

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 6088 of 2008

Sant Kumar Tiwari S/o Shri Narendra Prasad Tiwari, Occupation
Cat-I, General Magazine Clerk At Jhilmili Colliery, Resident At
Pandavpara Colliery Miners Quarter No. 99, P.O. Pandavpara, Distt.
Koria P.S. Patna

---- Petitioner

Versus

1. S.E.C.L. And Others Jhilmili, P.O. Pandavpara Distt. Koria Cg
2. Sub Area Manager Jhilmili, P.O. Pandavpara Distt. Koria Cg
3. Chief General Manager S.E.C.L. Baikunthpur Area P.O. Baikunthpur
Distt. Koria Cg

---- Respondents

WPS No. 1235 of 2009

Sushil Kumar Shrivastava S/o Vijay Kumar Shrivastava, Authorized
To Work Magazine Clerk Store Clerk, Jhilmili Colliery, Under
Baikunthpur Area S.E.C.L Distt. Koria Cg

---- Petitioner

Versus

1. S.E.C.L. And Others Jhilmili, P.O. Pandavpara, Distt. Koria Cg
2. Sub Area Manager, Jhilmili, P.O. Pandavpara, Distt. Koria Cg
3. Chief General Manager, S.E.C.L. Baikunthpur Area P.O.
Baikunthpur, Distt. Koria Cg

---- Respondents

For Petitioner : Mr. V. G. Tamaskar, Advocate.

For Respondent : Mr. H. B. Agrawal, Sr. Advocate.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order on Board

14/05/2018

1. In these cases the petitioner were initially appointed as General Majdoor Category I. While they were working, they were asked to work as Assistant Grade III. The persons having continued to work as Assistant Grade III, started raising claim that they should be regularized as Assistant Grade III which claim, unredressed, gave rise to instant petition.

2. Learned counsel for the petitioners argued that the spirit of the decision of the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Uma Devi and Others, 2006(4) SCC 1 followed by Subsequent decision in the case of Sheo Narain Nagar and Ors. Vs. State of Uttar Pradesh and Ors., 2017 (14) Scale 247 and in the case of Amarendra Kumar Mohapatra and Ors. Vs. State of Orissa and Ors., 2014 (4) SCC 583, mandates the respondents to regularize respective petitioners as Assistant Grade III on account of their long continuance and working as Assistant Grade III.

3. On the other hand, learned counsel for the respondent would argue that the petitioners were authorized to work as Assistant Grade 3 without any regular process of recruitment either by way of promotion or by direct recruitment, therefore, merely on account of long continuance, the petitioners have no claim to regularization as of right.

4. There is no material on record to show that while authorising respective petitioners to work as Assistant Grade 3, procedure prescribed for recruitment to the post of Assistant Grade III, whether by direct recruitment or by promotion, was followed. The petitioners substantively hold the post of General Majdoor Category I. In exigencies of service that regular incumbent against the post of Assistant Grade III was not available, the petitioners were deputed to work though they continued for fairly long time.

5. The question would be whether petitioner would be entitled to regularisation on such long continuance.

6. The authoritative pronouncement of the Supreme Court in the case of Uma Devi clearly lays down that regularization without due process of selection would not be permissible as it would be contrary to mandate of article 14, 16 of the constitution of India. By way of exception to the aforesaid rule, their lordships in the Supreme Court directed for regularization of those daily wage employees who at that time completed 10 years of service, only as a one time measure. But then, principle laid down in the decision and the ratio is that where appointment are made

against the rules, regularization would not be permissible.

7. Decision sighted by learned counsel for the petitioners do not lay down that on mere long continuance, right to regularization would mature.

Once, the law has been settled on the aspect, regularization cannot be claimed as of right unless there is policy of regularization consistent with constitutional mandate and judgment in the case of Uma Devi(Supra).

8. During course of the arguments, learned counsel for the petitioner stated that petitioner are governed by Labour laws and Industrial Dispute Act would also be entitled to regularization under the applicable labour laws on the ground of they having worked for long period. The submission essentially seeks direction for classification as permanent employee under standard standing orders. If there is any remedy, they may approach the labour Court because it will require inquiry into factual aspect and application of provision of standard standing orders. If the petitioner have any claim for classification they may approach respondents, if not redressed, may approach the Labour Court. Accordingly, the petitions are disposed off.

Sd/-

(Manindra Mohan Shrivastava)

Judge