

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 1849 of 2007

Onkar Singh Tamrakar S/o Late Kanwal Singh Tamrakar, aged about 40 years, R/o Gaya Nagar, Durg, Tahsil and District Durg (C.G.).

---Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Town and Administration Department, D.K.S. Bhawan, Raipur (C.G.).
2. Municipal Corporation, Durg, Through Commissioner, Municipal Corporation, Durg (C.G.).
3. Bisauha Ram, Electrician.
4. Rameshwar Rao, Electrician.
5. Tije Ram Sahu, Electrician.
6. Birendra Kumar Verma, Electrician.

Respondents No. 3 to 6, Through Commissioner, Municipal Corporation, Durg, District Durg (C.G.).

---Respondents

For petitioner	:	Shri Alok Bakshi, Advocate.
For respondent No.2	:	Ms. Sharmila Singhai, Advocate.
For State	:	Shri Shashank Thakur, Government Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

06/08/2018

1. The present Writ Petition has been filed seeking for direction to the respondent No.2 to provide the benefit of regularization to the petitioner on the post of Electrician with effect from the date of his initial appointment with the respondent No.2 as an Electrician i.e. from 21/11/1985.
2. The factual matrix of the case is that, the petitioner was appointed with the respondent No.2 as a Daily Wage Employee and was discharging his duties as an Electrician.

3. The grievance of the petitioner is that, in the year 1989, few of the Daily Wage Employees who were appointed along with the petitioner have been regularized, but for some reasons, the petitioner was left out.
4. Again in 1997 vide Annexure-P/4, the respondents appointed one Ganesh Patel as an Electrician, though he do not have the requisite qualification and at the same time, the petitioner who had all the requisite qualification was ignored for the said post.
5. The petitioner filed a Writ Petition i.e. WP No. 4457/1997 challenging the appointment of Ganesh Patel and also seeking for direction that the respondents should consider regularizing the services of the petitioner.
6. On 19/04/1999, the respondent-Corporation realizing their mistake while granting appointment to Ganesh Patel cancelled his appointment as an Electrician and granted him a fresh appointment on the post of 'Peon'.
7. Meanwhile, the Writ Petition No. 4457/1997 stood transferred to the State of Chhattisgarh on the creation of the State and the Writ Petition was disposed off on 02/04/2002 with the following observation:-

“Having thus considered the facts and circumstances of the case and material on record, in the opinion of this Court it would be just and proper if a direction is given to respondent No.1, Municipal Corporation for considering the case of the petitioner for regularization as early as possible preferably within three months from the date of production of certified copy of this order.”

8. Subsequently, the respondents it is said have regularized the petitioner with effect from 10/10/2002 as an Assistant Revenue Inspector. It is this order against which the petitioner is aggrieved of.

9. According to the counsel for the petitioner, the petitioner ought to have been regularized as an Electrician instead of Assistant Revenue Inspector. Further, the petitioner should had been regularized with effect from 25/11/1985 – the date of his initial appointment as a Daily Wage Employee.

10. During the course of argument, the counsel for the petitioner submits that, if not from the date of appointment, atleast the respondents should have considered granting regularization to the petitioner from the date the appointment of Ganesh Patel as an Electrician was cancelled i.e. on 19/04/1999.

11. Having heard the contentions put forth by the counsel for the petitioner and on perusal of record what is undisputed is the fact that, the substantive appointment of the petitioner all along till 10/10/2002 was that as a Daily Wage Employee.

12. It is by now well settled preposition of law that a Daily Wage Employee does not have a substantive right either for regularization or for claiming for counting seniority from the date of his initial appointment as a Daily Wage Employee.

13. The only relief which the petitioner at best could have claimed was for an order of regularization by the respondents and which the respondents

pursuant to the directives given by this Court in WP No. 4457/1997 dated 02/04/2005 have awarded.

14. It is all the more necessary to mention that, even while WP No.4457/1997 was being disposed off, there was no observation made by this Court that the regularization of the petitioner should be considered from the date of any existing vacancies available with the respondents or from any earlier point of time.

15. The petitioner also did not assail the order dated 02/04/2010 for not granting any retrospective benefit to the petitioner while issuing direction for consideration for regularization was made.

16. On such direction by this Court if an order has been passed by the respondents considering the claim of the petitioner and granting him regularization, the same cannot be found fault with.

17. Moreover, it is also settled position of law that regularization in service is always prospective in nature and it cannot be retrospective.

18. Given the aforesaid facts and circumstances of the case this Court does not find any strong case made out on behalf of the petitioner for grant of any relief as sought for by the petitioner.

19. The Writ Petition thus fails and is accordingly dismissed.

Sd/-

(P. Sam Koshy)
JUDGE