

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 5391 of 2011

Sandeep Kumar Pandey, Son of Shri Ambika Prasad Pandey, aged about 37 years, presently working as Peon in the Office of the Collector, Resident of Sheetala Ward, PS & PO Kawardha, District Kabirdham (CG)

---- **Petitioner**

Versus

1. State Of Chhattisgarh Through The Secretary Department of Revenue and Calamity, DKS Bhawan, Mantralaya, District Raipur (CG)
2. The Collector, District Kabirdham (CG)

---- **Respondent**

For Petitioner : Shri Dinesh Tiwari, Advocate.
For Respondents/State : Shri Shashank Thakur, Govt. Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

31/08/2015

1. The petitioner would pray for direction to the respondents to consider his case for grant of regular pay scale; to regularize his services on the post of Peon, and to set aside the select list drawn on the strength of the names sent by the District Employment Exchange together with consequent appointment and further direction to the respondents to issue fresh advertisement against the said vacant post.
2. The petitioner was appointed as Contingency Paid Watchman on a fixed

pay of Rs.1400/- under the order issued by the Collector, Kabirdham on 25.6.2005. Sometimes in the year 2010, establishment of District Collector, Kabirdham issued advertisement for filling up the vacant Class-IV posts in the said District Collectorate. However, the advertisement was subsequently cancelled and the names of eligible candidates were invited from the District Employment exchange. The petitioner was refused regular pay scale on the ground that the posts have been sanctioned in the department of the District Collectorate, Kabirdham and he may participate in the selection process.

3. Learned counsel for the petitioner would submit that making selection for a public office without issuing advertisement and only by inviting the names from the Employment Exchange has been held illegal by the Supreme Court, therefore, the respondents have committed illegality by not providing opportunity to the petitioner to compete in the selection process. He would submit that because of this illegality, the petitioner is entitled for regularization or for consideration of his case for grant of regular pay scale after 3 years of service.
4. The relief for setting aside select list sent by the District Employment Exchange was not made in the original writ petition; the same came to be mentioned by way of amendment made in February, 2015.
5. This Court in the matter of **Prakash Rao Gayakwad Vs. State of Chhattisgarh & Others** {WPS No.783/2010, decided on 5th August,

2014} has held in paragraphs -5, 6 and 7 thus:-

“5. The Supreme Court in *State of Orissa and Another v. Mamata Mohanty*¹, has clearly held that the course of inviting applications from the Employment Exchange for any appointment violates the mandates of Article 14 & 16 of the Constitution of India, as it deprives the candidates who are eligible for the post, from being considered. The observation made by the Supreme Court, reads as under :

“36. Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the Employment Exchange or putting a note on the Notice Board etc. that will not meet the requirement of Articles 14 & 16 of the Constitution. Such a course violates the mandates of Articles 14 & 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance of the said Constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit.”

6. This Court has also considered the issue in *Darbar Singh Porte & Another v. State of C.G. & Another*² and held as under :

“8. Even if the names of the petitioners were called from the employment exchange, this does not suffice the requirement of provision of Constitutional scheme of employment, as there should be an open invitation to all the concerned. Registration of name in the employment exchange may be one of the

1 (2011) 3 SCC 436

2 2010 (3) CGLJ 418

eligibility criteria, but drawing names from the employment exchange does not meet with the requirement of Constitutional scheme of employment. Admittedly the recruitment of the petitioners was not made in accordance with any rules.”

7. Considering the fact that the impugned selection/recruitment is made without issuing advertisement, the same is found to be in violation of Article 16 of the Constitution of India, as has been held by the Supreme Court in *Mamata Mohanty* (supra).”

8. In **Renu and others Vs. District and Sessions Judge, Tis Hazari Courts, Delhi and another**³, the Supreme Court referred to its earlier decisions in the matters of **Excise Supt. Vs. K.B.N. Visweshwara Rao**⁴, **Suresh Kumar Vs. State of Haryana**⁵ and **UPSC Vs. Girish Jayanti Lal Vaghela**⁶ and held that any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution.

9. Despite above-stated pronouncement, this Court finds itself unable to set aside the selection because the petitioner has not prayed for such relief by arraying all the necessary parties. Despite repeated suggestions by this Court to learned counsel for the petitioner to

3 (2014) 14 SCC 50

4 (1996) 6 SCC 216

5 (2003) 10 SCC 276

6 (2006) 2 SCC 482

implead all the selected candidates, he would insist on consideration of the petitioner's case for regularization or for grant of regular pay scale. Thus, in the absence of affected parties being joined, the relief for quashment of the select list cannot be granted.

10.Insofar as regularization of the petitioner's services is concerned, the same is not permissible in view of the law laid down by the Supreme Court in the matter of **Secretary, State of Karnataka and Others v. Umadevi (3) and Others**⁷.

11.For the other relief concerning grant of regular pay scale on completion of 3 years service, the petitioner has not placed on record any such Government instructions on the basis of which he is entitled to regular pay scale on completion of 3 years period. Therefore, on this count, the petitioner would be at liberty to make representation before the concerned Collector within a period of one month, which shall be disposed of by the said authority within a further period of 3 months.

12.With the aforesaid observations, the writ petition stands disposed of.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve

⁷ (2006) 4 SCC 1