clear that the petitioner was absent from duty from 16.06.2000 to 18.08.2000 is not disputed by either side. The other admitted fact is that the said period has been treated as 'no work no pay' only to the extent that the

petitioner would not be entitled for any wages during the said period. The respondents have not been able to show any document by which the said period has been treated as *dies non* or as break in service. For all practical purposes, once when the respondents themselves have admitted the fact that the petitioner was medically not fit to work and the same department subsequently on the petitioner's furnishing a fitness certificate permitted him to resume his duty, the continuity of his service automatically gets restored unless otherwise specifically ordered. In absence of any specific order for treating the said period as *dies non* or for that matter a break in service, the absence on duty on medical ground even if the petitioner was treated as no work no pay would not disqualify the petitioner from being considered for regularization as per Circular dated 05.03.2008. The decision of the respondents in refusing the case of the petitioner for regularization only on account of the petitioner being absent from duty on medical ground is apparently arbitrary and illegal and is also not in accordance with the circular dated 05.03.2008 of the State Government.

5. For the foregoing reasons, the impugned order dated 12.12.2014 Annexure P-1 is not sustainable and is accordingly set aside and quashed. The respondents are directed to consider the case of the petitioner for regularization forthwith and pass an appropriate order at the earliest”

7. In view of above quoted order dated 4.11.2015 passed by the coordinate Bench in W.P. (S) No.922/2015, the respondents are expected not to proceed against the petitioner treating his 'leave without pay' as break in service and consider his case also for regularization.
8. Accordingly, the writ petition stands disposed off.

Sd/-
(Pritinker Diwaker)
Judge