

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 1184 of 2013

1. Ganesh Athode S/o Kanhu Athode Aged About 43 Years R/o Bada Bhavani Nagar, Kota, Post University, PS Abba Naka, Kota, Distt Raipur, CG

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Forest Deptt, DKS Bhawan, Raipur, Dist Raipur, CG
2. Chief Conservator Of Forest Forest Circle, Raipur, Jail Road, Raipur, CG
3. Divisional Forest Officer Van Prabandh, Suchana Pranali, Van Mandal, Raja Talab, Raipur, Distt Raipur, CG

---- Respondent

For Petitioner	Shri Vinod Deshmukh, Advocate
For Respondent/State	Shri Majid Ali, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

09/02/2016

1. Petitioner is a daily wager in the Department of Forest, Raipur Circle, Raipur. He would pray for a direction to the respondents to regularise his services and quash the order whereby his representation has been rejected.

2. Pursuant to the circular dated 5-3-2008 different Departments of the State Government undertook exercise of scrutiny to determine eligibility for regularisation in terms of the circular.
3. The petitioner was initially found entitled to be regularised, however, on issues being raised, fresh scrutiny was made wherein the petitioner was found to have break-in-service of more than one month in several years. Since break-in-service for more than one month in a year has not been treated as continuous service from 1-1-1989 to 31-12-1997. The petitioner was held not entitled for regularisation and his representation has been cancelled.
4. Shri Vinod Deshmukh, learned counsel for the petitioner, would submit that the documents filed along with the return would clearly indicate that the documents pertaining to the petitioner's work in the year 1994 to 1999 were not placed before the committee, therefore, a fresh scrutiny should be made.
5. Per contra, Shri Majid Ali, learned Panel Lawyer appearing for the State, would submit that despite repeated scrutiny, which includes a scrutiny pursuant to the order passed by this Court in WPS No.4198 of 2012, the concerned

Department has not found any documentary evidence in the office where the petitioner claims to have worked to prove that there was no break-in-service during the relevant period, therefore, the petitioner has rightly been denied regularisation and the order dismissing his representation does not call for any interference.

6. Be that as it may, this Court cannot grant relief of regularisation as if regularisation is the source of recruitment. Similarly, this Court in exercise of power under Article 226 of the Constitution of India cannot direct regularization *de hors* the circular or scheme framed by the State Government.
7. In the case at hand, the State Government has issued the circular dated 5-3-2008 pursuant to the directions issued by the Supreme Court in **Secretary, State of Karnataka and Others v. Umadevi (3) and Others**¹, directing regularization of such daily wagers, as one time measure, who were appointed in any department of the State Government as daily wager between 1-1-1989 to 31-12-1997, however, the scheme further says that such daily wager has to be in continuous service.
8. The petitioner is claiming regularization only on the ground that since he has worked in the department in between 1-1-1989 to 31-12-1997 he is entitled for regularization, however, since the

¹ (2006) 4 SCC 1

petitioner was not regular in service and there is break-in-service for more than one month in several years, he is not covered under the circular dated 5-3-2008.

9. The identical matter has been dismissed by this Court vide order dated 30-7-2014 passed in WPS No.3441 of 2014 (*Virendra Kumar Upadhyaya v. State of Chhattisgarh & Others*). Thereagainst writ appeal has been preferred, bearing WA No.318 of 2014. The same has been dismissed by judgment dated 11-9-2014. Even the Special Leave to Appeal (C) No.34720 of 2015 preferred by said Virendra Kumar Upadhyaya has been dismissed by the Supreme Court by order dated 30-11-2015.

10. In the result, the writ petition, *sans* merit, is liable to be and is hereby dismissed. No order as to costs. Sd/-

Judge

Prashant Kumar Mishra

Gowri