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IN THE HIGH COURT OF JUDICATURE AT BILASPUR

Writ Petition No. 1918 OF 2005

PETITIONER (S) : 1. **State of Chhattisgarh,**
Through : Secretary,
Government of Chhattisgarh,
Public Works Department,
D.K.S. Bhawan, Mantralaya,
Raipur, Chhattisgarh
2. Chief Engineer,
East PWD, Raipur
3. Superintending Engineer,
Raipur Zone, PWD, Raipur
4. Executive Engineer,
Raipur Division No. 2 PWD
Raipur

VERSUS

RESPONDENT (S) 1. Madanlal Sahu
S/o Lilaram Sahu
Resident of Tikra Para
Raipur (C.G.)
2. Presiding Officer
Industrial Court
Raipur (C.G.)

**APPLICATION UNDER ARTICLES - 227 OF THE CONSTITUTION
OF INDIA**



(59)

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP No. 1918 of 2005

- State Of Chhattisgarh & Ors.

---- Petitioner

Versus

- Madan Lal Sahu & Ors.

---- Respondent

For Petitioner/State
For Respondents

Shri Y. S. Thakur, Dy. AG
None

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

02/03/2016

1. Challenge in this writ petition is to the order passed by the labour Court on 13.06.2000 and the appellate order passed by the Industrial Court on 23.08.2004 directing permanent classification of the respondent workman, which amounts to regularization.
2. The respondent workman moved an application before the labour Court seeking permanent classification, amounting to regularization, on the post of Watchman/Chowkidar w.e.f. 19.11.1996 together with all consequential benefits on the ground that he was working on daily wages as muster roll labourer from July 1987 in the office of the Sub Divisional Officer, Public Works Department, Sub Division No.4, Medical College, Raipur, and was not regularized despite State Government's circular dated 09.01.1990.



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3. The labour Court allowed the prayer directing his permanent classification/regularization w.e.f. 19.11.1996 and the said order has been affirmed by the Industrial Court.
4. The Supreme Court has laid down the principle that regularization of an employee working in the government department, who was initially appointed under the constitutional scheme of appointment, is different than permanent classification/regularization of a workman, who was a daily wager having been appointed de hors the constitutional scheme of appointment.
5. With regard to regularization of the employees working on temporary basis, the Supreme Court in **Secretary, State of Karnataka and others v. Umadevi (3) and others**¹, observed as under:

“Thus, it is clear that adherence to the rule of equality in public employment is a basis feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee.”

6. In **State of Uttaranchal & Anr. v. Prantiya Sinchai Avam Bandh Yogana Shramik Mahaparishad**², the Supreme Court has held thus in para 10:-

The next question which requires consideration is whether completion of 240 days in a year confers any right on an employee or workman to claim

1 (2006) 4 SCC 1

2 2007 AIR SCW 6807

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regularization in service. In *Madhyamik Shiksha Parishad v. Anil Kumar Mishra & Ors.* (2005 (5) SCC 122), it was held that the completion of 240 days work does not confer the right to regularization under the Industrial Disputes Act. It merely imposes certain obligations on the employer at the time of termination of the service. In *M.P. Housing Board and Anr. v. Monoj Srivastava* (2006 (2) SCC 702) (paragraph 17) after referring to several earlier decisions it has been re-iterated that it is well settled that only because a person had been working for more than 240 days, he does not derive any legal right to be regularized in service. This view has been reiterated in *Gangadhar Pillai v. Siemens Ltd.* (2007 (1) SCC 533). The same question has been examined in considerable detail with reference to employee working in a Government Company in *Indian Drugs and Pharmaceuticals Ltd. v. Workman, Indian Drugs & Pharmaceuticals Ltd.* (2007 (1) SCC 408) and paragraphs 34 and 35 of the judgment are being reproduced below:-

34. Thus, it is well settled that there is no right vested in any daily wager to seek regularization. Regularization can only be done in accordance with the rules and not de hors the rules. In the case of *E. Ramakrishnan and Ors. v. State of Kerala and Ors.* (1996) 10 SCC 565) this Court held that there can be no regularization de hors the rules. The same view was taken in *Dr. Kishore v. State of Maharashtra* (1997) 3 SCC 209) and *Union of India and Ors. v. Bishambar Dutt* (1996) 11 SCC 341). The direction issued by the Services Tribunal for regularizing the services of persons who had not been appointed, on regular basis in accordance with the rules was set aside although the petitioner had been working regularly for a long time.

35. In *Dr. Surinder Singh Jamwal and Anr. v. State of Jammu & Kashmir and Ors.* (AIR 1996 SS 2775), it was held that ad hoc appointment, does not give any right for regularization as regularization is governed by the statutory rules.

The above position was highlighted in *Hindustan Aeronautics Ltd. v. Dan Bahadur Singh and Ors.* (2007 (6) SCC 207)

It is not in dispute that some of the concerned workmen have been regularized. Before any direction for regularization can be given, the factual position has to be noted as to whether there was any sanctioned post. Apparently, in the present case, these factual details have not been discussed by



either the Labour Court or the High Court. We, therefore, remit the matter to the Tribunal to consider the factual background and to decide the matter afresh in the light of what has been stated in Uma Devis case (supra) and Hindustan Aeronautics case (supra).

7. The Supreme Court in **Hindustan Aeronautics Ltd. v. Dan Bahadur**

Singh & Ors.³, has held thus in paras 12 & 14:-

12. The appellant, Hindustan Aeronautics Ltd., is a government company within the meaning of Section 617 of the Companies Act. What will be the legal position of a Government Company and whether its employees can be treated to be government servants was examined in Heavy Engineering Mazdoor Union v. State of Bihar and Ors. (1969) 1 SCC 765 and it was held as under in para 4 of the reports:

".....It is an undisputed fact that the company was incorporated under the Companies Act and it is the company so incorporated which carries on the undertaking. The undertaking, therefore, is not one carried on directly by the Central Government or by any one of its departments as in the case of posts and telegraphs or the railways....."

In A.K. Bindal v. Union of India (2003) 5 SCC 163 the difference between an employee of a government and an employee of a Government Company was pointed out and it was held :

"17. The legal position is that identity of the Government Company remains distinct from the government. The Government Company is not identified with the Union but has been placed under a special system of control and conferred certain privileges by virtue of the provisions contained in Sections 619 and 620 of the Companies Act. Merely because the entire share holding is owned by the Central Government will not make the incorporated company as Central Government. It is also equally well settled that the employees of the Government Company are not civil servants and so are not entitled to the protection afforded by Article 311 of



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the Constitution (See Pyare Lal Sharma v. Managing Director (1989) 3 SCC 448)."

An employee working in an industrial establishment enjoys a limited kind of protection. He may lose his employment in various contingencies which are provided under the Industrial Disputes Act such as lay off as provided in Section 25-C, retrenchment as provided in Section 25-F, transfer of industrial establishment or management of an undertaking as provided in Section 25-FF, closure of undertaking as provided in Section 25-FFF. He may be entitled to notice or wages in lieu of notice and monetary compensation depending upon the length of service put in by him. But the type of tenure of service normally enjoyed by a permanent employee in Government Service, namely, to continue in service till the age of superannuation, may not be available to an employee or workman working in an industrial establishment on account of various provisions in the Industrial Disputes Act where his tenure may be cut short not on account of any disciplinary action taken against him, but on account of a unilateral act of the employer. Therefore, the claim for permanency in an industrial establishment has to be judged from a different angle and would have different meaning.

14. The next question which requires consideration is whether completion of 240 days in a year confers any right on an employee or workman to claim regularization in service. In *Madhyamik Shiksha Parishad v. Anil Kumar Mishra & Ors.* (2005) 5 SCC 122 it was held that the completion of 240 days' work does not confer the right to regularization under the Industrial Disputes Act. It merely imposes certain obligations on the employer at the time of termination of the services. In *M.P. Housing Board & Anr. v. Manoj Shrivastava* (2006) 2 SCC 702 (paragraph 17) after referring to several earlier decisions it has been reiterated that it is well settled that only because a person had been working for more than 240 days, he does not derive any legal right to be regularized in service. This view has been reiterated in *Gangadhar Pillai v. Siemens Ltd.* (2007) 1 SCC 533. The same question has been examined in considerable detail with reference to an employee working in a Government Company in *Indian Drugs and Pharmaceuticals Ltd. v. Workman, Indian Drugs & Pharmaceuticals Ltd.* 2007(1) SCC 408.....

8. The Supreme Court in **State of M.P. and Ors. v. Lalit Kumar Verma⁴**, held thus in para 7:-

"7. A workman, therefore, would be entitled to classification of permanent or temporary employee, if the conditions precedent therefor are satisfied. Respondent was not appointed against a clear vacancy. He was not appointed in a permanent post or placed on probation. He had also not been given a ticket of permanent employee. Working on daily wages alone would not entitle him to the status of a permanent employee"

9. The law is thus well settled that even the High Court cannot direct regularization of an employee de hors the scheme framed by the State Government directing consideration of the cases in accordance with the State Government's policy. Even in such cases, the High Court can only direct consideration as per the State Government's policy and not a direction to straightway regularize the workman/daily wager.
10. For the foregoing, the impugned order directing permanent classification of the workman, which amounts to regularization, deserves to be and is hereby set aside.
11. Accordingly, the writ petition stands allowed.

Sd/-
Prashant Kumar Mishra
Judge

Nirala/Gowri