

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 2139 of 2013**

1. Hemlal Thakur, aged about 50 years S/o Tahluram By Caste Gond, By occupation, Chowkidar, Govt. ITI, Bemetara R/o Village Hathod, PO Bjamgaon, Tahsil & Thana, Balod, Distt. Durg.
2. Moolchand Barmate, aged about 44 years S/o Jagtaram, by occupation Safai Karamchari, ITI Malkharoda, Distt. Janjgir Champa, Police Station Malkharoda.

---- Petitioners**Versus**

1. The State of Chhattisgarh Through its Secretary, Employment and Training Welfare Department, Sanchanalaya, Naya Raipur.
2. Director, Employment and Training Welfare Department, Sanchanalaya, Naya Raipur.
3. Joint Director, Employment and Training Welfare Department, Sanchanalaya, Naya Raipur.

---- Respondents

For Petitioners	Shri Parag Kotecha, Advocate.
For Respondents/State	Shri Gary Mukhopadhyay, Deputy Govt. Advocate.

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

09/10/2015

1. The petitioners have preferred this writ petition seeking their regularization on the post of Peon/Chowkidar.
2. Learned counsel appearing for the Petitioners submits that the petitioners have been appointed as Part Time Peon/Chowkidar on 12.09.1997 and 29.09.1997 respectively and since then they are continuously discharging their duties on the same status, and therefore, in the light of circular dated 05.03.2008 issued by the State of Chhattisgarh, they are entitled to be regularized.

3. Learned counsel for the Petitioners submits that the Petitioners have earlier filed writ petition WPS No. 6647 of 2011 along with other similarly situated persons which got disposed on 14.02.2012 directing the Respondents therein to consider the case of the Petitioners on its own merits keeping in view the circular dated 05.03.2008 and thereafter to pass appropriate speaking order. Subsequently, the Respondents by order dated 20.06.2013 rejected the representation of the Petitioners holding that circular dated 05.03.2008 does not confer any right on part time daily wager and the Petitioners being part time daily wagers are not entitled to be regularized on the said post.
4. It is further submitted on behalf of the Petitioners that their order of appointment show that they are part time employee, but infact the Respondents are taking full time work from them and they are being paid salary for the entire month. The Respondents are not treating them as part time employee is evident from Ex. P/2 & PR/1. On the basis of this, the counsel for the Petitioners submits that in the light of decision of Supreme Court in case of State of Karnataka and Others Vs. M.L. Kesari & Others¹ the case of Petitioners ought to have been considered by the Respondents for regularization.
5. Per contra, learned counsel appearing for the State submits that order of appointment of the Petitioners would reveal that the status of the Petitioners at the time of their appointment itself was as a part time daily wager and it is settled law that part time daily wager cannot be equated with full time daily wager and therefore, the Respondents have rightly rejected the claim of the Petitioners.
6. Considering the submissions put forth by either side and on perusal of the record would show that admittedly initially the Petitioners were appointed as a part time daily wager and that there is no change in their status by any subsequent orders issued in their favour. Their cases have been denied only on the ground that they

1 2010 (9) SCC 247

are part time daily wager employee and their cases do not fall within the ambit of circular dated 05.03.2008. Even otherwise, a perusal of record would show that the circular dated 05.03.2008 was issued with an intention of regularization of those workers who have put in ten years of continuous service (without any break) as on 31.12.1997 [as per clause B(2)(III) of circular dated 05.03.2008]. In case of break, the same should not be of more than one month. In the instant case on 31.12.1997, the Petitioners had barely 3 months of their services in the department, and therefore, the Petitioners on the basis of circular dated 05.03.2008 would not get any benefit.

7. Law in respect of regularization is now well settled. The Supreme Court in cases of *Secretary, State of Karnataka and Others v. Umadevi (3) and Others*², *Secretary to Government, School Education Department, Chennai v. R. Govindswamy and Others*³ and *Satya Prakash and others v. State of Bihar and Others*⁴ has consistently 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.
8. In the case in hand, the petitioners were not appointed under any statutory rules. Their appointment was also not against any regular sanctioned post. On the contrary, the order of appointment itself shows the status of the petitioners to be a

² (2006) 4 SCC 1

³ (2014) 4 SCC 769

⁴ (2010) 4 SCC 179

part time employee, therefore, applying the law laid down by the Supreme Court, this Court does not find any merit in the petitioners' claim for issuance of direction to the respondents for regularization of their services. The case law cited by the Petitioners are of no help to them.

9. In the result, the writ petition, being devoid of merit, is liable to to be and is hereby dismissed. No order as to costs.

Sd/-
(P.Sam Koshy)
JUDGE

inder