

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPL No. 5545 of 2007

1. State Of Chhattisgarh Through Chief Engineer, Mahanadi-Godavari Kachar, Shanker Nagar, Raipur CG

---- Petitioner

Versus

1. Prantadhyaksha Chhattisgarh Shasakiya Dainik Vetan Bhogi, Karyabharit Evam Shramik Karmachari Sangh, Chhattisgarh, Sadar Bazar, Raipur CG

---- Respondent

For Petitioner/State
For Respondent

Shri Y. S. Thakur, Dy. Adv. General
Shri Ratan Pandey, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

14/03/2016

1. State of Chhattisgarh has preferred this writ petition under Article 227 of the Constitution of India to assail the legality and validity of the award passed by the labour Court directing that the workman Kishan Lal Paraskar be treated as regularized employee w.e.f. 08.01.1988 together with the entire arrears of salary.
2. The respondent Union raised an industrial dispute, which was referred for adjudication to the labour Court. Individual workman Kishan Lal Paraskar submitted his statement of claim that he is working on daily wages Time Keeper/Field Assistant from 05.09.1979, therefore, he was entitled for regularization w.e.f.

08.01.1988 when similarly placed employees were regularized pursuant to the State Government's circular dated 01.12.1987.

3. The petitioner/State submitted reply to the statement of claim, *inter alia*, stating that at the time of entry into the service the workman had disclosed his name as Kishan Lal Soni, S/o L.R. Soni, however, at the time of scrutiny of daily wager workmen for considering their cases for regularization, the petitioner produced educational certificates, wherein his name was mentioned as Kishan Lal Paraskar, therefore, since the said name was not included in the gradation list, he was not regularized. It was further stated that on account of non-availability of posts, the workman has not been regularized nor benefit of seniority is admissible to him.
4. Learned counsel appearing for the State would submit that the labour Court committed serious error of jurisdiction to grant relief of regularization with retrospective effect, which is not permissible in law. Learned counsel would further submit that the State had categorically averred in the reply before the labour Court that on account of non-availability of posts, the workman was not considered subsequently.
5. Per contra, learned counsel appearing for the respondent workman, has referred to the law laid down by the Supreme Court in **Maharashtra State Road Transport Corporation and Another v. Casteribe Rajya Parivahan Karmchari**

Sanghatana¹ and Hari Nandan Prasad and Another v. Employer I/R to Management of Food Corporation of India and Another², to argue that the labour Court has jurisdiction to direct regularization, therefore, no interference is called for.

6. Admittedly, the respondent has claimed relief of regularization in view of the State Government's circular dated 01.12.1987 (Annexure-P-2). Para 2 of the said circular clearly states that regularization be made on sanctioned post, however, the daily wagers, who could not be regularized, shall not be removed from service. Thus, the State Government itself directed consideration of the case on sanctioned post and not in addition thereto.
7. In the case at hand, the sanctioned posts were filled up when an order of regularization was issued in favour of other daily wagers on 08.01.1988. The workman raised the industrial dispute only in the year 2002 i.e. after lapse of about 14 years. It is also to be seen that in the gradation list of daily wagers published in the year 1988, name of one K.L. Soni was included at S.No.21, however, in course of scrutiny, the workman submitted the certificates carrying his name as Kishan Lal Paraskar, therefore, in view of the discrepancy and anomaly in the records, he could not be regularized and all the sanctioned posts were filled up by issuing order of regularization in favour of others.
8. In **Maharashtra State Road Transport Corporation** (supra) and **Hari Nandan Prasad** (supra) the Supreme Court has held that

1 (2009) 8 SCC 556

2 (2014) 7 SCC 190

the labour Court can direct regularization when similarly placed persons have been regularized, however, it is nowhere held therein that regularization can be directed from retrospective effect.

9. After placing reliance on various decisions of the Supreme Court, this Court in **Smt. Kumari Bai & Others v. State of Chhattisgarh & Others**³ and other connected matters, while dealing with the similar plea raised by the daily wagers has held thus in para 13 :

'13. The regularization from a particular date has several aspects on which the order is passed since it depends upon availability of posts in a particular office/cadre, *inter-se* seniority of persons working on casual basis/daily-wagers and seniority of regular appointees, therefore, this Court, in the light of the above decisions of the Supreme Court, is of the considered opinion that to pass an order or regularization from a particular date is basically a policy decision and this Court need not interfere in such matters unless a right has accrued in favour of the employees to be regularised from a particular date, which is the cut-off date declared by the State Government.'

10. For the foregoing, this Court is of the considered opinion that the labour Court could not have directed for regularization from retrospective effect, however, since it appears that records were subsequently corrected to mention the name of workman in the gradation list as Kishan Lal Paraskar and the Supreme Court in **Hari Nandan Prasad** (supra) has observed in para 39 that in a given case when similarly placed persons have been regularized, the labour Court can direct for regularization, it is directed that the

3 WPS No.1029 of 2009 (decided on 11-2-2013)

workman be treated and given the benefit of a regularized employee from the date of award i.e. 16.05.2006 instead of 08.01.1988. Consequently the workman shall be entitled for the salary and allowances like a regular employee on the post w.e.f. 16.05.2006 onwards.

11. In the result, the writ petition is allowed in part to the extent indicated above. There shall be no order as to costs.

Sd/-

Judge

Prashant Kumar Mishra

Gowri