

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (L) No.994 of 2009

State of Chhattisgarh, Through Principal, Govt. Digvijay College  
Rajnandgaon (C.G.)

---- Petitioner

Versus

1. The Presiding Officer, Labour Court, Rajnandgaon (C.G.)
2. The President, Chhattisgarh Laghu Vetan Shaskiya Chaturth Varg  
Karmachari Sangh, Rajnandgaon (C.G.) Through Aggrieved Party  
– Shri Kuleshwar Singh & Mohan Kewat.

---- Respondents

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For Petitioner/State: Mr. Gary Mukhopadhyay, Deputy Govt. Adv.  
For Respondent No.2: Mr. Rakesh Thakur, Advocate.

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Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

19/05/2017

1. The State of Chhattisgarh has filed this writ petition invoking the jurisdiction of this Court under Article 226 of the Constitution of India questioning the award dated 28-4-2008 passed by the Labour Court, Rajnandgaon in Case No.15/I.D./2006 (Ref.) by which the Labour Court has directed the State Government to regularise the services of Kuleshwar Singh and Mohan Kewat on the post of Chowkidar.
2. Mr. Gary Mukhopadhyay, learned Deputy Government Advocate appearing on behalf of the State/petitioner, would submit that the order of the Labour Court directing regularisation has been passed after the judgment delivered by the Supreme Court in the

matter of **State of Karnataka v. Uma Devi (3)**<sup>1</sup>. He would further submit that the Labour Court has no jurisdiction to direct regularisation particularly when the workmen have not been appointed in accordance with the constitutional scheme. Therefore, the order impugned deserves to be set aside.

3. On the other hand, Mr. Rakesh Thakur, learned counsel appearing for respondent No.2, would oppose the writ petition and would submit that the State Government has itself issued circular dated 5-3-2008 for appointment of daily wagers.
4. I have heard learned counsel for the parties and perused the documents available on record with utmost circumspection.
5. Be that as it may, the Supreme Court in **State of Karnataka** (supra) has clearly held that daily wagers have no fundamental right to be absorbed in service as they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution of India. The decision in **State of Karnataka** (supra) has been followed recently by the Supreme Court in the matter of **State of Tamil Nadu Through Secretary to Government, Commercial Taxes and Registration Department, Secretariat and another v. A. Singamuthu**<sup>2</sup> in which in paragraph 15, Their Lordships of the Supreme Court observed as under: -

“15. In a similar issue, concerning part-time

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1 (2006) 4 SCC 1

2 (2017) 4 SCC 113

sweepers, the State of Tamil Nadu has filed an appeal before this Court, and those appeals were allowed by this Court by judgment dated 21-2-2014 in School Education Deptt., State of T.N. v. R. Govindaswamy. After referring to various judgments on this issue, in paras 5 to 7, this Court held as under: (SCC pp. 770-71)

“5. The issue involved here remains restricted as to whether the services of the part-time sweepers could have been directed by the High Court to be regularised. The is no more res integra.

6. In State of Karnataka v. Umadevi (3) (supra) this Court held as under: (SCC p.40, para 48)

'48. ... There is no fundamental right in those who have been employed on daily-wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily-wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules.'

7. In Union of India v. A.S. Pillai<sup>3</sup> this Court dealt with the issue of regularisation of part-time employees and the Court refused the relief on the ground that part-timers are free to get themselves engaged elsewhere and they are not restrained from working elsewhere when they are not working for the authority/employer. Being the part-time employees, they are not subject to service rules or other regulations which govern and control the regularly appointed staff of the department. Therefore, the question of giving them equal pay for equal work or considering their case for regularisation would not arise.”

6. Admittedly, the appointment of workmen is not in accordance with

the constitutional scheme by regular advertisement and they are merely daily-wagers who have been directed to be regularised by the Labour Court. The order of the Labour Court runs contrary to the decision of the Supreme Court in **State of Karnataka** (supra) followed in **A. Singamuthu's** case (supra). Consequently, the award impugned is quashed. However, this would not bar the workmen to make representation to the State Government/competent authority in view of the circular dated 5-3-2008 and the State Government in turn, would consider and decide the same strictly in accordance with law.

7. The writ petition is allowed to the extent indicated herein-above.

No order as to cost(s).

Sd/-  
(Sanjay K. Agrawal)  
Judge