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HIGH COURT OF CHHATTISGARH, BILASPUR**WPL No. 205 of 2012**

1. State Of Chhattisgarh Through The Secrty., Deptt. Of Water Resources, New Mahanadi Bhawan, Mantralaya, P.S. Mandir Hasod, Dist. Raipur C.G.

(The petitioner No.1 was not a party before the learned Labour Court but has been impleaded as petitioner No.1 in the instant petition as the proper course is to implead the State Government through the Secretary of the concerned department.)

2. Executive Engineer Water Resources Deptt. Rajnandgaon, Ps. Kotwali, Dist. Rajnandgaon C.G.

---- **Petitioners****Versus**

1. Tikaram Kashyap S/o Dakor Aged About 56 Years R/o Tilai, Post Padumtara, Dist. Rajnandgaon C.G., Presently working under the O/o Executive Engineer, Tandula Water Resources Division, Durg, Ps. Mohan Nagar, Dist. Durg C.G.
2. Presiding Officer Labour Court, Rajnandgaon C.G.

---- **Respondents**

For Petitioners/State	:	Shri Vinod Deshmukh, Dy. GA for the State
For Respondent No.1	:	None, despite service of notice

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****04/05/2016**

1. Challenge in this petition is to the order passed by the labour Court, Rajnandgaon, regularizing respondent No.1 in the services of the State of Chhattsgarh w.e.f. the date of moving the statement of claim.
2. The respondent-workman was appointed in the work charged establishment on the post of 'Ameen' in the water resources department in the year 1974. On the date of raising the dispute, he was working as permanent member of

work charged and contingency paid establishment. Although he was getting the benefit of regular pay-scale, he raised the claim for being regularized in the services on the ground that daily wager Ameen have already been regularized.

3. The labour Court has allowed the claim on the ground that post of regular Ameen is available in the department, yet the respondent has not been regularized, therefore, the statement of claim deserves to be allowed.
4. Learned State counsel would submit that the Executive Engineer, Water Resources Department, Rajnandgaon is not the appointing authority of Ameen, therefore, the labour Court could not have directed the Executive Engineer to regularize the respondent-workman without impleadment and giving opportunity of hearing to the State of Chhattisgarh.
5. No one appears for the respondent-workman despite service of notice.
6. In **State of Uttaranchal & Anr. v. Prantiya Sinchai Avam Bandh Yogana Shramik Mahaparishad**¹, 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 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 2007 AIR SCW 6807

(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.***², has held thus in para 14:-

“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

2 AIR 2007 SC 2733

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 Verma**³, 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. In the case at hand, the respondent-workman was appointed in the contingency paid establishment and is governed by the contingency paid establishment Rules, 1975.
10. Regularization of contingency paid employee is thus governed under different set of rules than the regularization of the daily wager, who is in the regular establishment. Moreover, the respondent has not submitted any proof that any person junior to him working in the work charged establishment has been regularized as Ameen in the regular establishment.
11. For the foregoing, the labour Court has committed serious illegality in directing the Executive Engineer of the Water Resources Department to regularize the respondent-workman because the Executive Engineer is not the appointing authority of the respondent as also for the reason that the member of contingency paid establishment cannot be regularized in the regular establishment. Even the terms of reference only mentioned about

³ AIR 2007 SC 528

the regularization and not as to in which establishment the regularization is to be made.

12. The impugned order passed by the labour Court deserves to be and is hereby set aside. The writ petition stands allowed.

Sd/-

Judge
Prashant Kumar Mishra

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