

HIGH COURT OF CHHATTISGARH, BILASPUR**WP No.2268 of 2004**

Raipur Development Authority, a body constituted under the relevant provisions of C.G. Nagar Tatha Gram Nivesh Adhiniyam, through the Chief Executive Officer, R.D.A. Building Shashtri Chowk, Raipur

---- Petitioner

Versus

1. Smt. Dhan Bai, wife of Shri Makhan, resident of Paras Nagar, Raipur
2. Smt. Premwati, wife of Shri Chamru
3. Smt. Vrindabai, wife of Shri Kamal Singh
4. Smt. Jhuna Bai, wife of Shri Radheshyam
5. Smt. Mangtin Bai (deleted)
6. Smt. Pano Bai (deleted)
7. Babulal Rawat, son of Shri Parauram
8. Sukharam, son of Shri Mangluram
9. Smt. Indira Bai, wife of Shri Parasram
10. Smt. Sukni Bai, wife of Shri Khemlal
11. Smt. Dropdi Bai, wife of Shri Ramavtaar
12. Smt. Mithila Bai, wife of Shri Salikram
13. Smt. Ram Bai, wife of Shri Baliram

Respondent Nos.2 to 13 employed in the office of Municipal Corporation, Near Hanuman Mandir, Shastri Chowk, Raipur

---- Respondents

WP No.2269 of 2004

Raipur Development Authority, a body constituted under the relevant provisions of C.G. Nagar Tatha Gram Nivesh Adhiniyam, through the Chief Executive Officer, R.D.A. Building Shashtri Chowk, Raipur

---- Petitioner

Versus

1. Smt. Paltin Bai, wife of Shri Salikram, resident of Paras Nagar, Raipur
2. Smt. Premwati, wife of Shri Chamru
3. Smt. Vrindabai, wife of Shri Kamal Singh
4. Smt. Jhuna Bai, wife of Shri Radheshyam
5. Smt. Mangtin Bai (deleted)
6. Smt. Pano Bai (deleted)
7. Babulal Rawat, son of Shri Parauram
8. Sukharam, son of Shri Mangluram
9. Smt. Indira Bai, wife of Shri Parasram
10. Smt. Sukni Bai, wife of Shri Khemlal
11. Smt. Dropdi Bai, wife of Shri Ramavtaar
12. Smt. Mithila Bai, wife of Shri Salikram
13. Smt. Ram Bai, wife of Shri Baliram

Respondent Nos.2 to 13 employed in the office of Municipal Corporation, Near Hanuman Mandir, Shastri Chowk, Raipur

---- Respondents

WP No.2270 of 2004

Raipur Development Authority, A body constituted under the relevant provisions of C.G. Nagar Tatha Gram Nivesh Adhiniyam, through the Chief Executive Officer, Raipur Development Authority, R.D.A. Building Shastri Chowk, Raipur

---- Petitioner

Versus

1. Smt. Gajra Bai, wife of Shri Derharam, Resident of Paras Nagar, Raipur
2. Smt. Lilotin Bai, wife of Shri Dukaal
3. Smt. Uma, wife of Shri Krishna Kumar
4. Kirtenenal, son of Shri Bodhanprasad
5. Baliram (deleted)
6. Smt. Bhagwantin Bai, wife of Shri Sukhram
7. Smt. Rama Bai, wife of Shri Kanhaiyalal
8. Smt. Premwati, wife of Shri Chamru
9. Smt. Vrindabai, wife of Shri Kamal Singh
10. Smt. Jhuna Bai, wife of Shri Radheshyam
11. Smt. Mangtin Bai (deleted)
12. Smt Pano Bai (deleted)
13. Babulal Rawat, son of Shri Parauram
14. Sukharam, son of Shri Mangluram
15. Smt. Indira Bai, wife of Shri Parasram
16. Smt. Sukni Bai, wife of Shri Khemlal
17. Smt.Dropdi Bai, wife of Shri Ramavtaar
18. Smt. Mithila Bai, wife of Shri Salikram
19. Smt. Ram Bai, wife of Shri Baliram

Respondent Nos.2 to 19 employed in the office of Municipal Corporation, Near Hanuman Mandir, Shashtri Chowk, Raipur

---- Respondents

WP No.2271 of 2004

Raipur Development Authority, a body constituted under the relevant provisions of C.G. Nagar Tatha Gram Nivesh Adhiniyam, through the Chief Executive Officer, R.D.A. Building Shashtri Chowk, Raipur

---- Petitioner

Versus

1. Smt. Sohadra Bai, wife of Shri Pitambar, resident of Paras Nagar, Raipur
2. Smt. Premwati, wife of Shri Chamru
3. Smt. Vrindabai, wife of Shri Kamal Singh
4. Smt. Jhuna Bai, wife of Shri Radheshyam
5. Smt. Mangtin Bai (deleted)
6. Smt. Pano Bai (deleted)
7. Babulal Rawat, son of Shri Parauram
8. Sukharam, son of Shri Mangluram
9. Smt. Indira Bai, wife of Shri Parasram
10. Smt. Sukni Bai, wife of Shri Khemlal
11. Smt. Dropdi Bai, wife of Shri Ramavtaar
12. Smt. Mithila Bai, wife of Shri Salikram
13. Smt. Ram Bai, wife of Shri Baliram

Respondent Nos.2 to 13 employed in the office of Municipal

Corporation, Near Hanuman Mandir, Shastri Chowk, Raipur

---- Respondents

WP No.2272 of 2004

Raipur Development Authority, a body constituted under the relevant provisions of C.G. Nagar Tatha Gram Nivesh Adhiniyam, through the Chief Executive Officer, R.D.A. Building Shashtri Chowk, Raipur

---- Petitioner

Versus

1. Mansha Ram, son of Shri Ramlal, resident of Paras Nagar, Raipur
2. Smt. Premwati, wife of Shri Chamru
3. Smt. Vrindabai, wife of Shri Kamal Singh
4. Smt. Jhuna Bai, wife of Shri Radheshyam
5. Smt. Mangtin Bai (deleted)
6. Smt. Pano Bai (deleted)
7. Babulal Rawat, son of Shri Parauram
8. Sukharam, son of Shri Mangluram
9. Smt. Indira Bai, wife of Shri Parasram
10. Smt. Sukni Bai, wife of Shri Khemlal
11. Smt. Dropdi Bai, wife of Shri Ramavtaar
12. Smt. Mithila Bai, wife of Shri Salikram
13. Smt. Ram Bai, wife of Shri Baliram

Respondent Nos.2 to 13 employed in the office of Municipal Corporation, Near Hanuman Mandir, Shastri Chowk, Raipur

---- Respondents

WP No.2273 of 2004

Raipur Development Authority, a body constituted under the relevant provisions of C.G. Nagar Tatha Gram Nivesh Adhiniyam, through the Chief Executive Officer, R.D.A. Building Shashtri Chowk, Raipur

---- Petitioner

Versus

1. Smt.Kachara Bai, wife of late Punit Ram (since deceased) represented by daughter in law Smt. Madhu Bai Sahu wife of late Manoj Sahu, resident of Santoshi Nagar near canal, Raipur
2. Smt. Premwati, wife of Shri Chamru
3. Smt. Vrindabai, wife of Shri Kamal Singh
4. Smt. Jhuna Bai, wife of Shri Radheshyam
5. Smt. Mangtin Bai (deleted)
6. Smt. Pano Bai (deleted)
7. Babulal Rawat, son of Shri Parauram
8. Sukharam, son of Shri Mangluram
9. Smt. Indira Bai, wife of Shri Parasram
10. Smt. Sukni Bai, wife of Shri Khemlal
11. Smt. Dropdi Bai, wife of Shri Ramavtaar
12. Smt. Mithila Bai, wife of Shri Salikram
13. Smt. Ram Bai, wife of Shri Baliram

Respondent Nos.2 to 13 employed in the office of Municipal Corporation, Near Hanuman Mandir, Shastri Chowk, Raipur

---- Respondents

And

WP No.2274 of 2004

Raipur Development Authority, a body constituted under the relevant provisions of C.G. Nagar Tatha Gram Nivesh Adhiniyam, through the Chief Executive Officer, R.D.A. Building Shashtri Chowk, Raipur

---- Petitioner

Versus

1. Smt. Ramhin Bai, wife of Shri Goverdhan, resident of Paras Nagar, Raipur
2. Smt. Premwati, wife of Shri Chamru
3. Smt. Vrindabai, wife of Shri Kamal Singh
4. Smt. Jhuna Bai, wife of Shri Radheshyam
5. Smt. Mangtin Bai (deleted)
6. Smt. Pano Bai (deleted)
7. Babulal Rawat, son of Shri Parauram
8. Sukharam, son of Shri Mangluram
9. Smt. Indira Bai, wife of Shri Parasram
10. Smt. Sukni Bai, wife of Shri Khemlal
11. Smt. Dropdi Bai, wife of Shri Ramavtaar
12. Smt. Mithila Bai, wife of Shri Salikram
13. Smt. Ram Bai, wife of Shri Baliram

Respondent Nos.2 to 13 employed in the office of Municipal Corporation, Near Hanuman Mandir, Shastri Chowk, Raipur

---- Respondents

For Petitioner	:	Mr.Kasif Shakeel, Advocate in all the writ petitions
For Respondent No.1	:	Mr.Sudeep Johri, Advocate in all the writ petitions

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

20/11/2017

1. Since common question of law & fact is involved in these batch of writ petitions, they are being heard together and are being disposed of by this common order.
2. Employees/respondent No.1 herein in all the writ petitions have filed applications under Section 31(3) read with Section 61(1) of the Chhattisgarh Industrial Relations Act, 1960 (hereinafter called as "the Act of 1960") claiming to be permanent employee in the establishment of the petitioner herein after holding them senior to the respondents. Their applications were

allowed by the Labour Court directing the petitioner to classify respondent No.1 as permanent employee and also granted consequential benefits. The petitioner and respondent No.1 (in all writ petitions) have preferred appeals before the Industrial Court. By order dated 13.4.2004 the Industrial Court dismissed the appeal filed by the petitioner herein. However, partly allowed the appeal filed by the employees granting benefit of classification from the date two years prior to the date of application before the Labour Court. Feeling aggrieved and dissatisfied with the order of the Industrial Court, the petitioner has filed these batch of writ petitions.

- 3.** Mr.Kasif Shakeel, learned counsel appearing for the petitioner, would submit that order passed by the Labour Court as affirmed by the industrial Court is liable to be set aside as respondent No.1 has failed to fulfill twin conditions for classifying them as permanent employee as respondent No.1 is only a daily wager and does not hold the post and they have not been appointed in accordance with the statutory rules and against clear & vacant post, therefore, the impugned order passed by the Labour Court as affirmed by the Industrial Court is liable to be set aside.
- 4.** On the other hand, Mr.Sudeep Johri, learned counsel appearing for respondent No.1 in all the writ petitions, would support the impugned order and submit that names of respondent No.1 in each of the writ petitions were included in the seniority list prepared by the petitioner herein and they have been worked satisfactorily for more than six months in the establishment of the petitioner and finding recorded by the Labour Court as

affirmed by the Industrial Court is the finding of fact based on material available on record and that cannot be interfered with particularly when most of employees have already retired from service, therefore, the impugned orders are liable to be set aside.

5. I have heard learned counsel for the parties, considered their rival submissions made herein-above and also gone through the records with utmost circumspection.
6. The applicable Standing Order is Rule 2 (i) of the Chhattisgarh Industrial Employment (Standing Orders) Rules, 1963 (hereinafter called as 'the Rules of 1963'), which provides as under:-

"2. Classification of employees.-

(i) A 'permanent' employee is one who has completed six months' satisfactory service in a clear vacancy in one or more posts whether as a probationer or otherwise, or a person whose name has been entered in muster roll and who is given a ticket of permanent employee."

7. Rule 2(i) prescribes twin requirement for acquisition of permanent status which states as under:-

"(1) That workman has completed six months satisfactory service,

(2) That service has been rendered in a clear vacancy in one or more posts which was established."

8. The Supreme Court in the matter of State of **M.P. and others Vs. Onkar Prasad Patel**¹ dealing with Rule 2 (i) of the MP Industrial Employment (Standing Orders) Rules 1963 held as under:-

¹ (2005) 13 SCC 489

“6. In view of the clear definition of a "permanent employee", as given in the Standard Standing Order, the applicant/workman cannot be categorized as a permanent employee even though he may have completed six months satisfactory service. The other requirements that the service was rendered in a clear vacancy in one or more posts was not established. The conditions are cumulative and are not independent of each other. That being the position, the Labour Court, the Industrial Court and the High Court were not justified in directing that the respondent/workman was to be categorized as permanent employee. That part of the direction is set aside. ”

9. Following the principle of law laid down in Onkar Prasad Patel

(supra) the Supreme Court in the matter of **M.P. Housing Board and another Vs. Manoj Shrivastava**² while pointing the requirements for acquiring permanent status to a workman *qua* Rule 2(i) of the Rules of 1963 held that daily wager does not hold a post or derive any legal any legal right in relation thereto, unless he is appointed (1) against a duly sanctioned vacant post, and (2) upon following the statutory law operating in the field and further held that if an appointment is made in contravention of either of the above conditions, such appointment would be void conferring no rights.

10. In the matter of State of M.P. and others Vs. Lalit

Kumar Verma³ the Supreme Court held as under:-

“7. A workman, therefore, would be entitled to classification of permanent or temporary employee, if the conditions precedent therefor are satisfied. The 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.”

² (2006) 2 SCC 702

³ (2007) 1 SCC 575

- 11.** Going by the principles of law laid down by the Supreme Court in the above-stated judgments (supra) and applying to the facts of the present case in hand, it is quite vivid that respondent No.1 (in all cases)/workmen in the applications filed before the Labour Court only pleaded that they are working as daily wagers employee since 1976 in the establishment of Raipur Development Authority and their names have been included in the seniority list so prepared by RDA and their services were not regularized, whereas their juniors' services were regularized, as such they are entitled to be classified as permanent. Such an averments have been denied by the petitioner RDA.
- 12.** The individual workmen have been examined, but on behalf of the petitioner RDA, no evidence has been led.
- 13.** The Labour Court by its order allowed the applications filed by the workmen on the ground that names of the workmen (respondent No.1 in all cases) are included in the seniority list and they have been worked for more than six months in the establishment of the RDA. In appeal the Industrial Court has affirmed the order of the Labour Court.
- 14.** Admittedly, respondents/workmen were appointed as daily wager in the establishment of the RDA, they were not appointed on a duly sanctioned vacant post in accordance with Rules and they were not given permanent status. Neither the Labour Court nor the Industrial Court has recorded such a finding that respondents/workmen were appointed on a duly sanctioned post. Mere inclusion of their names in the seniority list it cannot

be held that they fulfilled the twin requirements of Rule 2 (i) of the Rules of 1963. The Labour Court has committed legal error in classifying them as permanent employee granting permanent status and the Industrial Court perpetuated the illegality.

15. As a fallout and consequence of the above-stated discussion, the impugned order passed by the Labour Court as affirmed by the Industrial Court is hereby quashed.

16. The writ petitions are allowed to the extent indicated hereabove. No cost(s).

Sd/-

(Sanjay K. Agrawal)

Judge

B/-