

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No.1760 of 2012

Purshottam Lal Sahu S/o Lt. Shri G.L. Sahu Workigna As Assi. Grade Iii Nagar
Panchayt Sakri Distt. Bilaspur Cg

---- Petitioner

Versus

1. State Of Chhattisgarh through the Secretary, Department of Urban
Administration and Development, DKS Bhawan, Mantralaya, District Raipur
(CG)
2. The Distt. Selection Committee Through Its Joint Director Department Of Urban
Administration & Development, Bilaspur CG
3. Nagar Panchayt Sakri Through Its Chief Municipal Officer Nagar Panchayat
Sakri Dist.Bilaspur Cg

---- Respondent

For Petitioner : Shri M. K. Sinha, Advocate
For Respondent No.1 & 2 : Ms. M. Asha, Panel Lawyer
For Respondent No.3 : Shri Sushil Dubey, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

18/12/2015

Heard.

2. This petition has been filed by the petitioner claiming regularization of services.
3. Claim of the petitioner is that he was appointed as dailywage clerk on temporary basis on 11-06-1997 by Gram Panchayat Sakri. According to him, his appointment was duly approved on 16-8-1997 by Gram Panchayat Sakri. It is submitted that the petitioner has served more than 10 years.
4. Submission of learned counsel for petitioner is that the appointment was against the sanctioned post and at the time of appointment, the petitioner was possessing minimum required qualification prescribed for appointment to the

post of clerk in Panchayat. Therefore, it is argued, in view of the decision of the Supreme Court in the case of ***Amarkant Rai vs. State of Bihar and others***, 2015 AIR SC 3080, the petitioner is entitled to be considered for regularization.

5. On the other hand, learned State counsel opposed the prayer and submits that the petitioner's claim of there being sanctioned post and possessing minimum qualification, requires scrutiny. However, it is argued, that the petitioner was selected without following due procedure of selection and therefore, he would not be entitled to benefit of regularization in view of the judgment of Supreme Court in the case of ***the Secretary, State of Karnataka and others vs. Uma Devi and Others***, AIR 2006 SC 1806.

6. In the case of ***Amarkant Rai*** (supra), the Supreme Court held:

12. "Elaborating upon the principles laid down in Umadevi's case (supra) and explaining the difference between irregular and illegal appointments in [State of Karnataka & Ors. v. M.L. Kesari & Ors.](#), (2010) 9 SCC 247, this Court held as under:

"7. It is evident from the above that there is an exception to the general principles against "regularisation" enunciated in Umadevi (3) , if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular."

13. Applying the ratio of Umadevi's case, this Court in [Nihal Singh & Ors. v. State of Punjab & Ors.](#), (2013) 14 SCC 65 directed the absorption of the Special Police Officers in the services of the State of Punjab holding as under:

"35. Therefore, it is clear that the existence of the need for creation of the posts is a relevant factor with reference to which the executive government is required to take rational decision based on relevant consideration. In our

opinion, when the facts such as the ones obtaining in the instant case demonstrate that there is need for the creation of posts, the failure of the executive government to apply its mind and take a decision to create posts or stop extracting work from persons such as the appellants herein for decades together itself would be arbitrary action (inaction) on the part of the State.

36. The other factor which the State is required to keep in mind while creating or abolishing posts is the financial implications involved in such a decision. The creation of posts necessarily means additional financial burden on the exchequer of the State. Depending upon the priorities of the State, the allocation of the finances is no doubt exclusively within the domain of the legislature. However in the instant case creation of new posts would not create any additional financial burden to the State as the various banks at whose disposal the services of each of the appellants is made available have agreed to bear the burden. If absorbing the appellants into the services of the State and providing benefits on a par with the police officers of similar rank employed by the State results in further financial commitment it is always open for the State to demand the banks to meet such additional burden. Apparently no such demand has ever been made by the State. The result is-the various banks which avail the services of these appellants enjoy the supply of cheap labour over a period of decades. It is also pertinent to notice that these banks are public sector banks."

14. In our view, the exception carved out in para 53 of Umadevi is applicable to the facts of the present case. There is no material placed on record by the respondents that the appellant has been lacking any qualification or bear any blemish record during his employment for over two decades. It is pertinent to note that services of similarly situated persons on daily wages for regularization viz. one Yatindra Kumar Mishra who was appointed on daily wages on the post of Clerk was regularized w.e.f. 1987. The appellant although initially working against unsanctioned post, the appellant was working continuously since 03.1.2002 against sanctioned post. Since there is no material placed on record regarding the details whether any other night guard was appointed against the sanctioned post, in the facts and circumstances of the case, we are inclined to award monetary benefits be paid from 01.01.2010."

7. In view of the aforesaid verdict of the Supreme Court, claim of the petitioner does not appear to be frivolous and requires due consideration by the respondents.

8. Accordingly, the petitioner is finally disposed off with a direction to respondents to consider the claim of the petitioner for regularization in accordance with law within a period of four months from the date of receipt of a copy of this order.

SD/-
Manindra Mohan Shrivastava
Judge