

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 373 of 2011**

- Ballu Singh Thakur, S/o Nohar Singh Thakur, aged about 38 years, R/o Rajmahal Chowk, Kawardha, District Kabirdham (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through Secretary, Water Resources Department, Dau Kalyan Singh Bhawan, Raipur (Chhattisgarh)
2. Chief Engineer, Mahanadi Godawari Kachhar, Water Resources Department, Chhattisgarh, Raipur (CG)
3. Superintending Engineer, Water Resources Department, Shivnath Division, Durg, Distt. Durg (Chhattisgarh)
4. Executive Engineer, Water Resources Department, Chhattisgarh, Raipur (CG)

---- Respondent

For Petitioner : Shri Amit Verma, Advocate.
 For Respondents : Shri Dhiraj Wankhede, Govt. Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****07/10/2015**

1. The petitioner is aggrieved by the order Annexure-P/1 whereby the Chief Engineer, Mahanadi Godawari Kachhar, Water Resource Division, has rejected his representation which was preferred by the petitioner pursuant to the order passed by this Court in WPS

No.1180/2005.

2. In WPS No.1180/2005, the following order was passed by this Court:-

“Case of the petitioner is that he was appointed as Chowkidar in February 1989 and continued on the said post till issuance of termination order dated 4.8.1995 and thereafter the other termination order dated 31.1.2000.

Counsel for the petitioner submits that the first termination order dated 4.8.1995 was stayed by this Court on 5.9.1995 and on the strength of the said stay order the petitioner continued on the said post till passing of the second termination order dated 31.1.2000 which was also stayed later on by order dated 16.2.2000. Counsel for the petitioner further submits that on 5.3.2008 the Government has issued a circular and taken a decision to consider the cases of the persons who were appointed prior to year 1998 and also of those who are working for last 10 years.

In view of the subsequent developments and issuance of the circular dated 5.3.2008, at this stage counsel for the petitioner submits that he may be permitted to withdraw this petition with liberty to make a representation to the concerned respondents seeking regularization of service. He also prays for a direction to the concerned respondents to consider the case of the petitioner in the light of the legal position and the various circulars issued by the Government. He submits that some time limit may also be fixed for deciding the representation of the petitioner. To this prayer of the counsel for the petitioner, counsel for the respondents/State has no objection.

Accordingly, the petition is dismissed as withdrawn with liberty as aforesaid. If the petitioner makes a representation to the concerned respondents within one month from the date of receipt of copy of this order, the concerned respondents are expected to decide the same within a further period of three months from the date of its receipt strictly in accordance with law.

This Court has not expressed any opinion on the merits of the case and the authorities concerned are free to

decide the representation of the petitioner strictly in accordance with law taking into consideration the circulars and the guidelines in respect of regularization of government employees.”

3. In course of hearing, learned counsel for the petitioner would submit that the petitioner did not continue after 31.1.2000 when his services were terminated, although there was an interim order in his favour. He would submit that the persons who were engaged subsequent to the petitioner have been regularized, therefore, in view of the law laid down by the Supreme Court in **Malathi Das (Retired) Now P.B. Mahishy and others Vs. Suresh and others** {(2014) 13 SCC 249}, the petitioner is entitled to be considered for regularization and rejection of his representation is unjust and arbitrary.
4. Learned State counsel would submit that the petitioner was terminated on the ground that his services are no longer required and the said order has not been set aside by this Court or by any other competent Court, therefore, this petition for regularization is not maintainable.
5. It would appear that the petitioner was working on daily wages in the Department of Water Resources in the year 1995. He was terminated but the said order was stayed by the State Administrative Tribunal, however, the second order of termination was passed on 31.1.2000 on the ground that his services are no longer required. Despite the second interim order, the petitioner was not taken back and the petitioner did not initiate any contempt proceedings.

6. The earlier writ petition was preferred to challenge the order of termination, however, the petitioner withdrew the writ petition with liberty to make representation for his regularization.
7. It is settled law that regularization cannot be considered when the person is not on the roll of the department on the date of such consideration.
8. Unless and until the petitioner's termination is set aside, he is not entitled for consideration of his case for regularization. In his earlier writ petition also, there was no direction to consider his representation against termination but it was only for seeking regularization of service. The judgment relied by the petitioner is distinguishable inasmuch as in the said case the person was in service and similarly situated employees were regularized, whereas in the present case, the petitioner is not in service since after the year 2000.
9. For the foregoing, there being no substance in the writ petition, the same deserves to be and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)