

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No.2686 of 2005**

Shuba Dubey, aged about 56 years, S/o Shri Rama Dubey, R/o Ramanujganj, District Surguja (CG).

---- **Petitioner****Versus**

1. State of Chhattisgarh, through Secretary, Agriculture Department, DKS Bhawan, Raipur (CG).
2. Deputy Director, State Krishi Vipnan Board, Auchalic Office, Bilaspur, District Bilaspur (CG).
3. Managing Director, C.G. State Agriculture, Marketing Board, Raipur, District Raipur (CG).
4. Krishi Upaj Mandi Samiti, Ramanujganj, District Surguja (CG).
5. Bharsadhak Officer, Krishi Upaj Mandi Samiti, Ramanujganj, District Surguja (CG).

---- **Respondents**

For Petitioner : Mr. Manoj Paranjpe, Advocate
 For Respondents : Mr. Ranbir Singh Marhas, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order On Board

20/06/2017**(1)** Heard.

(2) The petitioner was appointed on the post of Nakedar in Krishi Upaj Mandi Samiti, Ramanujganj as a daily wager employee. The said Samiti on 10.7.1990 passed a resolution for regularizing the services of the petitioner on the post of Nakedar. The said resolution was passed on the basis of the circulars issued by the State Government dated 09.01.1990 and circular issued by Director Krishi Upaj Mandi dated 31.03.1990 and the

decision was taken to place the matter before the Departmental Promotion Committee/Selection Committee. On 15.10.1991, the Departmental Promotion Committee was convened and the Committee considered the case of the petitioner and other employees for regularization of their services and after due consideration, it was directed that the petitioner's service be regularized against the regular and vacant post of Nakedar. Accordingly, the order dated 01.11.1991 was passed for regularizing the services of the petitioner on the post of Nakedar. Against regularization of petitioner's service, complaint was made on 24.09.1994 and in that complaint, the Additional Director, M.P. Krishi Upaj Mandi cancelled the order of regularization granted in favour of the petitioner while exercising the powers under Section 59 of the Krishi Upaj Mandi Adhiniyam, 1972 on 13.05.1999.

(3) Against that order, the petitioner preferred an appeal before the State Government. The State Government by its order dated 01.04.2003 remanded back the matter to the Managing Director to consider the case of the petitioner and other employees afresh after affording an opportunity of hearing to the employees and pass order in accordance with law afresh.

(4) The Managing Director by its order dated 30.03.2005 has passed the fresh order and upheld the order of cancellation of regularization dated 13.05.1999 and further held that the petitioner would be entitled for regularization w.e.f. 30.03.2005.

(5) Feeling aggrieved against that order, this writ petition has been preferred by the petitioner herein.

(6) Mr. Manoj Paranjpe, learned counsel appearing for the petitioner would submit that the impugned order is bad-in-law and has assailed on the following grounds:-

- i. That the non-availability of the post of Nakerdar on the date of regularization on 01.11.1991 has not been established.
- ii. That the petitioner has been regularized against the regular and vacant post as per the order of Mandi Samiti. It is not the case of the Mandi Samiti that order of regularization appointing the petitioner has been passed by playing fraud or on misrepresentation, therefore, the impugned order is liable to be set-aside.

(7) Mr. Ranbir Singh Marhas, learned counsel appearing for the respondents No. 2, 3 & 5 would submit that on account of non-availability of the post of Nakerdar by the impugned order the petitioner has granted regularization against the regular and vacant post of Nakerdar w.e.f. 30.03.2005. He would further submit that against the impugned order, the appeal is maintainable under Section 59 of the Krishi Upaj Mandi Adhiniyam, 1972 before the State Government.

(8) I have learned counsel for the parties and perused the impugned order with utmost circumspection.

(9) This writ petition was taken up for hearing on 29.06.2005 and notices were issued. The dispute relates to regularization of the services of the petitioner on the post of Nakedar, which was made on 15.10.1991 and the instant writ petition is pending consideration before this Court since 23.06.2005 and therefore, it is not a case to be thrown on the ground of availability of alternative remedy. This would bring me to the merits of the matter.

(10) It appears from the record that on 10.07.1990, the resolution was passed by the Samiti for regularizing the services of the petitioner on the post of Nakedar and thereafter, decision was taken to place the matter before the Departmental Promotion Committee/Selection Committee. On 15.10.1991, the Departmental Promotion Committee has considered and recommended that the services of the petitioner be regularized against the regular and vacant post of Nakedar and thereafter, his service was regularized by the order dated 01.11.1991. Thereafter, the petitioner's service was cancelled on the ground that the post of Nakedar was not available at the time of regularization. The order dated 13.05.1999 only indicates that the post of Nakedar was not available, which has not been established by giving the fact and figure that infact the post of Nakedar was not available on 01.11.1991 and on the contrary, the Samiti itself has regularized the services of the petitioner on 01.11.1991.

(11) In the matter of **Md. Zamil Ahmed Vs. State of Bihar and others**¹, Their Lordships of the Supreme Court have held as under:-

“15. In these circumstances, we are of the view that there was no justification on the part of the State to wake up after the lapse of 15 years and terminate the services of the appellant on such ground. In any case, we are of the view that whether it was a conscious decision of the State to give appointment to the appellant as we have held above or a case of mistake on the part of the State in giving appointment to the appellant which now as per the State was contrary to the policy as held by the learned Single Judge, the State by their own conduct having condoned their lapse due to passage of time of 15 years, it was too late on the part of the State to have raised such ground for cancelling the appellant's appointment and terminating his services. It was more so because the appellant was not responsible for making any false declaration nor he suppressed any material fact for securing the appointment. The State was, therefore, not entitled to take advantage of their own mistake if they felt it to be so. The position would have been different if the appellant had committed some kind of fraud or manipulation or suppression of material fact for securing the appointment. As mentioned above such was not the case of the State.”

(12) In view of the aforesaid discussion and in light of principle of law laid down in the above-stated judgment and in view of fact that there is no material on record to establish the non-availability

¹ (2016) 12 SCC 342

of the post of Nakerdar on the date of regularization on 01.11.1991 and the order of cancellation has been passed after more than three years and there is no allegation that regularization has been afforded by playing fraud or misrepresenting facts, in the considered opinion of this Court, the impugned order dated 30.03.2005 cannot be sustained and it is hereby set-aside. It is held that the petitioner is entitled for regularization w.e.f. 01.11.1991 and also entitled to get all consequential benefits.

(13) Accordingly, the writ petition is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

L/-