

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 1621 of 2014**

- Ram Kumar Rathore, S/o late Shambhu Singh Rathore, aged about 46 years, R/o Post Sardha, Tehsil Lormi, District Mungeli (CG).

---- Petitioner**Versus**

1. State of Chhattisgarh Through Secretary, Department of Forest, Mahanadi Bhwan, Mantralaya, Raipur (CG).
2. The Chief Conservator of Forest, Bilaspur, District Bilaspur (CG).
3. The Conservator of Forest, Bilaspur Circle, Bilaspur, District Bilaspur (CG).
4. The Divisional Forest Officer, Forest Division, Bilaspur (Present Mungeli), District, Mungeli (CG).

---- Respondents

For Petitioner Shri Sanjay S Agrawal, Advocate.
 For Respondents/State Shri B.Gopa Kumar, Deputy Advocate General.

Hon'ble Shri Justice P. Sam Koshy
Order On Board

30/10/2015.

1. By way of this petition, the Petitioner sought for regularization of his service with the Respondents/Forest Department.
2. The contention of the Petitioner is that he has been employed with the Respondents as Forest Guard since 1990 on daily wage basis, and therefore, based on circular dated 05.03.2008 which has been issued in compliance of directives given by the Supreme Court in case of

Secretary, State of Karnataka and others v. Umadevi (3) and others¹

he is entitled to be considered for regularization.

3. Learned counsel for the State/Respondents opposing the petition has categorically submitted that pursuant to filing of this writ petition, a High Level Committee was constituted to scrutinize the service records of the Petitioner. The said Committee comprising of four senior officials of the Department have scrutinized the service records of the Petitioner and submitted its report vide Annexure R/3 dated 17.04.2015 stating that the Petitioner had a very poor attendance in the last 14 years of his service career that he has rendered, and therefore, taking into consideration the fact that he has not continuously worked for 240 days in a calendar year prior to 31.12.1997, his case was rejected by the concerned authorities.
4. Counsel for the Petitioner at this juncture submits that the said grounds raised by the State is contrary to the grounds rejecting his claim for regularization vide letter dated 07.03.2012 (Annexure P/1) which is under challenge in this petition. He relied upon the judgment of Supreme Court in case of **Rashmi Metaliks Limited & Another Vs. Kolkata Metropolitan Development Authority and Others²** stating that the Respondents would not be permitted to take a different ground to refuse the claim of the Petitioner if the same ground has not been mentioned at the first instance in the order impugned itself.
5. A bare perusal of the records of the petition itself would show that the Petitioner had a very poor attendance history in his service career as is

1 2006 (4) SCC 1

2 2013 (10) SCC 95

reflected from Annexure R/3 with the reply of the State. Further, it is not a case which has not been considered. The case of the Petitioner was duly considered and was not found suitable for regularization, and therefore, it cannot be said to be a case where the case of the Petitioner has been arbitrarily or deliberately refused for regularization. Regularization would not be a matter of right for a person but his right would be only for being considered for regularization and if his case has been considered and there are justifiable reasons for not granting regularization, the same cannot be said to be bad in law or arbitrary. The case cited by the Petitioner would not be applicable to the facts of the present case because the proposition laid down by the Supreme Court in the said judgment was in a contract matter and tender related dispute between two parties which would not be applicable in straitjacket formula that too under service jurisprudence.

6. So far as the case of the Petitioner that at the first instance his case was recommended vide Annexure P/3 for regularization by the authorities of the State Govt. is concerned, it only reflects that the authorities while sending the names had only recommended the Petitioner's name also because the name of the Petitioner was found among the workers who were engaged as daily wagers prior to 31.12.1997 but that would always be subject to scrutiny of his service records.
7. Counsel for the Petitioner further relied upon Ex. P/7 dated 20.06.2012 which is a document issued by the Conservator of Forest to the the Divisional Forest Officer, Bilaspur Division, forwarding the names of

eligible employees including the Petitioner for regularization. However, the said letter dated 20.06.2012 only reflects the name of the Petitioner amongst the others who were employed prior to 31.12.1997. It does not say that the Petitioner continuously worked for 240 days in a calendar year which was subjected to scrutiny only by the High Level Committee constituted by the State Govt.. Taking into consideration the report of High Level Committee dated 17.04.2015 (Annexure R/3) and in the light of factual details particularly the statistics about the attendance of the Petitioner, this court is of the opinion that the Respondents have not committed any wrong while rejecting the claim for regularization of the Petitioner.

8. The Supreme Court in a matter relating to regularization in case of **School Education Department, Chennai v. R. Govindaswamy and Others**³ relying on its earlier decision of State of Rajasthan and Others Vs. Daya Lal and Others, has held that appointment of ineligible candidates cannot be regularized and that even temporary, adhoc 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 regularization.
9. The Writ Petition fails and is accordingly dismissed. No order as to costs.

Sd/-

(P.Sam Koshy)
JUDGE

inder

3 2014 (4) SCC 769