

HIGH COURT OF CHHATTISGARH, BILASPUR

WPL No. 197 of 2013

- Nand Kumar Thakur S/o Late Shri Ishwar Singh Thakur Aged About 55 Years R/o Behind Indira Vihar Bandhwapara, Near Satbahniya Mandir (Sobha Bhawan) Sarkanda, Thana Sarkanda, Distt. Bilaspur C.G.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Rural Engineering Services Naya Raipur Mantralaya, Raipur C.G.
2. Chief Engineer Rural Engineering Services Raipur C.G.
3. Executive Engineer Rural Engineering Services Distt. Balod C.G.

---- Respondent

For Petitioner	Mr. KPS Gandhi, Advocate
For Respondent/State	Mr. P.K. Bhaduri, Government Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

25/08/2015

Heard.

(2) The petitioner/workman has raised an industrial dispute claiming benefit of regular pay scale from the date of initial appointment i.e. 31.12.1988 till 20.02.2008, when he was regularized.

(3) By the impugned order, the Labour Court has dismissed the statement of claim on the ground that the same is neither signed by the President of Union nor by the workman, therefore, it is not properly signed and verified.

(4) Ordinarily, in such matters, this Court would have set-aside the impugned order and remit the matter back to the Labour Court for adjudication, because, once the Labour dispute has been referred for adjudication, the same cannot be dismissed on technical grounds, however, to assess as to whether at all there is some substance in the petitioner's claim raised before the Labour Court, this Court has gone through the statement of claim.

(5) It appears the petitioner was engaged on daily wages prior to 31.12.1988 and was regularized on 20.02.2008. Relying upon the State Government's Notification dated 09.01.1990, it was stated in the statement of claim that since all daily wagers appointed prior to 31.12.1988 were required to be regularized, the petitioner is entitled to regular pay scale from the date of Notification i.e. 09.01.1990 and the respondent – Government is liable to pay the arrears of regular pay scale and all consequential benefits from the date of Notification i.e. 09.01.1990.

(6). In the matter of **Vijay K. Dhand and others Vs. State of Punjab and others, (2004) 13 SCC 707**, the Hon'ble Supreme Court has held that claim for regularization from the date of initial appointment cannot be ordered being contrary to government instructions. In the present case, the government has not fixed any cut-off date, therefore, the Petitioners are not entitled to be regularized from the date of their initial appointment in the absence of any specific direction by the State Government fixing a particular date of regularization.

(7) In the matter of **Punjab State Electricity Board and others Vs. Swaran Singh, (2005) 13 SCC 246**, the Hon'ble Supreme Court has held that the workman appointed on ad hoc basis in 1976 being

regularized in 1982 is not entitled to be regularized w.e.f. earlier date.

(8) In the matter of **Union of India and others Vs. Sheela Rani, (2007) 15 SCC 230**, the Hon'ble Supreme Court has again held that regularization should be prospective and not retrospective as chances of their upsetting the seniorities of regular appointees cannot be overlooked. In the case before the Supreme Court, the concerned employee was engaged as casual worker on 17/11/1982 and was regularized w.e.f. 26/09/2001 and her claim for regularization from the date of initial appointment was rejected by the Hon'ble Supreme Court.

(9) This Court in the matter of **Minketan Dansena and others vs. State of Chhattisgarh and others (W.P.(S) No.7553 of 2011 decided on 14.05.2015)**, held thus in para 5, 9 & 10:

5. The relief claimed in the writ petition cannot be granted and this writ petition cannot be entertained for the reason that the order of regularization takes effect from the date when it is passed and a daily wager cannot claim regularization from a retrospective date. This is because on the date when the Petitioners claimed to be regularized, posts may not be available.

9. Regularization from a particular date has several aspects on which the order is passed since it depends on availability of post in a particular office, inter se seniority of persons working on casual basis/daily wagers and seniority of regular appointees.

10. In the light of above judgments of Supreme Court, this Court is of the considered opinion that to pass an order of regularization from a particular date is basically a policy decision and this court need not interfere in such matters unless a right has accrued in favour of the employees to be regularized from a particular date which is taken to be cut-off date by the government.

(10) In view of the above, there is no substance in the statement of claim, therefore, there is no need to remit back the matter, because it will encourage frivolous litigations and would cause undue hardship to the petitioner-workman.

Sd/-

Judge

(Prashant Kumar Mishra)

Gowri