

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.5414 of 2010**

1. Banshilal Gond, aged about 39 years, S/o Shri Halal Khor Gond,
 2. Ghana Ram Sahu, aged about 37 years, S/o Late Kartik Ram
 3. Prakash, aged about 37 years S/o Shri Karan,
 4. Karan Dewangan, aged about 55 years, S/o Shri Puran,
 5. Roop Chand, aged about 44 years, S/o Vishram Dewangan
 6. Shyamlal Halba, aged about 48 years, S/o late Shri Kewal Halba,
- All petitioners are working As Daily Wager Under Respondents and Posted At Industrial Tree Plantation, Bhilai, Tahsil And Distt.-Durg (CG).

---- Petitioners**Versus**

1. State of Chhattisgarh through Principal Secretary, Forest Department, Govt. of Chhattisgarh, DKS Bhawan, GE Road, Raipur (CG).
2. Managing Director Chhattisgarh Rajya Van Vikas Nigam Limited, Lokash Plaza, Shankar Nagar Road, Raipur (CG).
3. Divisional Manager, Panabaras Pariyojna Mandal, Rajnandgaon (CG).

---- Respondents

For Petitioners	:	Shri VG Tamaskar, Advocate.
For State	:	Shri Gary Mukhopadhyay, Dy.GA.
For respondents No.2&3:	:	Shri B.D. Guru, Advocate.

Hon'ble Shri Justice P. Sam Koshy**JUDGMENT****Delivered on 11/12/2017**

1. The present writ petition has been filed primarily seeking for two reliefs which are as under:

10.1. That, the Hon'ble court be pleased to direct the respondents to regularize the petitioners as per directions issued by the State Government vide Notification dated 05.03.2008 Annexure P/1 by issuing writ of mandamus or any other appropriate writ or direction.

10.2 That, the respondents may also be directed to give all consequential benefits at par with equally placed and regularized daily wagers.

2. The brief facts relevant for consideration of this issue in the case is that, the petitioners total 6 in numbers, were initially engaged by the respondent No.2 as daily wage workers prior to 1997 and since then they are working with the respondent No.2 still as daily wage workers.
3. The contention of the petitioners are that since they have been working with the respondent No.2 for a considerable length of period, the respondent No.2 should consider the case of the petitioners for regularization. They heavily rely upon the decision of the Supreme Court in case of Secretary, State of Karnataka & Ors. Vs. Umadevi (3) & Ors. 2006(4)SCC1 wherein the Supreme Court in paragraph 53 have ordered for the respective employers to consider one time measure in trying to regularize all those persons who have been working with the State for more than 10 years continuously. The petitioners have also relied upon the circular of the State Govt. dated 05.03.2008 wherein it has been resolved by the State to consider regularization of even those workers who were appointed as daily wage worker in between 01.01.1989 to 31.12.1997.
4. Per contra, learned counsel for the contesting respondent i.e. respondent No.2 opposing the petition submits that the petitioners do not have any substantive right to claim the relief that they have sought for. It has been further contended that the petitioners in the instant case are substantially working as daily wage employee and that their initial appointment was not in accordance with the constitutional scheme framed by the employer. Neither have the petitioners been

engaged against any sanctioned vacant post nor have they been subjected to any of the recruitment procedures before the appointment. It was also contended by the respondent-employer that circular which has been relied upon by the petitioners i.e. circular dated 05.03.2008 is a circular which has been issued by the State Govt. and that the said circular has not been made applicable in the respondent No.2-establishment and that it is not binding upon the respondent No.2-corporation. Neither have the same been adopted by the corporation.

5. Having considered the rival contentions put forth on either side and on perusal of record, true it is that through the rejoinder the petitioners have placed record in the petition to show the fact that the petitioners were initially engaged to work as Security Workers by the respondent No.2-corporation in between November, 1994 to April, 1996 and from the document which has been issued in the year, 2010, it reflects that these petitioners were still working with the respondent No.2.
6. So far as the State is concerned, they have filed a reply adopting the stand taken by the respondent No.2-corporation in their reply. Thus, from the stand which the State has taken, it clearly reflects that they endorsed upon the fact that the circular of the State Govt. is not made applicable upon the respondent No.2-corporation and the said circular dated 05.03.2008 is also not binding upon the respondent No.2. Rest of the averment made in the petition being against the respondent No.2, the reply of the State may not be of much

relevance.

7. Now if we take into consideration the stand of the respondents available before this court, it is evidently clear that the petitioners have not been able to show as to the source and method of recruitment inasmuch as it has not been established before this court on behalf of the petitioners so far as their eligibility is concerned and it has also not been established as to whether their engagement was against any sanctioned vacant post. Unless these facts are brought on record, it is difficult to reach to the conclusion as to which category these employees would fall i.e. whether they would come under the category of illegal appointment or irregular appointment?
8. In case of Umadevi (Supra) which has been harped upon and also banked upon by the petitioners, the Supreme Court in paragraph 53 has made an observation so far as irregular appointment being made by the State authorities. That, if we read the principles or ratio laid down in the said judgment, what culls out is that so far as illegal appointment is concerned, irrespective of the total length of service even if it is substantial period, such employees would not be entitled for the relief of regularization. Further, that even in the event if the appointment is only irregular appointment then too the Supreme Court has made an observation that the employer should come out with one time measure/policy trying to accommodate and regularize such irregular appointees.
9. Though the document Ex. P/5 with the rejoinder shows that the petitioners herein are working as Security Workers, but they have not

been able to show whether such post is a sanctioned post in the department. The petitioners have also not been able to establish the fact that each of the petitioners also do have all the requisite eligibility criteria and qualifications for the post against which they are working.

10. So far as the status of daily wage workers is concerned, it is by now well settled that a daily wage worker as such does not have any indefeasible right accrued in their favour for consideration for regularization. In the judgment of Umadevi and all subsequent decisions it has been emphatically held that a daily wage worker as such unless he is appointed following the constitutional scheme or that his appointment has been made after following due process of law pertaining to the recruitment in the department. The daily wage worker would not be entitled for any relief only on the ground of their length of engagement.
11. Moreover, the contesting respondents in their reply have categorically taken a stand that circular of the State Govt. dated 05.03.2008 has not been adopted by the respondent-corporation and that neither is there any decision of respondent-corporation or the State Govt. holding the circular to be binding upon the Corporation. It has always been a settled position of law that, appointment to a public post must be under the constitutional schemes framed in the department by following the recruitment rules in force. Any persons appointed in contravention to the constitutional scheme or recruitment rules, cannot seek for any absorption of regularization.
12. Given the aforesaid factual matrix of the case and the legal position,

this court does not find any strong case made out by the petitioners for issuance of writ of mandamus against the respondent No.2 directing them for considering their case for regularization.

13. However, this court is still of the opinion that the petitioners before this court, as per Annexure P/5, have put in more than 20 years of service, this court does not know whether the petitioners have minimum eligibility criteria or educational qualification, this court is also not aware of the fact whether there exists any sanctioned vacant post available with the department, and under these circumstances, this court taking a sympathetic consideration on the claim of the petitioners, intends to make an observation while disposing of the writ petition that the respondent No.2 being corporation created by the State Govt. and discharging the functions for and on behalf of the State, the welfare of the employees or the workers engaged must also be borne in mind by the employer. Even though the circulars of the State Govt. may not be applicable, but the authorities concerned cannot lose sight of the service rendered by the petitioners and being a model employer, the respondent No.2 should have a policy catering the needs of such similarly placed workers in the department.
14. In today's world, where there is a huge employment crisis in the country and where employment is scarce, for survival sake workers do accept employment even if it be as a daily wage workers and while offering themselves for the said work, there is a legitimate expectation on their part, though subject to their fulfilling requisite

eligibility criteria, the department should some day consider their cases against sanctioned vacant post against which they are performing their duties.

15. Having put in more than 20 years of their life with the respondent-corporation, the respondent cannot act in an inhuman manner of discarding the claims of the petitioners only because their status happens to be that of daily wage employees. In spite of all decisions of the Supreme Court right from Umadevi and all subsequent decisions, if the department still continuously engages the daily wage workers uninterruptedly with specific place of posting and specified nature of job, it establishes the requirement of the department and the nature of work being perennial.
16. In the light of the aforesaid observations, this court makes only an observation that the authorities at the helm affair in the department i.e. the respondent No.2 should deliberate upon the condition of the petitioners and frame an appropriate suitable policy considering the entire facts and circumstances of the case.
17. While taking a decision, the authorities concerned shall also keep in mind the decision of the Supreme Court in case of Umadevi (Supra) as also the circulars of the State Govt. particularly circular dated 05.03.2008.
18. With the aforesaid observations, the writ petition stands dismissed.

Sd/-
(P. Sam Koshy)
Judge