

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 1924 of 2005**

Pitamber Kashyap, S/o. Shri Ram Avtar Kashyap, Aged about 34 years, Peon, Dr. Bhanwar Singh Porte, Govt. Degree College, Pendra, District Bilaspur, Madhya Pradesh.

---- Petitioner**Versus**

1. State of Madhya Pradesh, Through Secretary, Ministry of Higher Education, Vallabh Bhawan, Bhopal, Madhya Pradesh
2. Principal, Dr. Bhawar Singh Porte, Government College Pendra, District Bilaspur, Madhya Pradesh
3. Additional Director, Higher Education Directorate, Bilaspur Division, Bilaspur, Madhya Pradesh

----Respondents

For Petitioner	:	Mr. K.P.S. Gandhi, Advocate
For State	:	Mr. Shashank Thakur, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****23/03/2018**

1. Challenge in the present petition is to the order dated 29.02.2000, by which the services of the petitioner was terminated.
2. Brief facts relevant for the adjudication of the present dispute is that the petitioner was initially appointed in the year 1990 under the respondent No.2. Later on vide order dated 22.09.1990, the services of the petitioner stood regularized and the service book of the petitioner was also got prepared wherein the petitioner was shown to be regularized in services as a Peon in the pay-scale of Rs.750-12-870-15-945/-. The petitioner continued to work on the said post till abruptly Annex.A/1 dated 29.02.2000 was passed, by which the services of the petitioner stood discontinued.
3. The only reason assigned in Annex.A/1 is the non-requirement of the services of the petitioner. No reason whatsoever has been reflected in

the said order as to what are the circumstances under which the non-requirement of the services of the petitioner arose.

4. The petitioner submits that the said action on the part of the respondents is highly arbitrary, illegal and the same also is without conducting any inquiry whatsoever or even a show cause notice being issued to the petitioner and the same thus deserves to be set-aside. The counsel for the petitioner thus prayed for quashment of Annex.A/1 with all consequential benefits including that of back wages.
5. The respondents however opposing the petition submits that the reason which necessiated to the issuance of the Annex.A/1 is the fact that the petitioner has been wrongly granted the benefit of regularization by the then Principal at the Dr. Bhanwar Singh Porte Govt. College, Pendra. The State counsel submits that it is not just the petitioner alone, there were a couple of more other employees also, who were wrongly regularized by the then Principal and when this fact came to the knowledge of the respondents, they conducted a preliminary enquiry and issued the order of termination. He submits that the petitioner undoubtedly was substantively holding the post of Daily Wage Worker and who has been wrongly granted the benefit of regularization by the then Principal and therefore the petitioner cannot be equated with that of the regular government employee and thus prayed for the rejection of the petition.
6. Having heard the contentions put forth on either side and on perusal of record, what reflects is that that the State Government while issuing Annex.A/1 i.e. the impugned order of termination has not given any reason whatsoever which led to the issuance of the termination order.

The only reason assigned in the order is the non-requirement of the services of the petitioner by giving one month's notice.

7. The contention which the respondents have raised also was not reflected in the original reply which they had filed, however subsequently they had filed a memo of submission on 07.01.2015 bringing these facts on record as regards the act on the part of the then Principal.
8. Bare perusal of the memo of submission reflects that no action whatsoever has been initiated against the then Principal Mr. R.B. Singh and who was permitted to superannuate. It is only the petitioner who has been made a victim of the alleged act on the part of the then Principal.
9. What is necessary to be appreciated is the fact that rightly or wrongly the petitioner had been regularized and had served the department as a regular employee for almost 10 years.
10. If ultimately the respondents had found that the regularization of the petitioner was erroneous or bad in law in any manner. The petitioner definitely was required to be given an opportunity of hearing. In the instant case, no such opportunity of hearing whatsoever has been issued before passing of the impugned order of termination (Annex.P/1). The impugned order also does not reflect that the order of termination was in any manner for the reason of his being wrongly regularized.
11. Moreover what also cannot be lost sight is the fact that if for any reason the respondents found that the petitioner has been wrongly regularized, the option left with the respondents was for canceling the

order of regularization and keeping the petitioner in the services of the respondents as a Daily Wage Employee. This also does not seem to have been taken resort of by the respondents.

12. What also cannot be brushed aside is the fact that except for the charge sheet issued to the Principal there is no document brought on record to show the alleged illegal appointment or irregular regularization of the petitioner.

Admittedly no show cause notice or any enquiry was conducted by the respondents against the petitioner.

13. Under the circumstances, this Court is inclined to allow the petition and hold that the impugned order (Annex.A/1) dated 29.02.2000 is bad in law and the same therefore deserves to be and is accordingly set-aside. The respondents are directed to immediately take back the petitioner into services.
14. Considering the fact that the petitioner had promptly challenged the order of termination initially before the State Administrative Tribunal and which subsequently stood transferred to this Court and considering the fact that he has been in litigation for the last 18 years, this Court is of the opinion that ends of justice would meet if the petitioner is awarded 50% back wages along with continuity of employment.
15. Thus the petition stands allowed. The petitioner stands reinstated in service with 50% of back wages.

Sd/-
(P. Sam Koshy)
Judge