

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WPS No. 1486 of 2015**

1. Sachitanand Pal, S/o Amardev Pal, Aged About 25 years, R/o Village Sonhat Tahsil Sonhat, Civil/ Revenue District Korla
2. Ashok Kumar, S/o Late Ramjeet, Aged About 39 Years, R/o Village Sonhat, Tehsil Sonhat, Civil/ Revenue District Korla
3. Shivnarayan Rajwade, S/o Late Balsai, Aged About 35 Years. R/o Village Katgodi, Civil/ Revenue District Korla
4. Adheer Singh, S/o Tapeswar, Aged About 38 Years, R/o Village Katgodi, Civil/ Revenue District Korla
5. Gopal Singh, S/o Budhram, Aged About 39 Years, R/o Village Katgodi, Civil/ Revenue District Korla

**---- Petitioners**

**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Aadim Jati & Anusuchit Jati Vikas, Mantralaya, Mahanadi Bhawan, Naya Raipur
2. Commissioner Department Of Aadim Jati & Anusuchit Jati Vikas, Chhattisgarh Raipur
3. Assistant Commissioner Tribal Development Department Distirct Koriya

**---- Respondents**

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| For Petitioners      | Shri H.S. Ahluwalia, Advocate |
| For Respondent/State | Shri S. Mazid Ali, PL         |

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**Hon'ble Shri Justice Prashant Kumar Mishra**

**Order On Board**

**29/04/2015**

1. With the consent of the learned counsel for the parties, the matter is heard finally.

2. This writ petition is preferred to direct the respondent authorities to act in letter and spirit of their circular dated 07.03.2012 and absorb the petitioners in regular post of regular pay scale. The petitioners appeared to be appointed on different Class-IV posts on daily wages i.e. at collector rate in the Department of Tribal Development, Government of Chhattisgarh. On issuance of circular dated 07.03.2012, they apprehended their removal, which led to filing of writ petitions including the petitioners' writ petition bearing W.P.(S) No.4227/2012 and other connected matters. The said writ petitions were disposed of on 14.12.2012 in the following manner:-

- I. At the very outset, learned counsel appearing for the respective petitioners submit that they do not want to press any other relief and confine their prayer to the extent that the respondents may be directed to scrutinize the case of the petitioners individually in accordance with the instructions issued vide memo dated 07.03.2012.
- II. Learned counsel appearing for the State/respondents submits that the case of all the petitioners will be scrutinized in accordance with the prevailing circular dated 07.03.2012 and if they are found fit, appropriate order thereafter, for their continuation of services, will be passed in accordance with law.
- III. In view of the above submission made by learned State counsel, according to the learned counsel appearing for the respective petitioners, nothing survives in these petitions.
- IV. Accordingly, all these petitions stand disposed of. No order as to costs.

3. In view of the above order passed by this Court, the concerned

authority in the Department of Tribal Development, District Korea undertook the exercise of scrutiny and eventually, it has passed the order (Annexure-P-1) after giving proper opportunity of hearing including personal hearing to the petitioners. The Assistant Commissioner, Tribal Development, District Korea has recorded in the order (Annexure-P-1) that in course of hearing, the petitioners could only produce experience certificate issued by the Principal, Higher Secondary School, Sonhat and they failed to produce the order of appointment issued by the competent authority. Thus, the authority concluded that the petitioners have not been appointed by following the procedure, therefore, their services need not be continued.

4. Learned counsel for the petitioners would submit that the name of the petitioners were included in the list of Class-IV employees working in different hostels/ashrams/schools in Korea District. Several other persons, whose names are included in the said list have been continued, whereas the order (Annexure-P-1) has been passed against the petitioners. He would, thus, submit that the petitioners have been discriminated in the matter of scrutiny of their cases in terms of the circular dated 07.03.2012 and order passed by this Court.
5. Per contra, learned State counsel would submit that the petitioners' cases have been scrutinized and in course of such exercise, they have been heard, therefore, it cannot be said that Article 14 has been violated. He would also submit that the petitioners failed to produce the order of appointment, therefore, they have been found not entitled to continue in service.
6. A reading of the circular dated 07.03.2002 would indicate that para 2 thereof provides that scrutiny be made to first examine, who are the

persons, who were eligible for appointment and who were not appointed in accordance with the procedure prescribed in the circular dated 29.10.1996 and 22.11.1999. In para 4 of the circular, earlier circular of 1996 and 1999 have been referred to indicate that procedure for appointment has been mentioned in those circulars. In the concluding part of this circular of 07.03.2012, it is mentioned that only such employees, who were eligible for appointment and who were appointed in accordance with procedure prescribed in the circular dated 29.10.1996 and 22.11.1999 be continued.

7. Concededly, as is apparent from the document (Annexure-P-1), petitioners are not possessed of the order of appointment nor they have been able to demonstrate the procedure, which was followed when they were engaged as Class-
8. In *State of Karnataka and Others v. Umadevi (3) and Others*<sup>1</sup> the Supreme Court 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.
9. The issue was again considered by the Supreme Court in *Secretary to Government, School Education Department,*

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<sup>1</sup> (2006) 4 SCC 1

*Chennai v. R. Govindswamy and Others*<sup>2</sup>, wherein after relying on the decision rendered in *State of Rajasthan and Others v. Daya Lal and Others*<sup>3</sup>, 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, 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*<sup>4</sup>].

10. In the matter of *Basawaraj v. Land Acquisition Officer*<sup>5</sup>, the Supreme Court, at para 8, held thus:-

**“8.** *It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same*

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2 (2014) 4 SCC 769

3 (2011) 2 SCC 429

4 (2010) 4 SCC 179

5 (2013) 14 SCC 81

*relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible.”*

11. For the foregoing, the petitioners' claim for absorption fails and is hereby dismissed.

JUDGE