

HIGH COURT OF CHHATTISGARH, BILASPUR**WP No. 1350 of 2004**

- Smt. Hemanti Prajapati, W/o Late Shri P.K. Prajapati, Aged about 45 years, Project Officer, I.C.D.S., Ambikapur, (Surguja) (CG)

---- Petitioner**Versus**

1. State of Chhattisgarh, Through Secretary, Government of Chhattisgarh, Mahila and Bal Vikas Vibhag, Mantralaya, DKS Bhawan, Raipur (CG)
2. The Commissioner, Mahila and Bal Vikas, Mantralaya, Parishar, Raipur - (CG)

---- Respondents

For Petitioner : Shri Prateek Sharma, Advocate.

For Respondents : Shri Shashank Thakur, Govt. Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****08/05/2015**

1. The petitioner is widow of late P.K. Prajapati, who was a Member of Parliament. On account of untimely death of her husband, the petitioner was initially appointed as Assistant Teacher on compassionate ground. Since it was difficult for her to tied over penury out of the meagre amount of salary from the post of Assistant Teacher, she applied before the then Government of M.P. for a better suitable post. Considering her prayer, by order dated 11.10.1988, the petitioner was appointed as Project Officer in the Department of Woman and Child Development on adhoc basis. The order of appointment contained 3 conditions; (i)

the petitioner shall pass all departmental examinations; (ii) she shall undergo all the departmental trainings, and (iii) her appointment shall be regularized subject to approval by the Public Service Commission (for short 'PSC') within a period of 2 years.

2. Admittedly, the petitioner passed departmental examination and undergone departmental training courses, as would be apparent from the gazette notifications published by the State of MP in this regard which are part of record of the Original Application. However, the State of MP did not send her case for approval by the PSC within a period of 2 years.
3. In the year 1991, the State Government framed recruitment rules known as M.P. Women & Child Development (Gazetted) Service Recruitment Rules, 1990 with effect from 18.2.1991 wherein the post of Project Officer was included by making it a Class-2 Gazetted Officer Post. Thus on and from this date the post of Project Officer came within the purview of PSC. The State of M.P. sent the petitioner's case for confirmation/regularization to the PSC in November, 1996. The MP PSC by its communication dated 28.2.1997 refused to accord approval to the petitioner's appointment on the ground that her appointment has been made in violation of the State Government circular dated 10.6.1994 concerning grant of compassionate appointment.
4. The State Government framed regularization rules by name M.P. Women and Child Development Department, Regularization of Adhoc Appointment/Promotion/Absorption Rules, 1998 (henceforth 'the 1998 Rules') dated 26.11.1998 published in the official gazette on 4.12.1998. Pursuant to these rules, the petitioner's services were regularized on 20.4.1999. By amending Madhya Pradesh Public Service Commission (Limitation of Functions) Regulations 1957, on 18.3.1999, the post of Project Officer was brought out of the purview of the PSC.

5. In the above obtaining factual background of the case, the petitioner has preferred the present petition seeking regularization of her services from the date of initial appointment. Prior to this petition, the petitioner had preferred Original Application No.930/99, however, during the pendency of the said OA, the present writ petition came to be filed. Since two writ petitions on the same issue were pending, the OA, which was later on re-numbered as WP(S) No.3075/2005, was dismissed as withdrawn on 14.12.2006.
6. It has been urged by learned counsel for the petitioner that the petitioner having been appointed on compassionate ground, it was never an adhoc or stop gap arrangement because compassionate appointment, by its very nature, is never temporary or stop gap arrangement. He would further submit that the petitioner having cleared the departmental examination and having undergone departmental training and thus having fulfilled whatever was required to be done on her part, cannot be blamed for the delay caused by the State by not sending the petitioner's case for approval to the PSC within a period of 2 years as stipulated in the appointment order.
7. Learned counsel would strenuously urge the point that since at the time of petitioner's appointment the post was not within the purview of PSC, condition of seeking approval from the PSC was wrongly mentioned, therefore, since the approval was not at all required, the appointment should be treated as regular appointment from the date of initial appointment. He would place reliance on the judgments in the matters of **Narender Chadha and others Vs. Union of India and others**¹ and **The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others**² to submit that when adhoc appointment is continued till the date of regularization and the appointment is not contrary to the Rules, the appointee is entitled to

¹ AIR 1986 SUPREME COURT 638

² AIR 1990 SC 1607

seniority from the date of adhoc appointment. He would also submit that recommendation of the PSC is not binding on the State Government. For this, he would rely on judgment of the Supreme Court in the matter of **Dr. M.C. Bindal Vs. R.C. Singh and others**³.

8. Per contra, learned State counsel would submit that the petitioner having accepted the appointment and being beneficiary of it, cannot turn back to say that she is entitled for regularization from the date of initial appointment even though the same has not been approved by the PSC. He would also submit that the petitioner having been regularized under the 1998 Rules, the same provision of the said Rules would bind the petitioner, therefore, she is not entitled for regularization from the date of initial appointment.
9. Having heard learned counsel for the parties at length and on perusal of the documents, it would appear that when the petitioner was appointed on compassionate ground, the post of Project Officer was not within the purview of PSC. As a matter of fact, the recruitment rules governing recruitment to the post of Project Officer itself came into force from 18.2.1991, however, by this time, the petitioner had already completed 2 years service within which the State Government was bound to refer the matter to the PSC for approval of her appointment. Since on the date of appointment the post itself was not within the purview of the PSC, the State Government was competent to take decision with regard to regularization of the petitioner's service. Even otherwise, the PSC has recorded a perverse reasoning while refusing approval of the petitioner's appointment inasmuch as refusal of approval mentions the circular dated 10.6.1994 whereas the petitioner was appointed way back on 11.10.1988. Thus, the circular dated 10.6.1994 was not at all applicable to the petitioner.

10. For the aforesaid reasons, the matter deserves to be reconsidered by the

³ (1989) 1 SCC 136

State of Chhattisgarh afresh. The petitioner shall submit a detailed representation before the State of Chhattisgarh along with copies of Original Application and the Writ Petitions with documents annexed therein. The representation may be filed within a period of one month from today. If such representation is filed, the State of Chhattisgarh shall consider and decide the same keeping in view the above observations, at the earliest, preferably within a period of 6 months. However, if the occasion so arises, the petitioner would be at liberty to move afresh before this Court.

11. The writ petition is accordingly disposed of.

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