

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 1683 of 2015

- Namchand Sahu S/o Late Nirmal Das Sahu, Aged About 33 years R/o Village Usari Bore Tahsil Rajnandgaon, District Rajnandgaon

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Forest Mahandi Bhawan, New Raipur P.S. Rakhi, Raipur
2. The Chief Conservator Of Forest, Forest Circle Rajnandgaon, District Rajnandgaon
3. Collector Rajnandgaon, District Rajnandgaon
4. Managing Director, Chhattisgarh Rajya Laghu Van Upaj, (Vyapaar And Vikas) Sahakari Sangh Maryadit, Rajnandgaon District Rajnandgaon

---- Respondents

For Petitioner	: Shri D.K. Vishwakarma, Advocate
For Respondent/State	: Shri P.K. Bhaduri, Govt. Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board By

03/07/2015

Heard learned counsel for the parties.

1. Petitioner has preferred this writ petition seeking a direction to the respondents to consider his case for regularization in view of the circular/order issued by the State Government on 19-6-2013 (Annexure – P/1).
2. The petitioner is working as contingency paid employee in the establishment of Zila Laghu Vanopaj Sahakari Union Maryadit, Rajnandgaon, a Corporative Society, registered under the Chhattisgarh Cooperative Societies Act, 1960, since 2001.
3. In the order Annexure – P/1 the Finance Department of the Government of Chhattisgarh has directed all the Departments that

such temporary posts which are continuing for last more than 3 years and there appears necessity of continuing the post for a long period, be made permanent posts.

4. Based on this communication, the petitioner is seeking regularization on the reasoning that the post having been made permanent, the petitioner is also entitled to be regularized on the post.
5. In the considered opinion of this Court, converting a temporary post into a permanent post is an administrative function, however, the same does not amount to giving permanent status to the employees working on the post. Making the post permanent is different than regularization of service.
6. In *Secretary, State of Karnataka and Others v. Umadevi (3) and Others*¹, it has been held that merely because an employee had continued under cover of an order of the Court, under 'litigious employment' or had been continued beyond the term of his appointment, he would not be entitled to any right to be absorbed or made permanent in service merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It has been further held that appointments made without following the due process or the rules for appointment did not confer any right on the appointees and that absorption, regularization or permanent continuance of temporary, contractual, casual, daily wage or ad hoc employees appointed/recruited *de hors* the constitutional scheme of public employment on issuance of direction by Court, is not permissible meaning thereby that absorption, regularization or permanent continuance are not mode of appointment.
7. The issue was again considered by the Supreme Court in *Secretary to Government, School Education Department, Chennai v. R. Govindswamy and Others*², wherein after relying on the decision rendered in *State of Rajasthan and Others v. Daya Lal and Others*³, it has been held that something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized, back door entries,

1 (2006) 4 SCC 1

2 (2014) 4 SCC 769

3 (2011) 2 SCC 429

appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized and that even temporary, ad hoc 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, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in absence of a legal right. [Also see: *Satya Prakash and others v. State of Bihar and Others*⁴].

8. On the basis of the directions issued by the Supreme Court in *Umadevi* (supra), the State Government has issued a circular dated 5-3-2008 directing regularization of employees who have been working continuously during the period from 1-1-1989 to 31-12-1997. Thus, any claim for regularization has to be considered by the State Government within the four corners of the circular dated 5-3-2008 and not otherwise. The order Annexure – P/1 is not a circular for regularization of any daily wager/contingency paid employee/ad hoc/temporary employee.
9. Reliance placed by the learned counsel for the petitioner upon the decision of the Supreme Court rendered in *State of Jharkhand and Others v. Kamal Prasad and Others*⁵, has no application in the facts of the present case because in the said case before the Supreme Court the employees were working since more than 10 years even before the judgment of *Umadevi* (supra) and were, thus, covered within the application of para 53 of the *Umadevi*'s judgment.
10. For the reasons mentioned hereinabove, no case for issuance of any direction to the respondent authorities is made out.
11. Accordingly, the writ petition is dismissed.

Sd/-

JUDGE

(Prashant Kumar Mishra)

4 (2010) 4 SCC 179

5 (2014) 7 SCC 223