

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 4305 of 2011**

1. Babloo S/o Laxman by caste Harijan, aged about 35 years, occupation, Safai Kamgar, Daily Wages employee, Municipal Corporation, Raigarh (CG).
2. Smt. Kiran W/o Shri Bhagwano, aged about 35 years, Occupation Safai Kamgar Daily Wages Employee Municipal Corporation Raigarh (CG).
3. Radhe S/o Shri Mijanu, aged about 44 years, Occupation Safai Kamgar Daily Wages Employee Municipal Corporation Raigarh (CG).
4. Laloni W/o Shri Radhe, aged about 40 years, Occupation Safai Kamgar Daily Wages Employee Municipal Corporation Raigarh (CG).

---- Petitioners**Versus**

1. State of Chhattisgarh through the Principal Secretary, Department of Urban Administration and Development, Mantralaya, DKS Bhawan, Raipur (CG).
2. The Under Secretary, Govt. of Chhattisgarh, Department Of Urban Administration & Development Mantralaya, DKS Bhawan Raipur (CG).
3. The Municipal Corporation, Raigarh, through its Commissioner, Municipal Corporation, Raigarh (CG).
4. The Director Urban Administration Development, Chhattisgarh, Raipur (CG).

---- Respondents

For Petitioners	Shri Awadh Tripathi and Shri Wasim Miyan, Advocates.
For Respondent/State	Shri UNS Deo, Govt. Advocate.
For Respondent No.3	Shri BD Guru, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****07/04/2016**

1. The petitioners seek to impugn the order dated 04.07.2011 (Annexure P/1) whereby the services of the petitioners was discontinued. The petitioners also sought for a

direction that they may be directed to continue the petitioners on the post as they were working as daily wagers for considerable period of time.

2. The admitted facts of the instant case is that, the petitioners were appointed as daily wage workers by the respondent No.3. According to the petitioners, they are working as daily wagers for considerable period of time. It is also contended that 372 regular posts of Class-IV employees are lying vacant with the respondent No.3, and therefore, they should have been regularized/absorbed on the aforesaid vacant posts considering their length of service as daily wagers in accordance with circular of the State dated 05.03.2008.
3. On the other hand, learned counsel for the respondents submits that admittedly the petitioners were discharging their duties as daily wage workers and they do not have any indefeasible rights for continuance in the employment. Their services stands discontinued at the end of the day or on the expiry of the period of their engagement. In addition, the respondents have also contended that the works which were carried out by the petitioners, the corporation intends to get it done through outsourcing.
4. I have heard the counsel for the parties and perused the documents appended thereto.
5. Admittedly, the petitioners have not been appointed on the respondent-organization following the due process of recruitment. The daily wagers who have been appointed dehorse the constitutional scheme of employment, is not entitled to reinstatement, continuation or regularization. The services of the daily wagers can come to an end at any day whenever their services are not required. If appointment itself is not in accordance with constitutional scheme of employment, the daily wagers cannot make a grievance against their termination/discontinuation.
6. The Supreme Court in 2009(7)SCC 205 (General Manager, Uttaranchal Jal Sansthan

Vs. Laxmi Devi and Others) has held that, before a person can claim a status of a government servant, not only his appointment must be made in terms of the recruitment rules, he must otherwise fulfill the criterion therefor. Rendition of service for a long time, it is well known, does not confer permanency. It is furthermore not a mode of appointment. The contention that ad hoc appointees working for several years without break should be considered for regularization in accordance with the rules, in the opinion of this court, is clearly inapplicable. In any event all such decisions must be held to have been overruled in Umadevi (3) {2006 (4)SCC-1}.

7. The Supreme Court, in the matter of Secretary, State of Karnataka and others Vs. Umadevi (3) and others¹ observed in para 47 as under:

“47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.”

8. In the matter of Indian Drugs & Pharmaceuticals Ltd. Vs. Workmen, Indian Drugs & Pharmaceuticals Ltd.², the Supreme Court observed as under:

“34. Thus, it is well settled that there is no right vested in any daily-

¹ 2006 (4) SCC 1

² 2007 (1) SCC 408

wager to seek regularization. Regularization can only be done in accordance with the rules and not dehorse the rules.”

35. In *Surinder Singh Jamwal (Dr.) v. State of J&K* it was held that ad hoc appointment does not give any right for regularization as regularization is governed by the statutory rules.”

9. The observations made hereinabove in the aforesaid cases (*Supra*), with approval, the Supreme Court in the matter of **Official Liquidator Vs. Dayanand and others**³ has further explained about the rights of the daily wagers and regularization. Para 70 of which reads as under:

"70. The Shift in the Court's approach became more prominent in *A. Umarani v. Coop. Societies*, decided by a three-Judge Bench, wherein it was held that the State cannot invoke Article 162 of the Constitution for regularization of the appointments made in violation of the mandatory statutory provisions."

10. Applying the well settled principles of law to the facts of the present case, the petitioners do not deserve any relief. There is no merit in this petition. The petition is accordingly dismissed. No order as to costs.

Sd/-
(P. Sam Koshy)
JUDGE

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