

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 339 of 2016**

- Laxman Kumar Kashyap S/o Lt. Parauram Kashyap, Aged About 49 Years
R/o Village And Post Chapka Tahsil Jagdalpur, District Bastar, (Chhattisgarh)

---- Appellant**Versus**

1. The State Of M.P. Now Its State Of Chhattisgarh Through: The Secretary, Tribal Welfare Department Mahanadi Bhawan, P.S. Rakhi, Raipur, District Raipur, (Chhattisgarh)
2. Assistant Commissioner, Tribal Development, Jagdalpur, District Bastar, (Chhattisgarh)
3. The District Collector, Collector Office, Jagdalpur, District Bastar, (Chhattisgarh)
4. Principal, Government Higher Secondary School Chapka, Jagdalpur, District Bastar, (Chhattisgarh)

---- Respondents

For Appellants	:	Shri Pravin K. Tulsyan, Advocate
For Respondents/State	:	Shri Yashwant Singh Thakur, Addl.A.G.

Hon'ble The Chief Justice
Hon'ble Shri Justice Sanjay Agrawal

Order On Board**24/10/2016****Per Deepak Gupta, CJ**

This appeal by the employee is directed against the judgment dated 16.03.2016 delivered by a learned Single Judge of this Court in Writ Petition (S) No.2018 of 2005 whereby the learned Single Judge rejected the writ petition filed by the petitioner.

2. The undisputed facts are that the petitioner was initially employed on daily wages as Jalvahak (Water Bearer) w.e.f. 13.10.1993 on the basis of an order passed by the Principal, Government Higher Secondary School, Chapka, Jagdalpur

on 01.11.1993. Thereafter, on 16.06.1995, the Assistant Commissioner, Tribal Development Department, Jagdalpur passed an order that the writ petitioner Laxman Kumar Kashyap had acquired status of permanent employee, and therefore, he is appointed in the work charged and contingency paid establishment in the pay scale of Rs.515-800/-.

3. The State of Madhya Pradesh issued a Circular on 26.02.2000 for scrutiny of all the appointments made on daily wages after 31.12.1988. During this process, the Scrutiny Committee constituted at the District Level found that the appellant/petitioner had been appointed on daily wages by the Principal, Government Higher Secondary School, Chapka, Jagdalpur on 01.11.1993 without the proper selection procedure as prescribed in the service rules, and therefore, his appointment was illegal. On the basis of the report of the Scrutiny Committee, an order of termination was passed against the appellant/petitioner, without issuing any show cause notice to him.

4. The appellant/petitioner challenged his order of termination by filing an original application before the State Administrative Tribunal, Madhya Pradesh. In the meantime, State of Chhattisgarh was formed on 1st November, 2000. The State Administrative Tribunal was also abolished and the matter came back to this Court from the State Administrative Tribunal. It would be most important to mention that the State Administrative Tribunal had granted interim direction to the petitioner and the petitioner continued to work as contingency employee till the passing of the order of this Court by learned Single Judge and his services were actually terminated on 28.05.2016. In para 7 of the impugned judgment/order, the learned Single Judge held as follows:

“7. It is also to be seen that the petitioner was initially appointed as daily wager. There is no interim order in this petition and if his subsequent appointment on regular pay scale is found illegal, he cannot be permitted to work as a daily wager after lapse of more than 1 ½ decade.”

5. The finding given by the learned Single Judge that there was no interim order in favour of the petitioner is apparently incorrect and against the record. This fact has also not been disputed by the learned Additional Advocate General who concedes with that in fact the services of the employee have been terminated only after the order was passed by the learned Single Judge.

6. This leads us to a very unusual situation where an employee has served the department for 23 years, but his petition has been dismissed on the ground that he was not working. Assuming for the sake of argument that the Scrutiny Committee was right in holding that initial appointment of the petitioner on 13.10.1993 by the Principal, Government Higher Secondary School, Chapka, Jagdalpur, was illegal, the Committee could only go into the illegalities of all the appointments made on daily wage basis because that was the mandate of the State of Madhya Pradesh when it directed the scrutiny of all such daily wage appointments. The Committee could not have overridden the order of the Assistant Commissioner, Tribal Development Department, Jagdalpur passed on 16.06.1995 whereby he had placed the petitioner on contingency paid establishment. This order created a vested right in the appellant/petitioner of being treated to be a permanent employee appointed on the contingency paid establishment. This order could not have been varied or cancelled without following the principles of natural justice and without giving an opportunity to the employee to be heard. Even an employee who has been employed wrongly has a right to be heard before the order of his termination can be passed. It is well settled law that an order which visits an employee with civil consequence cannot be passed without giving him an opportunity of hearing. Therefore, we are constrained to observe that the order of termination of the appellant/petitioner having been passed without giving him any notice is totally illegal and is bound to be set aside.

6. In this view of the matter, we set aside the judgment/order of the learned Single Judge and direct the respondent – Department to reinstate the

appellant/petitioner forthwith to his original position and continue him in service unless his services are terminated after following the procedure prescribed by law.

Sd/-
(Deepak Gupta)
Chief Justice

Sd/-
(Sanjay Agrawal)
Judge

Anjani