

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No.679 of 2015

1. Kamlesh Gond, S/o Jagdish Gond, aged about 47 years, R/o Village Govindpur, Post Gattasili, Police Station and Tahsil Nagri, Civil and Revenue District Dhamtari (Chhattisgarh)
2. Yashwant, S/o Sudama, aged about 39 years, R/o Village Khadpathram, Police Station and Post Nagri, Civil and Revenue District Dhamtari (Chhattisgarh)
3. Dinesh Kumar, S/o Kheduram Markam, aged about 32 years, R/o Village Mongragahan, Police Station and Post Nagri, Civil and Revenue District Dhamtari (Chhattisgarh)

---- Appellants

versus

1. State of Chhattisgarh Through the Secretary, Forest Department, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur, District Raipur (Chhattisgarh)
2. The Chief Conservator of Forest, Raipur Circle, Police Station Raipur, Civil and Revenue District Raipur (Chhattisgarh)
3. The Conservator of Forest Raipur Circle, Police Station Raipur, Civil and Revenue District Raipur (Chhattisgarh)
4. The Forest Divisional Officer Dhamtari Forest Division, District Dhamtari (Chhattisgarh)

---- Respondents

For Appellants	:	Shri Kunal Das, Advocate
For State/Respondents	:	Shri B. Gopa Kumar, Deputy Advocate General

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per Navin Sinha, Chief Justice

25/1/2016

1. The present appeal assails order dated 20.7.2015 in Writ Petition (S) No.2716 of 2014 declining interference with the order passed by the Respondents rejecting the claim for regularisation in pursuance of circular dated 5.3.2008.

2. Learned Counsel for the Appellants submits that pursuant to the judgment in (2006) 4 SCC 1 (Secretary, State of Karnataka v. Uma Devi (3)) for regularisation of daily wage employees who may have completed ten years of service, the State Government issued circular dated 5.3.2008. It provided that those who were appointed on daily wage or ad hoc between 1.1.1989 to 31.12.1997 may be considered for regularisation. The Appellants fulfilled that requirement but have wrongly been denied regularisation. The Appellants approached this Court earlier in Writ Petition (S) No.4327 of 2012 disposed on 27.9.2012 to decide their representations. The Respondents have wrongly held that the Appellants did not fulfill the eligibility criteria of ten years of service.

3. Learned Counsel for the State submitted that the Learned Single Judge has adequately considered by evaluation of dates that they had not completed ten years of continuous service and therefore the Appellants are not entitled to the benefit of circular dated 5.3.2008.

4. We have considered the submissions on behalf of the parties and find no reason to interfere with the order under appeal though for different reasons.

5. One of us (Navin Sinha, J.) as a puisne Judge at Patna High Court had the occasion to consider the issue for regularisation of a daily wage in light of Uma Devi (supra) referred to a Full Bench in Civil Writ Jurisdiction Case No.267 of 2010 and 472 of 2010, dated 1.2.2013 for answering a reference in (2010) 9 SCC 247 (State of Karnataka v. M.L.Kesari) made a departure from the same. The reference was answered after a detailed discussion holding as follows:

“We therefore sum up our conclusions and answer the reference as follows:-

A) Uma Devi (supra) prohibits regularisation of daily wage, casual, ad-hoc and temporary appointments, the period of service being

irrelevant;

B) An illegal appointment void ab-initio made contrary to the mandate of Article 14 without open competitive selection cannot be regularised under any circumstances.

C) Irregular appointments can be regularised if the appointment was made by an authority competent to do so, it was made on a vacant sanctioned post, in accordance with Article 14 of the Constitution with equal opportunity for participation to others eligible by competitive selection and the candidate possessed the eligibility qualifications for a regular appointment to the post.

D) The appointment must not have been an individual favour doled out to the appointee alone and the person must have continued in service for over ten years without intervention of any court orders.”

6. The circular dated 5.3.2008 is obviously therefore based on complete misconception and misreading of the directions contained in Uma Devi (supra).

7. We find no merit in this appeal. The appeal is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE