

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 3902 of 2013

Laxmikant Koka S/o Late Shri V.K.Koka, aged about 47 Years, Presently Working As Asstt Grade III, Nagar Nigam Bilaspur, Tahsil and Distt Bilaspur, Chhattisgarh.

---- Petitioner

Versus

1. The State Of Chhattisgarh, Through The Secretary, Urban Administration and Secretariat, P.O Mantralaya, PS Rakhi, Naya Raipur, Distt Raipur, Chhattisgarh.
2. Nagar Nigam Bilaspur Nagar Through Municipal Commissioner, Nagar Nigam Bilaspur, Dist Bilaspur, Chhattisgarh.

---Respondents

For Petitioner	:	Shri Harsh Wardhan, Advocate
For respondent No.1	:	Ms.M.Asha, Panel Lawyer
For respondent No.2	:	Shri Ashutosh Singh Kachhawaha, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

18/09/2017

1. The present Writ Petition has been filed seeking for direction to the respondents for regularization of the services of the petitioner working under the respondent No.2.
2. The brief facts of the case is that, according to the petitioner, he was initially engaged as a daily wage worker under the respondent No.2 in the year 1989 and he continued to work on the said post as a daily wage worker till the year 2000. In the year 2000, the services of the petitioner was discontinued. The petitioner thereafter preferred the Writ Petition before the High Court which was registered as the Writ Petition No.553/2002. The said Writ Petition got decided on 17/07/2006 wherein the High Court while disposing the Writ Petition has held as under :

XXXX In the present case, admittedly the petitioner was appointed on daily wages basis post and as such he has no right to the post. However, in the facts and circumstances of the case, the respondents are directed to consider the case of the petitioner in terms of the order, as stated above passed by the Hon'ble Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi (3) and Others (Supra). The writ petition accordingly stands disposed of. No order as to costs.

3. Subsequently, the petitioner kept on approaching the respondents and finally vide order dated 05/09/2008, the petitioner along with few other person have been granted a fresh employment under the respondent No.2 with effect from 05/09/2008 onwards and on which post the petitioner is still continuing in employment.
4. The contention of the petitioner now is that, since there was continuous employment of more than 10 years prior to his discontinuance from employment in the year 2000, applying the ratio of law laid down by the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka and Others Vs. Umadevi (3) and Others {[2006] 4 SCC 1}** and also the subsequent circular of regularization issued by the State Government dated 05/03/2008, the petitioner was entitled for being regularized. According to the petitioner, there is no quarrel so far as continuous employment of the petitioner is concerned from 1989 to 2000 i.e. he has rendered services of around 11-12 years and therefore he has become entitled for regularization.
5. The counsel for the petitioner fairly submits that, subsequent to his fresh appointment vide order dated 05/09/2008, since he has not completed the required length of service, he may not be entitled for regularization but his claim is confined to the continuous 10 years of service from 1989 to 2000, and for which the circular of dated 05/03/2008 floated by the State Government would be squarely applicable. He further submits that, in spite of repeated representations being made by the petitioner, the claim for regularization was ultimately rejected by the respondent No.2 on dated 03/08/2013 leading to filing of the present petition and prayed for quashment of the same and for direction to the respondent for considering his claim for regularization. He relied upon the decision of Supreme Court in the case of **State of Jharkhand and Others Vs. Kamal Prasad and Others {[2014] 7 SCC 223}**.
6. The counsel for the respondents however opposing the petition submitted that, the claim of the petitioner stood rejected by the High Court at the first instance when he filed the Writ Petition i.e. WP No. 553/2002 decided on 17/07/2006. The counsel for the respondents further submits that, admittedly, the petitioner was not in employment during the period from 2000 till September-2008 and hence this period undoubtedly would be break in service so far as petitioner is concerned. His claim for regularization has been rightly rejected vide the impugned order dated 03/08/2013 and prayed for dismissal of the petition.

7. Having heard the rival contentions put forth on either side and on perusal of record, what is undisputed is the fact that, beyond the year 2000, the status of the petitioner was as a discontinued employee whose services stood terminated for whatever reasons be it. The said action of termination was held to be proper by the High Court in its judgment passed in WP No.553/2002 dated 17/07/2006. The order of the High Court has attained finality since it was not questioned any further. The order of re-instatement dated 05/09/2008 issued in favour of the petitioner shows that the petitioner was given a fresh appointment except for the observation that the order is being passed at the instance of judgment of the High Court of Chhattisgarh. The order of re-instatement dated 05/09/2008 had also been accepted without any objection by the petitioner and has accepted the employment and thereafter he started making repeated claim for regularization of services which got rejected vide the impugned order.
8. For counting his services also for regularization if we taken into consideration the circular of the State Government dated 05/03/2008, it clearly reflects that the said circular would be applicable to those employees who are in continuous employment of the State Government or the respondent No.2 for a period of more than 10 years and where the services were engaged between 01/01/1989 to 31/12/1997 without any break in services.
9. What is undisputed is the fact that, there was a break in service of more than 8 years in the case of the petitioner between 2000-2008 and the subsequent order of employment being a fresh employment, the circular of the State Government dated 05/03/2008 cannot be made applicable in the instant case claiming regularization.
10. Law so far as regularization is concerned is by now well settled by catena of decisions of Supreme Court and where it has been repeatedly held by the Supreme Court that, claim for regularization is not as a matter of right particularly when the substantive engagement of the petitioner was that as a daily wage worker and the mode of recruitment under both respondent No.1 as well as respondent No.2 are governed by separate set of rules pertaining to recruitment and appointment.
11. As regards judgment of Supreme Court which has been relied upon by the petitioner the facts of the said case are by itself distinguishable and it is not a case where the petitioners services was earlier put to challenge before the High Court unsuccessfully. Further, the order passed by the Hon'ble Supreme Court was in exercise of the powers conferred under Article 136 of the Constitution of India and therefore the said judgment is

quite distinguishable of the facts itself and would not come to the rescue of the petitioner.

12. The Writ Petition thus being devoid of merit is liable to be and is hereby rejected.

**Sd/-
(P. Sam Koshy)
Judge**

Sumit