

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 639 of 2015

- Hemlal Thakur S/o Tahluram Aged About 50 Years By Caste Gond, By Occupation Chowkidar, Govt. I T I , Bemetara, R/o Village Hathod, P. O. Bjamgaon, Tahsil Balod, Distt. Durg (Chhattisgarh)

---- Appellant

Petitioner

Versus

1. The State Of Chhattisgarh Through Its Secretary, Employment And Training Welfare Department, Sanchanalaya, Naya Raipur (Chhattisgarh)
2. Director, Employment And Training Welfare Department, Sanchanalaya, Naya Raipur (Chhattisgarh)
3. Joint Director, Employment And Training Welfare Department, Sanchanalaya, Naya Raipur (Chhattisgarh)
4. Moolchand Barmate, S/o Jagtaram, Aged About 44 Years By Occupation Safai Karamchari, I T I Malkharoda, Distt. Janjgir Champa (Chhattisgarh)

---- Respondent

For appellant	: Shri Parag Kotecha, Advocate.
For Respondent/State	: Shri AS Kachhawaha, Addl. A.G.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment On Board By Justice Pritinker Diwaker

14/01/2016

Challenge in the present writ appeal is to the order dated 9.10.2015 passed by learned Single Judge dismissing the writ petition filed by the appellant and respondent No.4 seeking their regularization on the post of Peon/Chowkidar.

02. According to counsel for the appellant, the appellant is entitled for regularization on the post of Peon/Chowkidar on the basis of Circular dated 5.3.2008 as he was continuously working on the said post on daily wage. He submits that in the case of the appellant/petitioner, the writ Court has wrongly applied the principles of law laid down by the Apex Court in the matters of *Secretary, State of Karnataka and others Vs. Umadevi (3) and others, (2006) 4 SCC 1*; *Secretary to Government, School Education Department, Chennai Vs. R. Govindswamy and others, (2014) 4 SCC 769*; and *Satya Prakash and others Vs. State of Bihar and Others, (2010) 4 SCC 179*. He submits that in view of judgment of the Apex Court in the matters of ***Amarkant Rai Vs. State of Bihar and others, (2015) 8 SCC 265***, the case of the appellant being an exception carved out in *Umadevi's* case (supra), he is entitled to be regularized on the post of Chowkidar.

03. Per contra, it has been argued by the State counsel that the appellant was merely a part time daily wager, there is no change in his status by any subsequent order and the Circular dated 5.3.2008 is also not applicable in his case as the same was issued for regularization of those workers who have put in 10 years of continuous services (without any break) as on 31.12.1997 whereas the appellant had hardly completed 3 months of service in the department.

04. Learned writ Court considering all the legal and factual aspects of the case observed that the appellant was not appointed under any statutory rules or against any regular sanctioned post, rather his appointment was as a part time employee. Learned Single Judge keeping in view the law relating to regularization of services and further

the Circular dated 5.3.2008 issued by the concerned department, which was being heavily relied upon by the appellant/petitioner, has rightly held that till 31.12.1997 the appellant had barely put in three months of service in the department and therefore, he is not entitled for regularization. As regards the judgment relied upon by the appellant, the same being distinguishable on facts is of no help to him. We find no illegality or perversity in the order impugned necessitating interference in exercise of appellate jurisdiction. The appeal being meritless deserves dismissal which we direct.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(C.B. Bajpai)

Judge

Khan