

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 2051 of 2005**

1. Het Ram Yadav S/o Jogi Ram, Aged about 27 yrs. Working as Cook / peon R/o Tar Bahar, District - Bilaspur
2. Pramod Kumar Kaushik S/o Harprasad Kaushik, Aged about 31 years. Working as Cook / Peon R/o Village / Post – Saida, District - Bilaspur

---- Petitioners**Versus**

1. The State of Madhya Pradesh Through the Secretary, Department of School Education, Vallabh Bhavan Bhopal (MP)
2. Director – Cum-Commissioner, Public Instructions School Education, Vallabh Bhawan, Bhopal (MP)
3. The Joint Director, Public Instructions School Education, Bilaspur (MP)
4. The District Education Officer, District – Bilaspur (MP)
5. The Principal, Govt. Basic Training Institute, District – Bilaspur (MP)
6. The Collector, District – Bilaspur (MP)
7. The Commissioner, Bilaspur Division, Bilaspur M.P.

---- Respondents

For Petitioners	:	Shri Vinod Deshmukh, Advocate
For State	:	Shri Manish Nigam, Panel Lawyer

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****03/04/2018**

The two petitioners herein filed Original Application before the State Administration Tribunal, Jabalpur. After abolition of the Tribunal, this petition arising from the territorial area of the State of Chhattisgarh, was transferred to

this Court and then registered as writ petition. The petitioners filed this petition aggrieved by impugned orders by which, their services have been terminated.

2. Quintessential facts relevant for adjudication of controversy involved in the writ petition are that the petitioners were initially appointed as daily wage employee vide order dated 01/02/1992 (Annexures A/2A and Annexure A/2B) to work as Cook in contingency establishment as contingency employees. The appointment was made on payment at the rate fixed by the Collector and the appointment was liable to be terminated at any time without notice, it being a temporary appointment. The petitioners, later on, were given regular pay scale w.e.f. 01/01/1996 as is evident from pay fixation chart, Annexure A/3-A and Annexure A/3-B. While the matter stood thus, the Director, Public Instructions issued orders for termination of illegally appointed daily wage employees, pursuant to which, the services of the petitioners were terminated on 27/01/2000. It appears that as number of cases were filed before the State Administrative Tribunal and directions were issued, the petitioners were also re-instated and their cases were scrutinized. Upon scrutiny, it was recorded that the petitioners' appointment was illegal. Accepting the said recommendation and recording finding that the petitioners were appointed in violation of Government's instructions, their services were terminated giving rise to this petition.

3. Learned counsel for the petitioner would submit that the petitioners are not back door appointees. When a need arose for appointment of Cook, names were sponsored by the employment exchange for recruitment made by the respondent authorities and a duly constituted selection committee had

selected the petitioners on the basis of which, appointment order, though on daily wage basis, were issued. Learned counsel for the petitioners would submit that the petitioners having been duly selected by proper procedure, could not be said to be illegally appointed. He would further submit that before issuance of impugned order of termination, the petitioners were not afforded any opportunity of hearing. Relying upon the decision of the Full Bench of this Court in the case of **L.P.Tiwari v. State of Chhattisgarh and ors, ILR 2017 Chhattisgarh 1921** and **Bhagwat Prasad Yadav v. State of Chhattisgarh and ors, 2006 (1) CGLJ 472**, it is submitted that the petitioners, having attained regular status, could not be terminated by such scrutiny without affording proper opportunity of hearing and the circulars and policy decisions for scrutiny of daily wage employees could not be made applicable to these petitioners.

4. On the other hand, learned State counsel would submit that the scrutiny committee had examined the records of selection of the petitioners and it was found that the petitioners were selected by a committee of members which did not include the District Employment Officer, District Organizer and the competent authority as required under the Aakasmikta Nidhi se Vetan Paane Wale Karmachariyo ki Bharti tatha Sewa Sharten Niyam, 1987 (for short "the Rules of 1987"). Therefore, it is contended that the selection of the petitioners was not in accordance with rules. He further submits that as the appointment of the petitioners, right from the beginning was bad in law, grant of regular pay scale to the petitioners was also bad in law. All these matters were scrutinized and finally, the services of the petitioners were terminated. As far as argument

that the petitioners' services were terminated without affording opportunity of hearing is concerned, learned State counsel would contend that present is a case where conclusion is foregone that the selection committee was not constituted as per the provisions of the rules. Therefore, it would only be an empty formality.

5. It is not a case of back door appointment as such because the averments made by the petitioners which have not been disputed by the respondents is that the names of the candidates including that of the petitioners were sponsored by the Employment Exchange. It is also not in dispute that the petitioners were selected by a selection committee constituted by the Principal of Government Basic Training Institution but the objection taken by the respondents is that the selection committee was not constituted in accordance with the provisions of the Rules. The categoric averments made by the respondents in their return that the selection committee did not comprise of the District Employment Officer, District Organizer and the competent authority, has not been traversed by the petitioners. There is no material to show that the petitioners were selected by the committee as contemplated under the Rules of 1987. Therefore, there cannot be two opinions on this aspect that the committee which selected the petitioners was not the one as contemplated under the Rules.

6. It is quite apparent that the petitioners were appointed on daily wage basis and not on regular basis because though they were selected by some process of selection, that selection was not in accordance with the provisions of the Rules. But then, it is also clear that the petitioners were given

appointment on daily wage basis. The respondents have not placed before this Court report of the scrutiny committee to justify whether the petitioners were not even entitled to be appointed on daily wage basis or that their daily wage engagement in the year 1992 itself was not permissible under the then guidelines of the State Government. This would be relevant because the operative reason for termination of the services of the petitioners is that the petitioners were appointed in the contingency establishment contrary to the directions of the State Government.

7. Though the impugned order refers to circular dated 26/02/2000, the said circular is not in record. However, from the circular dated 14/02/2000 placed on record by the petitioner, it is clear that all daily wage employees were not liable to be terminated but only those, who were found to be engaged in that capacity contrary to the directives of the State Government as daily wage employee. As such daily wage engagement was not completely banned. Therefore, if it is found that the petitioners were not selected by the committee as required under the Rules, the petitioners could not claim regular appointment. However, they could claim to continue as daily wage employee. To that extent, an opportunity of hearing was necessary so that the petitioners could dispute that not as a regular employee but atleast as a daily wage employee, the petitioners were entitled to continue in employment as long as there was a need and that first come last go principle ought to be applied.

It be noticed that the operative reason for termination is not that the services were no longer required but the petitioners' engagement was contrary to the Government's instructions. Therefore, had the petitioner been

afforded opportunity of hearing, the petitioner would have got opportunity to satisfy that even though they were not entitled to regularisation, atleast they were entitled to continue as daily wage employees as their engagement as daily wage employee was not in violation of the Government's instructions and circular so as to require proceedings to be drawn as contemplated under circular dated 14/02/2000.

8. In the decisions relied upon by learned counsel for the petitioners, it has been held that those who have been regularised, they could not be subjected to termination by treating them as daily wage employees and were atleast entitled to be afforded opportunity of hearing. In the present case, the petitioners have categorically stated in the petition that they were later on regularised in 1996 which is evident from the fact that both the petitioners were granted regular pay scale. The denial of these averments in the petition is quite evasive. The fact that the petitioners were granted regular pay scale in the year 1996 has not been disputed. The aforesaid two decisions would have full force even on the facts of the present case.

9. In the result, the impugned order of termination of the petitioners cannot be sustained in law and are liable to be quashed and set aside. It would, however, be open for the respondents to afford the petitioners, opportunity of hearing to satisfy whether they were appointed as daily wage employees in accordance with the then instructions of the Government and in any case, it was not a case of engagement as daily wage employee contrary to the instructions. However, this liberty would be available only after reinstatement of the petitioners though, as daily wage employees only. In the facts and

circumstances of the present case, when this Court has held that the selection of the petitioners was not in accordance with the Rules but they should be continued as daily wage employees, they are entitled to opportunity of hearing, interest of justice would be served if the petitioners are paid 50% of back wages considering that they have been out of employment since last 18 years. The wages would be calculated on the basis of wages payable to the daily wage Cook from time to time.

10. With the aforesaid observations, this petition is finally disposed off.

Sd/-

(Manindra Mohan Shrivastava)
Judge