

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 6675 of 2010

1. Aatma Ram Yadav S/o Shri K.L.Yadav, aged about 50 years, Working as Timekeeper, Municipal Corporation, Korba (Chhattisgarh).
2. Mannulal Rathore S/o Arjun Lal Rathore, aged about 45 years, Working As Timekeeper, Municipal Corporation, Korba (Chhattisgarh).

---- Petitioners

Versus

1. State Of Chhattisgarh, through – the Secretary, Urban Administration and Development Department, Raipur, D.K.S.Bhawan, Raipur (Chhattisgarh).
2. Commissioner, Urban Administration, D.K.S.Bhawan, Raipur (Chhattisgarh).
3. Commissioner, Municipal Corporation, Korba (Chhattisgarh).
4. Ravishankar Dewangan S/o Padumala Dewangan, aged about 40 years, Working As Timekeeper, Municipal Corporation, Korba (Chhattisgarh).
5. Chhatilal Patel S/o M.P. Patel, aged about 50 years, Working As Timekeeper, Municipal Corporation, Korba (Chhattisgarh).

---Respondents

AND

WPS No. 3572 of 2010

Ramehswar Prasad Rathore S/o Late Shri Sukhru Ram Rathore, aged about 55 years, Occupation – service, Time Keeper at Municipal Corporation, Korba (Chhattisgarh).

---Petitioner

Versus

1. State Of Chhattisgarh, through – the Secretary, Urban Administration and Development Department, Raipur, District Raipur (Chhattisgarh).
2. Additional Secretary, Chhattisgarh Government, Urban Administration & Development Department, Raipur, Distt.-Raipur (Chhattisgarh)
3. Commissioner, Urban Administration, Raipur, Distt.-Raipur (Chhattisgarh) .
4. Commissioner, Municipal Corporation, Korba, District Korba (Chhattisgarh).

---Respondents

For Petitioners	:	Shri Ali Asgar and Shri Indra Tripathi Advocates for respective petitioners.
For Respondent No.4	:	Shri S.S.Baghel on behalf of Shri B.D.Guru, Advocate Ms.M.Asha, Panel Lawyer for the State.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

11/09/2017

1. These are the two writ petitions pertaining to three petitioners who are claiming regularization from the date of which their immediate junior or the person who were appointed along with them had been regularized in service.
2. The facts in brief in the instant case is that, the petitioners were initially appointed as a daily wage worker on the post of Timekeeper in Special Area Development Authority, Korba (SADA) in the year 1985 and 1986. Subsequently, SADA got merged with the Municipal Corporation and the petitioners came under the employment of the Municipal Corporation.
3. In the year 1990, the services of the petitioners were discontinued by the respondents on the instructions of the State Government where there was a direction to discontinue the services of all daily wage workers of the State Government and the local bodies under the State Government.
4. This action of discontinuance was put to challenge before the Labour Court where the case was registered as case number 17/93 of ID. Act(Ref). The Labour Court vide its order dated 14/02/1994 allowed the reference in the favour of the worker holding, that the discontinuance was in contravention to the provision of the ID Act and therefore directed the respondents to reinstate the petitioners with all consequential benefits on the post they were working prior to discontinuance.
5. The said award of the Labour Court was put to challenge by the employer vide Writ Petition No.3359/1994. The High Court dismissed the said Writ Petition on 22/11/1995. While dismissing the Wirt Petition, the

petitioner herein who were the respondents in the said Writ Petition had sought for directions to the Municipal Corporation for considering their case for regularization. So the High Court while dismissing the Writ Petition only made an observation that for claim of regularization, the petitioners herein would be at liberty to make a representation which shall be considered by the petitioner in accordance with law. Though, there was an order passed by the High Court for considering the case of the petitioners for regularization, the respondents herein however did not act upon it.

6. The petitioners immediately made a representation to the respondent authorities, but it lead no result which allowed the petitioners to again approaching the High Court.

7. The petitioners immediately thereafter filed two Writ Petitions i.e. WP Nos.900/1996 and 1108/1996. In Writ Petition No.900/1996, there were two petitioners i.e. Ravishankar Dewangan and Rameshwar Prasad Rathore. Meanwhile, the respondents in the case of one Ravishankar Dewangan who was also a workmen working along with the petitioners granted him the benefit of regularization with effect from 24/07/1996 and the case of the petitioners were left out. Since Ravishankar Dewangan had been regularized and his grievance got redressed, the Writ Petition No.900/1996 was confined to Rameshwar Prasad Rathore alone.

8. The two Writ Petitions came up for hearing on 15/02/2006. The Writ Petitions were initially filed in the High Court of Madhya Pradesh subsequent to the new State of this court. Thus the Writ Petitions are transferred at High Court, Bilaspur where it came up for hearing on 15/02/2006 and after hearing the parties, the High Court finally vide its order dated 15/02/2006 disposed off these Writ Petitions with the following directions.

“The respondent No.2 is directed to consider the cases of the petitioners in W.P.No.1108/1996 and the petitioner No.2 namely Rameshwar Prasad Rathore in W.P.No.900/1996 to regularize their services on the post, looking to the availability of vacancies, in accordance with law.”

9. The petitioners immediately moved the detail representation once again to the respondents. The respondents subsequently considered the case of the petitioners and vide order dated 26/04/2008 had granted regularization to the petitioners with effect from 26/04/2008. The petitioner in the Writ Petition No.3572/2010 stood retired on attaining the age of superannuation with effect from 30/06/2017.

10. The petitioners in W.P.No.6675/2010 are still in employment. The two Writ Petitions were filed by the petitioners in July-2010 and November-2010. The claim of the petitioners in these Writ Petitions is that, the respondents be directed to modify the order dated 26/04/2008 granting the petitioners regularization with effect from 24/07/1996 i.e. the date on which Ravishankar Dewangan, the person who were appointed along with the petitioners and were similarly placed and who had been granted regularization. Along with Ravishankar Dewangan, there was another person namely Chhatilal Patel who were junior to the petitioners and who also had been regularized by the respondents.

11. The contentions of the counsel for the petitioners is that, once when the persons like Ravishankar Dewangan and Chhatilal Patel who were identically placed persons both in the nature of employment as also the nature of appointment further they were also discontinued initially but subsequently reinstated by the order of Labour Court. And when the two persons were given regularization, there was no reason as to why the petitioners should have been left out. According to the counsel for the

petitioners, it is nothing but arbitrary and same deserves to be modified to the extent of a suitable directions be issued to the respondents for considering the regularization of the petitioners from the date on which these two persons have been regularized.

12. What is relevant at this juncture is that this court in exercise of its writ jurisdiction under Article 226 cannot issue a writ directing the respondents to consider regularization of the petitioners from a retrospective date. So far as claim for regularization itself is by now well settled legal position, regularization can enough be claim as a matter of light.

13. Law so far as regularization is concerned has seen considerable change in its approach from the time of the landmark judgment of Hon'ble Supreme Court passed in the case of ***Secretary, State of Karnataka and Ors. Vs. Umadevi and Ors. [{2006} 4 SCC 1]***.

14. The fact which cannot be ignored or brushed aside is that, the initial appointment of the petitioners in the instant case is that of a daily wage employee. The petitioners in the instant case while disposal of two Writ Petitions i.e. WP Nos.900/1996 and 1108/1996 seems to have abandoned their claim for regularization from back date. When those Writ Petitions which were being considered and where the claim of the petitioners was also for regularization, the relief sought for that was prayed at the time of disposal of the Writ Petition was only for considering the case of the petitioners for regularization. Keeping in view the fact that, there were quite a few vacancies available for the post of Time Keeper in the respondents office on which the petitioners have been discharging there duties as a daily wage employee and therefore there case may be considered. The petitioners herein may have acquiesced their claim before the court or may have abandoned their claim for regularization from retrospective date at

the time of the disposal of the said Writ Petitions. The respondents accordingly have taken into consideration the availability of vacancies and the circular of the State Government as regards of regularization dated 05/03/2008 regularised the services of the petitioners.

15. This court is of the opinion that, the respondents does not appear to have acted in a malafied manner nor can the respondents be said to have acted arbitrarily as the directions given by this court was only for consideration of the claim for regularization in the scenario that was prevailing at the time of disposal of Writ Petition i.e. the number of vacancies available with the respondents at the time of appointment. What is also necessary to be considered is the fact that, when the persons who were similarly placed like the petitioners i.e. Ravishankar Dewangan and also Chhatilal Patel were regularized on 24/07/1996 the petitioners have not challenge the regularization of this two persons nor did they question their regularization ahead of the petitioners in two Writ Petitions which were filed by the petitioners i.e. WP Nos.900/1996 and 1108/1996 neither were these persons being made a party in the present Writ Petitions. Ravishankar Dewangan was one of the petitioner in WP No.900/1996 and it was pending the petition that the respondents had regularized his service. Even then petitioner in WP No.3572/2010 had not claimed for disposal of the Writ Petition on 15/02/2006 for considering his case with effect from the date on which Ravishankar Dewangan was regularized.

16. Further, the directions by the High Court on 15/02/2006 at the time of disposal of two Writ Petitions was for considering the case of the petitioners in the light of the available vacancies as it stood on the date of disposal of Writ Petitions. Therefore the petitioners now again cannot, having once got the relief as sought for in the Writ Petitions that they had

filed now claim for something more which they themselves at one point of time either had for-gone or abandoned or which was not granted by this court in subsequent Writ Petitions.

17. So far as petitioner Ravishankar Dewangan is concerned, since the petitioner has already super-annuated with effect from 30/06/2017, this court is of the opinion that in the said petition nothing further remains to be adjudicated.

18. The counsel for the petitioner however submits that the said Writ Petitioner has not been granted any retiral benefits though the same is not the prayer in Writ Petition, but this court does not find any reason as to why the petitioner namely Rameshwar Prasad Rathore shall not be entitled for whatever retiral dues which otherwise he is entitled for and that the respondents shall make all endeavors for releasing the retiral dues at the earliest.

19. As regards the petitioner in WP No. 6675 of 2010 is concerned, this Court is reluctant in granting any relief as sought for, for the reason mentioned in the preceding paragraphs but reserves the liberty for the petitioner in approaching the respondents by making suitable representation if they so desire for redressal of their grievance claiming parity with their immediate junior or similarly placed person, both these Writ Petitions thus stands disposed off.

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

Sumit