

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 204 of 2015

- Smt. Kumari Dhurva W/o Ajay Kumar Dhurva Aged About 35 Years Occupation Service (Presently Terminated), R/o Village Kusiya, Po Khairagarh, Ps Khairagarh, Dist. Rajnandgaon C.G.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Labour, Mahanadi Mantralaya, Naya Raipur, Post Office & Police Station Naya Raipur, District Raipur C.G.
2. Director Employees State Insurance Services, Directorate, D/290-5, Tagore Nagar, Raipur C.G.
3. The Superintendent ESI Hospital, Rajnandgaon C.G.

---- Respondent

And

WPS No. 235 Of 2015

- Smt. Sandhya Singh W/o Shri Akhilesh Singh Aged About 39 Years R/o House No. 91, Smriti Nagar, Apollo Hospital Road, Nehru Nagar, Police Station Supela Bhilai, Civil & Revenue District Durg, Cg

---- Petitioner

Vs

1. State Of Chhattisgarh Through Its Secretary Labour Department, Mantralaya Mahanadi Bhawan, Police Station Rakhi, Raipur, Cg
2. The Director Employees State Insurance Services, D-290/5, Tagore Nagar, Raipur, District Raipur, Cg
3. The Insurance Medical Officer, First Class, Employees State Insurance Services, Nandini Road Khursipar, Bhilai, District Durg, Cg

---- Respondent

And

WPS No. 254 Of 2015

- Smt. Shweta Methews W/o Shri Satish Kumar Barwala Aged 36 Years Occupation Service (Presently terminated) R/o Jute Mill Kabir Chowk Police Station Jute Mill Bima Colony Raigarh District Raigarh C.G.

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary Department Of Labour, Mahanadi, Mantralaya, Naya Raipur, Post Office and Police Station Naya Raipur, District Raipur, C.G.
2. The Director, Employees State Insurance Services, Directorate, D/ 290 - 5, Tagore Nagar, Raipur C.G.
3. The Superintendent ESI Hospital, Rajnandgaon C.G.

---- Respondent

And

WPS No. 252 Of 2015

- Ku. Sangita Bhagat D/o Late Shri Bhola Ram Bhagat Aged 34 Years Occupation Service (Presently Terminated) R/o Jate Mill Kabir Chowk Bima Colony Raigarh , P.S. Jute Mill District Raigarh C.G.

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary Department Of Labour, Mahanadi Mantralaya, Naya Raipur, Post Office and Police Station Naya Raipur, District Raipur, C.G.
2. The Director, Employees State Insurance Services, Directorate, D/ 290 - 5, Tagore Nagar, Raipur C.G.
3. The Superintendent ESI Hospital, Rajnandgaon C.G.

---- Respondent

And

WPS No. 256 Of 2015

- Shyam Lal Bariha S/o Etwaru Bariha Aged About 36 Years Occupation E.S.I. Service (Insurance Medical Officer, Rajnandgaon) R/o Village Jharmunda, Post Office Aarangi, P.S. Basana, Tahsil Pithora District Mahasamund C.G.

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary Department Of Labour, Mahanadi Mantralaya, Naya Raipur, Post Office and Police Station Naya Raipur, District Raipur, C.G.
2. The Director Employees State Insurance Services, Directorate, D/290-5 , Tagore Nagar, Raipur, C.G.
3. The Superintendent ESI Hospital, Rajnandgaon, C.G.

---- Respondent

And

WPS No. 249 Of 2015

- Purnima Dhruv D/o Shri Bala Ram Dhruv Aged About 30 Years Occupation Staff Nurse, R/o Village Daterenga, Post Sejbahara Police Station Tikrapara Tahsil & District Raipur C.G.

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary Department Of Labour, Mahanadi Mantralaya, Naya Raipur, Post Office and Police Station Naya Raipur, District Raipur, C.G.
2. The Director, Employees State Insurance Services, Directorate, D/290 - 5, Tagore Nagar, Raipur C.G.
3. The Superintendent ESI Hospital, Rajnandgaon C.G.

---- Respondent

And

WPS No. 260 Of 2015

- Smt. Manjulata Kokila W/o Pratap Singh Kokila Aged About 39 Years Occupation Service (Presently Terminated) R/o House No. 211/J, Ward No. 30, Janta Colony, Larveli, District Rajnandgaon C.G.

---- **Petitioner**

Vs

1. State Of Chhattisgarh Through The Secretary Department Of Labour, Mahanadi Mantralaya, Naya Raipur, Post Office and Police Station Naya Raipur, District Raipur, C.G.
2. The Director, Employees State Insurance Services, Directorate, D/ 290 - 5, Tagore Nagar, Raipur C.G.
3. The Superintendent ESI Hospital, Rajnandgaon C.G.

---- **Respondent**

And

WPS No. 251 Of 2015

- Smt. Joshee Grace Tigga W/o Ashish Albert Rai Aged About 36 Years Occupation Staff Nurse R/o C/o Shri G. Albert Rai Behind Santosh Mandir Nurani Chowk Rajatalab, Raipur P.S. Civil Lines Tahsil & District Raipur C.G.

---- **Petitioner**

Vs

1. State Of Chhattisgarh Through The Secretary Department Of Labour, Mahanadi Mantralaya, Naya Raipur, Post Office and Police Station Naya Raipur, District Raipur, C.G.
2. The Director, Employees State Insurance Services, Directorate, D/ 290 - 5, Tagore Nagar, Raipur C.G.
3. The Superintendent ESI Hospital, Rajnandgaon C.G.

---- **Respondent**

And

WPS No. 1053 Of 2015

- Smt. Anupama Deep (Anupama Jofer) W/o Shri Manoj Deep Aged

About 47 Years Ex - Staff Nurse, Posted At Employees State Insurance Services, Champa Centre, Champa, District Janjgir Champa Chhattisgarh

---- **Petitioner**

Vs

1. State Of Chhattisgarh Through The Secretary, Department Of Labour Mantralaya, Mahanadi Bhawan, New Raipur Chhattisgarh
2. The Director Employees State Insurance Services, C - Block 2nd Floor, Indrawati Bhawan, Naya Raipur District Raipur Chhattisgarh
3. The Insurance Medical Officer Employee State Insurance Services, Champa Centre, Champa, Dist Janjgir - Champa Chhattisgarh

---- **Respondent**

And

WPS No. 1055 Of 2015

- Smt. Shubha Beny Baby W/o Bany Baby Aged About 37 Years Working As Staff Nurse Employees State Insurance Services, Jamul/ Nandini Road Centre, Bhilai, District Durg Chhattisgarh

---- **Petitioner**

Vs

1. State Of Chhattisgarh Through The Secretary, Department Of Labour Mantralaya, Mahanadi Bhawan, New Raipur Chhattisgarh
2. The Director Employees State Insurance Services, C - Block 2nd Floor, Indrawati Bhawan, Naya Raipur District Raipur Chhattisgarh
3. The Insurance Medical Officer Employee State Insurance Services, Jamul/Nandini Road, District Durg (CG)

---- **Respondent**

And

WPS No. 1056 Of 2015

- Ku. Mridula Puram D/o Shri H. L. Puram Aged About 38 Years Ex - Staff Nurse, Posted At Employees State Insurance Services, Raipur

Centre, District Raipur Chhattisgarh

---- **Petitioner**

Vs

1. State Of Chhattisgarh Through The Secretary, Department Of Labour Mantralaya, Mahanadi Bhawan, New Raipur Chhattisgarh
2. The Director Employees State Insurance Services, C - Block 2nd Floor, Indrawati Bhawan, Naya Raipur District Raipur Chhattisgarh
3. The Insurance Medical Officer Employee State Insurance Services, Champa Centre, Champa, Dist Janjgir - Champa Chhattisgarh

---- **Respondent**

And

WPS No. 1054 Of 2015

- Smt. Vernika Louis (Vernika Singh) W/o Shri R. Louis Aged About 44 Years Ex - Staff Nurse, Posted At Employees State Insurance Services Urla Centre, District Raipur Chhattisgarh

---- **Petitioner**

Vs

1. State Of Chhattisgarh Through The Secretary, Department Of Labour, Mantralaya, Mahanadi Bhawan, New Raipur Chhattisgarh
2. The Director Employees State Insurance Services, C - Block 2nd Floor, Indrawati Bhawan, Naya Raipur District Raipur Chhattisgarh
3. The Insurance Medical Officer Employee State Insurance Services, Champa Centre, Champa, Dist Janjgir - Champa Chhattisgarh

---- **Respondent**

And

WPS No. 2017 Of 2015

- Smt. Mina Nagar W/o Vimal Nagar Aged About 35 Years R/o C/o M.P. Verma, Radha Niwas, Krishak Nagar, Jora, Thana- Telibandha, Tahsil & District- Raipur (Chhattisgarh)

---- **Petitioner**

Vs

1. State Of Chhattisgarh Through The Secretary, Department Of Labour, Mantralaya, New Raipur, Raipur (Chhattisgarh)
2. The Director, Employee State Insurances Services, D 290/5, Taigore Nagar, Raipur District - Raipur (Chhattisgarh)
3. The Directorate, Employee State Insurance Services, Birgaon, District- Raipur (Chhattisgarh)

---- **Respondent**

And

WPS No. 6465 Of 2014

- Tukeshwar Prasad Verma S/o Shri Rekhrum Verma Aged About 34 Years R/o Village & Post Raikheda P.S. Kharora Distt. Raipur C.G.

---- **Petitioner**

Vs

1. State Of Chhattisgarh Through The Secretary Department Of Labour, Mantralaya, New Raipur, Raipur C.G.
2. The Director, Employee State Insurance Service D 290/5, Taigore Nagar Raipur Distt. Raipur C.G.
3. The Insurance Medical Officer Employee State Insurance Services Baikunth Tilda Centre, Distt. Raipur C.G.

---- **Respondent**

And

WPS No. 6472 Of 2014

- Yadav Dewangan S/o Shri Komal Prasad Dewangan Aged About 35 Years R/o C/o Dinesh Kirana Store Purana Dhamatari Road Tikrapara Thana Tikrapara Distt. Raipur C.G.

---- **Petitioner**

Vs

1. State Of Chhattisgarh Through The Secretary Department Of Labour, Mantralaya, New Raipur, Raipur, C.G.
2. The Director, Employee State Insurance Service D 290/5, Taigore Nagar Raipur Distt. Raipur C.G.
3. The Insurance Medical Officer Employee State Insurance Services, Mandirhasaud, District Raipur (CG)

---- Respondent

And

WPS No. 6473 Of 2014

- Shadab Khan S/o Late Anwar Ahmed Khan Aged About 35 Years R/o Qtr No. I-15, Penshanbada, Police Line Thana City Kotwali Tahsil & Distt. Raipur C.G.

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary Department Of Labour, Mantralaya, New Raipur, Raipur C.G.
2. The Director, Employee State Insurance Service D 290/5, Taigore Nagar Raipur Distt. Raipur C.G.
3. The Directorate Employee State Insurance Services, Raipur, Distt. Raipur C.G.

---- Respondent

And

WPS No. 6507 Of 2014

- Mohd. Zaheer Sheikh S/o Shri Jarif Sheikh Aged About 36 Years R/o Street No. 11, Qtr No. 7-D, Sector -1, Bhilai Distt. Durg. C.G.

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary Department Of Labour, Mahanadi Bhawan, Mantralaya, New Raipur, C.G.

2. The Director, Employees State Insurance Service D -290/5, Taigor Bhawan Raipur C.G.

---- Respondent

And

WPS No. 6509 Of 2014

- Manoj Kumar Verma S/o Shri Late Ramchandra Verma Aged About 34 Years R/o Village Post And Thana Kharora Distt. Raipur C.G.

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary Department Of Labour, Mantralaya, New Raipur, Raipur C.G.
2. The Director, Employee State Insurance Service D 290/5, Taigore Nagar Raipur Distt. Raipur C.G.
3. The Insurance Medical Officer Employee State Insurance Services Baikunth Tilda Centre, Distt. Raipur C.G.

---- Respondent

And

WPS No. 6510 Of 2014

- Madhu Baghel W/o Shri Suraj Baghel Aged About 36 Years R/o Qtr No. L -14, Street No. 5, Avani Vihar Mowa Thana Mowa Raipur Distt. Raipur C.G.

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary Department Of Labour, Mantralaya, New Raipur, Raipur C.G.
2. The Director, Employee State Insurance Service D 290/5, Taigore Nagar Raipur Distt. Raipur C.G.
3. The Insurance Medical Officer Employee State Insurance Services Raipur, District Raipur (CG)

---- Respondent

And

WPS No. 6659 Of 2014

- Ghanshyam Jangade S/o Shri Roshan Lal Jagade Aged About 34 Years R/o Shanker Nagar, Khamhardih, Raipur Tahsil & District - Raipur C.G.

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary Department Of Labour, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur C.G.
2. Director, Employee State Insurance Service Directorate Indrawati Bhavan, Tagore Nagar, Raipur District Raipur C.G.
3. Employee State Insurance Service Janjgir - Champa , Distt. Janjgir - Champa C.G.

---- Respondent

And

WPS No. 6660 Of 2014

- Unis John W/o Shiv Kumar Dhruv, Aged About 33 Years R/o Ganga Bhavan Infont Of Tirmuty Talikes, Korbapara, Champa District Janjgir Champa C.G.

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary Department Of Labour, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur C.G.
2. Director, Employee State Insurance Service Directorate Indrawati Bhavan, Tagore Nagar, Raipur District Raipur C.G.
3. Employee State Insurance Service Janjgir - Champa , Distt. Janjgir - Champa C.G.

---- Respondent

And

WPS No. 6661 Of 2014

- Ashwani Shrivastava S/o Late Shri Laxmi Narayan Shrivastava Aged About 40 Years Ward Boy, Karmchari Rajya Beema, Aousadhalya (Sewaye) Tedesara, District Rajnandgaon C.G.

---- Petitioner

Vs

1. State Govt. Of C.G. Through The Secretary Department Of Labour, Mahanadi Bhawan, New Raipur, C.G. PS Rakhi
2. The Director, Employee State Insurance Service Directorate Indrawati Bhawan, New Raipur, PS Rakhi, Raipur C.G.
3. Beema Chhikitsa Padadhikari, Karmchari Rajya Beem Sevaye, Prabhari Rajnandgaon C.G.

---- Respondent

And

WPS No. 2374 Of 2015

- Kiran Mahapatra, W/o Shri Sanjay Mahapatra, Age 39 years, R/o H. No.B-22, Galaxy Residency, Amlideeh, Post : Ravigram, P.S. New Rajendra Nagar, Tah. Raipur, Civil & Revenue District Raipur (CG) PIN 492006

---- Petitioner

Vs

1. The State Of Chhattisgarh, Through The Secretary Department Of Labour, Mahanadi Bhawan, New Raipur, PS Rakhi, Civil and Revenue District Raipur (CG) Pin : 492001
2. The Director, Employees State Insurance Services, Directorate, Indrawati Bhawan, New Raipur, P.S. Rakhi, Civil and Revenue District Raipur (CG) Pin 492001

---- Respondent

For Petitioners : Shri VVS Murthy, Sr. Advocate with Shri Shantanu Kumr, Shri Uttam Pandey, Shri Rajeev Shrivastava, Shri Gagan Tiwari, Shri Ajay Shrivastava, Shri Bharat Rajput, Shri Amiyakant Tiwari, and Shri Abhishek Pandey, Advocates.
For Respondent/State : Shri P.K. Bhaduri, Govt. Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

Passed on :28/09/2015

1. The petitioners have assailed the legality and validity of the order dated 19.11.2014 passed by the Director, Employees State Insurance Services whereby the petitioners, who were continuing on probation on the posts of Staff Nurse, *Misrak*, AG-III, Dresser, Ward Sewak, Watchman, *Aaya*, etc., as the case may be, have been discharged from the service.
2. For the purposes of disposal, the pleadings made and the documents filed in WPS No.204/2015 are being referred.
3. Facts of the case, pertinent to be referred for adjudication of the writ petitions, are that the Directorate of Employees State Insurance Services (henceforth 'the Directorate') issued two advertisements; one on 14.11.2001 and the other on 12.5.2003 for filling up the posts on which the petitioners were appointed. On the allegation of gross illegality, irregularity, violation of the Rules including reservation rules and roster, the State Government received complaints which

were duly enquired into in the year 2003-2004 itself, wherein it was found that the recruitment process is tainted.

4. Apprehending termination of their services, the petitioners had preferred Writ Petitions before this Court, one such petition being WPS No.1744/2008, which was disposed of on 25.3.2008 in the following manner:-

“With consent of learned counsel appearing for the parties, the matter is heard finally.

2) Learned counsel appearing for the petitioners submits that the petitioners were appointed on probation on the post of Class IV employees by order dated 28-7-2003 (Annexure P/3). Learned counsel further submits that the petitioners apprehend that their services may be terminated at any time without affording an opportunity of hearing to them.

3) Per contra, learned counsel appearing for the respondents/State submits that the appointment of the petitioners is de hors the rules, without following proper circulars, instructions and 80 persons have been appointed against vacant posts of 8 sanctioned posts.

4) Without expressing any opinion on the merit of the case with regard to the appointment, further action thereon, it is ordered that no removal order be passed without affording an opportunity of hearing to the petitioners, as submitted by learned counsel for both the parties.

5) In view of the above, this petition is disposed of.”

5. Soon after the disposal of the above-stated writ petition, the Directorate issued show cause notices to the petitioners vide Annexure-P/5 as to why their services may not be dispensed with.

The petitioners again preferred WPS No.4157/2008, which was allowed in the following manner:-

“With the consent of learned counsel appearing for both the parties, the matter is heard finally.

2) Learned counsel appearing for the petitioners submits that pursuant to the order dated 25-3-2008 passed in Writ Petition (S) No.1744 of 2008 (Ku. Shweta Mathews and others Vs. State of Chhattisgarh and another), the Director Directorate of Employees State Insurance, has issued a notice dated 21-7-2008 (Annexure P/1). According to the learned counsel for the petitioners, show cause notice is vague and does not specify any particular incident of irregularity or illegality. Thus, the petitioners are not capable of replying to the show cause notice.

3) Be that as it may, on perusal of the show cause notice, it appears that the grievance of the petitioners is correct. Learned counsel appearing for the respondents/State also does not find proper requirement of the notice in the impugned notice. In view of that, this notice may not be treated as proper notice and the respondents are at liberty to issue a fresh notice giving the details of the irregularity and illegality committed in the selection process in order to enable the petitioners to file proper reply within a reasonable period.

4) Accordingly, the notice dated 21-7-2008 (Annexure P/1) is quashed and the petition is allowed to the above extent.”

6. The Directorate once again issued a show cause notice vide Annexure P/7 in WPS No.204/2015 to which the petitioners have submitted their reply.
7. Yet another writ petition viz. WPS No.1612/2008 (Ganesh Harpal & Others Vs. State of Chhattisgarh & Others) was preferred by the

employees seeking direction to the respondents to issue the order concerning confirmation of their probation period from the date of completion of the period of probation and grant them increment. The said writ petition was disposed of by this Court on 25.6.2014 in the following manner:-

“6. Having considered the rival submissions, it appears to the Court that even if required number of posts may not be available in the year when the subject appointments were made as the same were in the excess of the cadre strength, since the respondents have not cancelled the appointment nor have taken any action against the appointee, they cannot keep the issue of confirming the services of the petitioners in abeyance for indefinite period. It is not the case of the respondents that the petitioners lack any educational or eligibility qualification, therefore their appointment was inherently bad in law, therefore, the respondents are duty bound to pass appropriate orders keeping the entirety of the situation into consideration including the years of services rendered by the petitioners and the fact that no action has been taken by the State Govt. against the erring officer who issued the order of appointment.

7. Accordingly, the writ petition is disposed of with a direction that on production of certified copy of this order before the competent authority within a period of one month from today the concerned competent authority shall take a decision regarding completion of probation of the petitioners in their respective post within a further period of three months.”

8. The order passed in WPS No.1612/2008 was assailed before the Division Bench in Writ Appeal No.372/2014 {State of Chhattisgarh and another Vs. Ganesh Harpal and others}, which was dismissed on

29.10.2014 by observing thus:-

“4. The pleadings in the memo of appeal itself make it manifest that the respondents are not illegal back-door appointees, but have been selected after an advertisement and selection process. It is also not in dispute that the officer who made the appointments not only was granted promotions but has been allowed to superannuate also without any action against him. It is difficult to appreciate the conduct of the appellants in mixing up the issue for confirmation of the probation with regularization. The two are entirely distinct issues and we therefore see no reason to interfere with the order under appeal.”

9. Pursuant to the order passed in Ganesh Harpal, referred to above, the State Government/Directorate of the Employees State Insurance has passed the impugned order cancelling the appointments and while refusing to confirm their probation, the petitioners have been discharged from the services.

10. Shri VVS Murthy, learned Sr. Advocate assisted with Shri Shantanu Kumar, Shri Uttam Pandey, Shri Rajeev Shrivastava, Shri Gagan Tiwari, Shri Ajay Shrivastava, Shri Bharat Rajput and Shri Abhishek Pandey, Advocates for the respective petitioners would assail the impugned order on submission that fresh show cause notice have not been issued before cancellation of appointment or discharging the petitioners from services, therefore, the order is in violation of principles of natural justice. They would further submit that the impugned order is stigmatic, therefore, they could not have been

removed without holding any enquiry in terms of Rule 8(6) of the Chhattisgarh Government Servants (Temporary and Quasi-Permanent Service) Rules, 1960 (henceforth 'the Quasi Permanent Rules, 1960'). It is also argued that the advertisement for backlog vacancies was issued on 12.5.2003 and the interviews for Staff Nurse were held on 10.7.2003, therefore, direction issued by the State Government on 17.7.2003 for not holding interviews for the subject posts would not apply, as the same would amount to changing the rules midway. It is further put-forth that all the appointments should not have been cancelled. Reliance is placed in the matters of **Union of India and others Vs. Mahaveer C. Singhvi**¹ and **State Bank of India and others Vs. Palak Modi and another**².

11. Per contra, Shri P.K. Bhaduri, learned Govt. Advocate would submit that the impugned order is about cancellation of appointment and non-confirmation of probation period on account of large scale irregularity in the selection process from the very inception. However, there being no allegation directed specifically against any petitioner, there was no necessity of holding any regular enquiry and the order is not stigmatic. He would submit that regularization and confirmation of services are two different issues, therefore, since the petitioners have been discharged from the services, the State Government was not obliged to hold regular enquiry. He would refer to Rules 7 & 8 of the

1 (2010) 8 SCC 220

2 (2013) 3 SCC 607

Chhattisgarh Civil Services (General Conditions of Services) Rules, 1961 (for short 'the General Conditions of Services Rules, 1961) and the Quasi Permanent Rules, 1960 to argue that there is no concept of deemed confirmation in the service. He would further submit that there were presumptive attacks to scuttle the intended action of discharging the petitioners from services which were initiated in the year 2008, therefore, the said practice has to be discouraged in view of the judgment of the Supreme Court in the matter of **Union of India and Another Vs. Tulsiram Patel** {(1985) 3 SCC 398}. According to him, interviews were not completed on 10.7.2003 but it went on beyond that date even after issuance of circular by the State Government on 17.7.2003, therefore, illegality and malafide of the recruiting authorities were writ large. He would strenuously urge the fact that the person who has issued the appointment orders was himself working on contract basis, therefore, it is a case where contract appointee has made selection of others on regular basis. Reliance is placed in the matters of **Maheshchandra Madhosaran Srivastava Vs. State of Madhya Pradesh**³, **Ramanand Vs. State of M.P. and others**⁴, **Union of India and another Vs. Tulsiram Patel**⁵, **Krishan Yadav and another Vs. State of Haryana and others**⁶, **Ashwani Kumar and Others Vs. State of Bihar and others**⁷

3 1975 MPLJ 493

4 1979 JLJ 574 : 1979 MPLJ 498

5 (1985) 3 SCC 398

6 (1994) 4 SCC 165

7 (1997) 2 SCC 1

Bharat Sanchar Nigam Ltd and another Vs. Union of India and others⁸, State of Uttar Pradesh Vs. Akbar Ali Khan⁹, The State of Punjab Vs. Dharam Singh¹⁰, Municipal Corporation, Raipur Vs. Ashok Kumar Misra¹¹, Head Master, Lawrence School Lovedale Vs. Jayanthi Raghu & Anr¹², Chandra Prakash Shahi Vs. State of U.P. and others¹³, Secretary to Government, School Education Department, Chennai Vs. R. Govindaswamy and others¹⁴.

Whether regular enquiry necessary

12.The petitioners would urge that under the Quasi Permanent Rules, 1960 the petitioners having completed more than 5 years of continuous service, they shall be deemed to be in Quasi Permanent Service. Therefore, their services are liable for termination in the same circumstances and in the same manner as in the case of Government servant in permanent service whereas, in the case at hand, they have been discharged from service in the manner contrary to Rule-6 of the Quasi Permanent Rules, 1960.

13.Challenging the said argument, learned Govt. Advocate has drawn attention of the Court to Rule-8 of the M.P. Civil Services General Conditions of Service Rules, 1961 to put forth that an employee can

8 (2006) 3 SCC 1

9 AIR 1966 SC 1842

10 AIR 1968 SC 1210

11 AIR 1991 SC 1402

12 AIR 2012 SC 1571

13 (2000) 5 SCC 152

14 (2014) 4 SCC 769

be treated to be in quasi permanent service only when he has not been discharged from service. However, in the case at hand, notices were issued against the petitioners right from the year 2008 onwards and moreover, the petitioners being probationers a regular enquiry was not at all necessary.

14. In **Ramanand** (Supra), the Division Bench of the Madhya Pradesh High Court {**J.S. Verma and U.N. Bhachawat, JJ**} dealt with the similar plea based on interpretation of Quasi Permanent Rules, 1960 and the General Conditions of Service Rules, 1961. Upon consideration of both the Rules, the Division Bench held in paragraphs- 17, 18 & 21 thus:-

“17. We now turn to the provision made regarding period of probation and confirmation in Annexure C. the relevant portion is set out below.

“परीक्षा काल की अवधि दो वर्ष की होगी, तत्पश्चात् यदि उनका कार्य संतोष जनक पाया गया तो उनको स्थायी किया जाएगा।”

(Emphasis supplied by us)

From what is extracted above, especially the underlined portion, it has been expressly indicated that after the period of probation on his work being found satisfactory the employee shall be confirmed and there is no maximum probationary period provided. The necessary corollary, therefore, is that in absence of formal order of confirmation, if the employee is allowed to continue in service after the original period of probation, he shall be deemed to continue as probationer till the formal order of confirmation. In other words the the necessary implication is that after the completion of the specified period of probation, if the employee is allowed to continue in the post without a formal

order of confirmation, his original specified period of probation is deemed to have been extended. Thus the forequoted condition permitted extension of the probationary period for an indefinite time.

The principle deducible from the leading decision on the point of the Supreme Court in *State of Punjab Vs. Dharma Singh (Supra)*, is that unless there is a Service Rule providing for an automatic confirmation on the expiry of the specified period of probation or an outer limit for the extension of the period of probation, the employee shall be deemed to continue on probation if he is allowed to continue without confirmation after the expiry of specified period.

18. In the light of the foregoing discussion, admittedly as there was no order of confirmation of the petitioner, he continued as probationer till the termination of his service.

Though in the light of our view already expressed that rule 8 of the Service Rules cannot be utilised for the decision of the point at hand, it is not necessary to consider the implication of that rule but even on assuming that it applies, we are of the opinion that even according to that rule also the petitioner could not be deemed to have been confirmed on his post.

21. On reading sub-rule (2) along with sub-rules (6) and (7) and Rule 8 of the Service Rules, it is very clear in the light of the view taken in the forequoted decision of this Court, *Mahesh Chandra Vs. State of M.P. (Supra)* that after the expiry of the specified probationary period the employee shall not be deemed to be confirmed on his post but would continue as a temporary Government Servant and shall be governed by the Quasi Permanent Rules. Even in this view of the matter, the petitioner cannot be deemed to have been confirmed on the expiry of the original period of probation and the termination of his service by giving one month's notice cannot be held to be illegal."

(Emphasis supplied)

15. In the case at hand, concededly, there were complaints of large scale

irregularity and illegality in the recruitment process, therefore, services of the petitioners were not confirmed and they remained as probationers. In view of law laid down by the Division Bench in **Ramanand** (Supra), their non-confirmation and consequent termination does not suffer from any infirmity qua the Quasi Permanent Rules, 1960 read with the General Conditions of Service Rules, 1961.

16. In **Dharam Singh** (Supra), the Supreme Court has held in para-3 thus:-

“3. This Court has consistently held that when a first appointment or promotion is made on probation for a specific period and the employee is allowed to continue in the post after the expiry of the period without any specific order of confirmation, he should be deemed to continue in his post as a probationer only, in the absence of any indication to the contrary in the original order of appointment or promotion or the service rules. In, such a case, an express order-of confirmation is necessary to give the employee a substantive right to the post, and from the mere fact that he is allowed to continue in the post after the expiry of the specified period of probation it is not possible to hold that he should deemed to have been confirmed. This view was taken in Sukhbans Singh v. State of Punjab, 1963-1 SCR 416 at pp. 424-426 = (AIR 1962 SC 1711 at pp.1714-1715) G. S. Ramaswamy v. Inspector- General of Police, Mysore State, Bangalore, (1964) 6 SCR 279 at pp.288-289 = (AIR 1966 SC 175 at pp.179-180), Accountant General, Madhya Pradesh, Gwalior v. Beni Prasad Bhatnagar, Civil Appeal No.548 of 1962, D/- 23-1-1964 (SC), D. A. Lyall v. Chief Conservator of Forests, U.P. Civil Appeal No.259 of 1963, D/-24-2-1965 (SC) and State of U.P. v. Akbar Ali, (1966) 3 SCR 821 at pp.825-826 = (AIR 1966 SC 1842 at

p.1845). The reason for this conclusion is that where on the completion of the specified period of probation the employee is allowed to continue in the post without an order of confirmation, the only possible view to take in the absence of anything to the contrary in the original order of appointment or promotion or the service rules, is that the initial period of probation has been extended by necessary implication. In all these cases, the conditions of service of the employee permitted extension of the probationary period for an indefinite time and there was no service rule forbidding its extension beyond a certain maximum period.”

(Emphasis supplied)

17. In view of the law laid down by the Supreme Court and the Division Bench of the Madhya Pradesh High Court, it is settled that unless a probationer is confirmed, mere continuation after the end of period of probation would not have the effect of deemed confirmation and the termination of their service by giving one month's notice cannot be held to be illegal. If the petitioner's contention is accepted that they cannot be removed without holding regular enquiry, it would mean that even for removing a probationer, the appointing authority is bound to hold regular enquiry, which is contrary to the settled principle of service jurisprudence.

Recruitment process – Complaints – Enquiry Report

18. After the subject appointments were made in the year 2002-03, the State Government received complaints regarding serious irregularities committed by the recruiting officer. An officer of the rank of Principal Secretary who later became Chief Secretary of the State was

appointed as enquiry officer. The enquiry report (Annexure-R/1) highlights the following features and findings:-

- “(i) Less meritorious candidates have been selected.
- (ii) Advertisement dated 14.11.2001 did not mention the figures of posts earmarked for each reserved category.
- (iii) The interview committee for conducting interview for selection of Staff Nurse was consisted of Dr. Dahate, Dr. Wale and one Shri A.K. Dubey, who was Lecturer in the Government Engineering College. It was not cleared as to why the Lecturer of Government Engineering College was made member of the Selection Committee for recruitment of Staff Nurse.
- (iv) The General Administration Department of the State Government issued a communication on 17.7.2003 to the effect that for recruitment of reserved category candidates for filling all backlog vacancies interview should not be conducted. However, the interview for the present recruitment continued and 30% marks were allotted for interview.
- (v) One candidate Shri Punit Ram Porte was not selected though he had secured more marks than the candidate selected for the post of Ward Sewak.
- (vi) For the post of AG-III only one post was sanctioned whereas 2 appointments were made. Moreover, one Shri Piyush was granted 29 marks out of 30 marks in the interview and the candidates who had secured higher marks in the educational qualification were awarded only 9-10 marks in the interview and they were not selected.
- (vii) For Staff Nurse, one Nilima Ragini was granted 25 marks in the interview and 47 other candidates who were more meritorious in the educational qualification have not been selected.

- (viii) Similar instances have been pointed out for appointment on the post of Staff Nurse.
- (ix) Only 2 posts of Staff Nurse were available whereas 9 appointments have been made. {It means excess candidates were appointed without issuing advertisement}.
- (x) Appointment orders of Class-IV employees were issued under the signature of Insurance Medical Officer Shri RK Panthi, for the Director. However, Shri Panthi was a contract appointee and was not a regular Government servant.
- (xi) Vide GAD circular dated 23.3.1999 the State Government has directed that marks for interviews shall not be more than 10% of the maximum marks. Thus fixing of 30% marks for interview was contrary to the State Government circular.
- (xii) One Dr. Bhasin of the Directorate of ESI, refused to issue appointment orders because of large scale irregularities. In other advertisement dated 14.11.2001, 2 posts of Staff Nurse was advertised but 5 persons were appointed. Moreover, reservation was not mentioned in the advertisement. There is no break up of marks allotted for educational qualification and interview of all the 5 selected candidates.
- (xiii) Horizontal reservation for Ex-Serviceman was not provided in both the advertisements.
- (xiv) As against the sanctioned post of Cleaner, Ward Sewak have been appointed, therefore, cleaning staff was not available in the dispensary.
- (xv) Outcome of the enquiry ordered by the Government was not informed to the State Government. Dr. Bhasin submitted his preliminary enquiry report before the Principal Secretary Shri Robert Harangdola. Dr. Bhasin orally informed the Principal Secretary about the preliminary enquiry report and deposited the report himself in the Mantralaya Office of the Principal

Secretary. However, the file was not available, therefore, a copy was again summoned from Dr. Bhasin, who again submitted report on 18.8.2004. There are other instances of non-cooperation by the staff of Mantralaya as is mentioned in para-13.1 and 13.2 of the enquiry report.

19. Thus it clearly appears that there was effort to frustrate and bury the enquiry report so that ill-deeds and mischief committed in the recruitment may not be taken to its logical end.

20. The report recommended for discharge of all the probationers and for taking disciplinary action against Secretary Shri MS Murthy, members of the Selection Committee Shri A.K. Dubey, Shri Ranvir Kapoor, Dr. Dahate, Dr. Wale and Smt. Vibha Bajpai.

Termination simplicitor or punitive

21. From the discussion and finding in the previous paragraphs, it is found that in absence of express order of confirmation, the petitioners continued to be on probation. It is argued that the impugned order is not termination simplicitor but the same is punitive as it is preceded by enquiry.

22. The question as to when termination of a probationer would be treated as termination simplicitor or it would amount to punishment requiring an enquiry wherein the probationer has to be given opportunity of hearing is no longer *res integra*.

23. The issue as to when non-confirmation of a probationer would amount to stigma has been considered by the Supreme Court in **Krishnadevaraya Education Trust and Another v. L.A. Balakrishna**¹⁵. In the said case a committee was constituted for assessing the suitability of a probationer for continuing in the service and the said committee came to the conclusion that the job proficiency of the employee was not up to the mark and that would be a valid reason for terminating the services and the said reason cannot be cited and relied upon by contending that the termination order was passed by way of punishment.

24. In **Krishnadevaraya Education Trust** (supra), the Supreme Court held thus :

5. There can be no manner of doubt that the employer is entitled to engage the services of a person on probation. During the period of probation, the suitability of the recruit/appointee has to be seen. If his services are not satisfactory which means that he is not suitable for the job, then the employer has a right to terminate the services as a reason thereof. If the termination during probationary period is without any reason, perhaps such an order would be sought to be challenged on the ground of being arbitrary. Therefore, naturally services of an employee on probation would be terminated, when he is found not to be suitable for the job for which he was engaged, without assigning any reason. If the order on the face of it states that his services are being terminated because his performance is not satisfactory, the employer runs the risk of the allegation being made that the order itself casts a stigma. We do not say that such a contention will succeed. Normally, therefore,

¹⁵ (2001) 9 SCC 319

it is preferred that the order itself does not mention the reason why the services are being terminated.

6. If such an order is challenged, the employer will have to indicate the grounds on which the services of a probationer were terminated. Mere fact that in response to the challenge the employer states that the services were not satisfactory would not ipso facto mean that the services of the probationer were being terminated by way of punishment. The probationer is on test and if the services are found not to be satisfactory, the employer has, in terms of the letter of appointment, the right to terminate the services.

7. In the instant case, the second order which was passed terminating the services of the respondent was innocuously worded. Even if we take into consideration the first order which was passed which mentioned that a Committee which had been constituted came to the conclusion that the job proficiency of the respondent was not up to the mark, that would be a valid reason for terminating the services of the respondent. That reason cannot be cited and relied upon by contending that the termination was by way of punishment.”

25. In Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical

Sciences and Another¹⁶, the following has been held by the Supreme

Court :

29.....Generally speaking when a probationer's appointment is terminated it means that the probationer is unfit for the job, whether by reason of misconduct or ineptitude, whatever the language used in the termination order may be. Although strictly speaking, the stigma is implicit in the termination, a simple termination is not stigmatic. A termination order which explicitly states what is implicit in every order of termination of a probationer's appointment, is also not stigmatic. The decisions cited by the parties and noted by us earlier, also do not hold so. In order to amount to a stigma,

¹⁶ (2002) 1 SCC 520

the order must be in a language which imputes something over and above mere unsuitability for the job.”

26. In **Rajesh Kumar Srivastava v. State of Jharkhand and Others**¹⁷,

the Supreme Court examined challenge to the termination of the services of employee, who was a Probationer Munsif. After examining the record placed before it, the Supreme Court held that the competent authority had terminated the services of the employee because his work was not satisfactory and such decision cannot be termed as stigmatic or punitive.

27. In **State Bank of India and Others v. Palak Modi and Another**¹⁸,

the Supreme Court held thus :

“25. The ratio of the abovenoted judgments is that a probationer has no right to hold the post and his service can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post held by him. If the competent authority holds an inquiry for judging the suitability of the probationer or for his further continuance in service or for confirmation and such inquiry is the basis for taking decision to terminate his service, then the action of the competent authority cannot be castigated as punitive. However, if the allegation of misconduct constitutes the foundation of the action taken, the ultimate decision taken by the competent authority can be nullified on the ground of violation of the rules of natural justice.”

28. In the case at hand, the petitioners were allowed to continue as probationers; as a matter of fact, the department was trying to

¹⁷ (2011) 4 SCC 447

¹⁸ (2013) 3 SCC 607

discharge or terminate them right from the year 2008, however, because of interim orders passed by this Court in previous writ petitions directing affording opportunity of hearing to the petitioners, the authorities were cautious not to pass an order which may be construed as violating the High Court's order.

29. The Supreme Court had an occasion to consider the effect of litigious employment in the matter of **Secretary to Government, School Education Department, Chennai v. R. Govindaswamy and others**¹⁹, wherein it has been observed thus:-

“8. This Court in *State of Rajasthan v. Daya Lal* {(2011) 2 SCC 429} has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are as under: (SCC p. 435, para 12)

“(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme.

¹⁹ (2014) 4 SCC 769

While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be 'litigious employment'. Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary

against the State must arise under a contract or under a statute.”

(Emphasis supplied)

30. It is to be remembered that WPS No.1612/2008 was pending consideration before this Court till 25.6.2014. In the same matter, some of the petitioners had sought direction to the respondents to issue the order concerning confirmation of their probation period and grant them annual increment. It is only when this Court directed the respondents to take a decision within the stipulated period; the respondents initiated the process and has now passed the impugned order. Be that as it may, on the face of report submitted by the Principal Secretary finding grave irregularities in the recruitment process, the authorities had never considered the petitioners for confirmation but on the contrary their effort was to terminate the services. Apprehending termination a presumptive attack was laid by the petitioners in WPS No.1744/2008 and some other writ petitions and in the said case, this Court directed that the petitioners shall not be removed without giving opportunity of hearing. When show cause notice was issued, this Court in WPS No.4157/2008 quashed the show cause notice on the ground that the same was vague.

31. Since these two orders were not challenged before the Division Bench, a co-ordinate Bench would not comment on the same. However, the fact remains that even though the petitioners were

probationers, they were protected by the orders passed by this Court. Such orders including the order passed on 25.6.2014 do not improve the petitioners' status from being a probationer. Therefore, terminating them without enquiry is not illegal because the impugned order is innocuous and is termination simplicitor rather than punitive.

All pervasive/ huge irregularity; whether enquiry against each appointee necessary

32. In **Union of India and Others v. O. Chakradhar**²⁰, the Supreme Court held thus :

8. In our view the nature and the extent of illegalities and irregularities committed in conducting a selection will have to be scrutinized in each case so as to come to a conclusion about future course of action to be adopted in the matter. If the mischief played is so widespread and all-pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, in such cases it will neither be possible nor necessary to issue individual show-cause notices to each selectee. The only way out would be to cancel the whole selection. Motive behind the irregularities committed also has its relevance.

(Emphasis supplied)

33. This Court has referred to finding of the enquiry officer to the effect that in the recruitment process/advertisement the extent of reservation was not mentioned; less meritorious candidates selected; interview committee was consisted of Professor of Engineering College, who was supposed to take interview for recruitment of Staff Nurse; GAD circular of 17.7.2003 prohibiting interview was violated;

²⁰ (2002) 3 SCC 146

substantially more number of candidates were appointed than the vacancies advertised meaning thereby that additional appointments were made without advertisement; several appointment orders were issued under the signatures of one Insurance Medical Officer who himself was working on contract basis; horizontal reservation for ex-serviceman not provided; and lastly, efforts were made to bury the enquiry report at the Mantralaya. In the teeth of these findings, it would be apparent that the enquiry conducted by the Principal Secretary was not for examining any misconduct by any of the petitioners but it was to enquire about the mass irregularities at the stage of issuance of advertisement and recruitment.

34. In **Krishan Yadav** (Supra), the following has been held in paragraphs-19 and 20:-

“19. It is highly regrettable that the holders of public offices both big and small have forgotten that the offices entrusted to them are sacred trusts. Such offices are meant for use and not abuse. From a Minister to a menial everyone has been dishonest to gain undue advantages. The whole examination and the interview have turned out to be farcical exhibiting base character of those who have been responsible for this sordid episode. It shocks our conscience to come across such a systematic fraud. It is somewhat surprising the High Court should have taken the path of least resistance stating, in view of the destruction of records, that it was helpless. It should have helped itself. Law is not that powerless.

20. In the above circumstances, what are we to do? The only proper course open to us is to set aside the entire selection. The plea was made that innocent

candidates should not be penalised for the misdeeds of others. We are unable to accept this argument. When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place as “fraud unravels everything”. To put it in other words, the entire selection is arbitrary. It is that which is faulted and not the individual candidates. Accordingly we hereby set aside the selection of Taxation Inspectors.”

(Emphasis supplied)

35. In **Ashwani Kumar** (Supra), the Supreme Court held that there would never arise any occasion for regularizing the appointment of an employee whose initial entry itself is tainted and is in total breach of the requisite procedure of recruitment and especially when there is no vacancy on which such an initial entry of the candidate could ever be effected. Such an entry of an employee would remain tainted from the very beginning and no question of regularising such an illegal entrant would ever survive for consideration, however competent the recruiting agency may be. The appointees had no case for regularisation and whatever purported regularisation was effected in their favour remained an exercise in futility.

36. Although in the case at hand the issue is about confirmation of the petitioners and not their regularization, yet the principle that when initial entry in the service is tainted and stinking, their confirmation is also required to be considered because it has an impact of confirming an employee who has entered the service through a process which though appeared to be initiated by advertisement followed by

interview, yet it suffers from grave and all pervasive illegality or irregularity, which was so deep-rooted that it was difficult to take out any individual so as to separate them from others.

37. Thus, the authorities have not committed any illegality in canceling the appointments and discharging the petitioners without confirming them in service.

38. For the foregoing, all the writ petitions being devoid of any substance deserve to be and are hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve