

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 4520 of 2015**

Manbahal Ram, Aged about 37 years, S/o- Kabir Ram, Presently working as Peon (Daily Wager), Nagar Panchayat-Kusmi, P.S. & Tehsil Kusmi, Distt. - Balrampur-Ramanujanj, C.G.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through: Secretary, Department of Urban Administration & Development, Mantralaya, Mahanadi Bhawan, New Raipur, District – Raipur, Chhattisgarh.
2. Commissioner, Department of Urban Administration & Development, Directorate, Raipur (C.G.)
3. Joint Director, Department of Urban Administration & Development, Division Office, Ambikapur, Chhattisgarh.
4. Chief Municipal Officer, Nagar Panchayat-Kusmi, P.S. & Tehsil-Kusmi, Distt.-Balrampur-Ramanujanj, Chhattisgarh.

---- Respondents

For Petitioner : Shri Pawan Shrivastava, Advocate.

For Respondents/State : Shri D.R. Minj, Dy. Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****01/12/2015**

Heard.

(1) Learned counsel appearing for the petitioner would submit that Municipal Council, Nagar Panchayat Kusumi has passed resolution to regularize the services of the petitioner in its orders dated 21.11.2014 but he has not been regularized and, therefore, he has made representation for regularization, which is not being decided as per resolution and, therefore, following prayer has been made:-

“10.1 That, this Hon'ble Court may kindly be pleased to direct the respondents to decide the representation of the petitioner for regularization of his services on the post of peon, according to the resolution passed by President-in-Council and Parishad of Nagar Panchayat-Kusmi and in the light of judgment passed by Hon'ble Supreme Court in the case of State of Karnataka Vs. Umadevi, within a period of three months.”

10.2 Any other relief as this Hon'ble Court may deems fit may also be awarded.”

(2) I have heard learned counsel for parties.

(3) In the matter of **A.P. SRTC & others Vs. G. Srinivas Reddy & others**¹, Their Lordships of the Supreme Court has held that direction to consider the representation has not to be passed without examining the issue & without recording finding on issue and observed in paragraphs 14 to 18 as under:-

“14. We may, in this context, examine the significance and meaning of a direction given by the court to “consider” a case. When a court directs an authority to

1 (2006) 3 SCC 674

“consider”, it requires the authority to apply its mind to the facts and circumstances of the case and then take a decision thereon in accordance with law. There is a reason for a large number of writ petitions filed in the High Courts being disposed of with a direction to “consider” the claim/case/representation of the petitioner(s) in the writ petitions.

15. Where an order or action of the State or an authority is found to be illegal, or in contravention of the prescribed procedure, or in breach of the rules of natural justice, or arbitrary/unreasonable/irrational, or prompted by mala fides or extraneous consideration, or the result of abuse of power, such action is open to judicial review. When the High Court finds that the order or action requires interference and exercises the power of judicial review, thereby resulting in the action/order of the State or authority being quashed, the High Court will not proceed to substitute its own decision in the matter, as the will amount to exercising appellate power, but require the authority to “consider” and decide the matter again. The power of judicial review under Article 226 concentrates and lays emphasis on the decision-making process, rather than the decision itself.

16. The High Courts also direct the authorities to “consider”, in a different category of cases. Where an authority vested with the power to decide a matter, fails to do so in spite of a request, the person aggrieved approaches the High Court, which in exercise of the power of judicial review, directs the authority to “consider” and decide the matter. In such cases, while exercising

the power of judicial review, the High Court directs “consideration” without examining the facts or the legal question(s) involved and without recording any findings on the issues. The High Court may also direct the authority to “consider” afresh, where the authority had decided a matter without considering the relevant facts and circumstances, or by taking extraneous or irrelevant matters into consideration. In such cases also, the High Court may not examine the validity or tenability of the claim on merits, but require the authority to do so.

(17) Where the High Court finds the decision-making process erroneous and records its findings as to the matter in which the decision should be made, and then directs the authority to “consider” the matter, the authority will have to consider and decide the matter in the light of its findings or observations of the court. But where the High Court without recording any findings, or without expressing any view, merely directs the authority to “consider” the matter, the authority will have to consider the matter in accordance with law, with reference to the facts and circumstances of the case, its power not being circumscribed by any observations or findings of the Court.

(18) We may also note that sometimes the High Courts dispose of the matter merely with a direction to the authority to “consider” the matter without examining the issue raised even though the facts necessary to decide the correctness of the order are available. Neither pressure of work nor the complexity of the issue can be a reason for the court to avoid deciding the issue which

requires to be decided, and disposing of the matter with a direction to “consider” the matter afresh. Be that as it may”

(4) After hearing learned counsel for the parties and applying the ratio of law laid down by the Supreme Court in the above referred case (supra), this Court is of the opinion that the petitioner is not entitled for relief claimed. Thus, writ petition is dismissed . However, it is made clear that this order will not bar the respondents authorities to decide the pending representation of the petitioner, if any.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-