

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 514 of 2016

1. Sanjeeb Kumar Rathore S/o Anjor Singh Rathore, Aged About 35 Years R/o Village Nawagaon Venket, Tehsil Lormi, Distt. Mungeli, Chhattisgarh, Chhattisgarh
2. Rohitas Singh Rathore, S/o Shiv Gulam Rathore, Aged About 41 Years R/o Village Bhaurakachhar, P.O. Bandha, Distt. Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Forest, Mantralaya, Mahanadi Bhawan, Naya Raipur, Civil/ Revenue Distt. Raipur, Chhattisgarh, Chhattisgarh
2. Chief Conservator Of Forest, Aranya Bhawan, Medical College Road, Raipur, Chhattisgarh, District : Raipur, Chhattisgarh
3. Deputy Director, Acchanakmar Tiger Reserve, Lormi, Distt. Mungeli, Chhattisgarh, District : Mungeli, Chhattisgarh
4. Chief Conservator of Forest, Circle – Bilaspur, Dist. - Bilaspur (CG)

---- Respondents

Shri H.S.Ahluwalia, counsel for the petitioner/s.
Shri A.S.Kachhawaha, Addl. A.G. for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

06/02/2018

Heard.

The only issue arising for consideration is whether the petitioners' claim for regularization could be rejected only on the ground that prior to 31/12/1997, their services were not continued.

2. Learned counsel for the petitioners submits that under policy dated 05/03/2008, there is no such requirement that prior to 31/12/1997, service as daily wage employee need to be continuous. He submits that according to the State policy, which was framed under the directions of the Supreme Court in the case of **Secretary, State of**

Karnataka and others Vs. Uma Devi (3) and others, 2006 (4) SCC 1, the cases of daily wage employees who are working from 01/01/1989 to 31/12/1997, should be considered for regularization.

3. Learned State counsel submits that the operating reason for not considering the claim for regularization is that prior to 31/12/1997, there were breaks in service.

4. Taking into consideration the submission of learned counsel for the parties and also considering the reason assigned not to regularise the petitioners is not according to the spirit of the circular based on the judgment of the Supreme Court in the case of **Uma Devi** (supra) that the daily wage employees who were continuing in service for 10 years, should be considered for regularization.

5. It goes without saying that they should be treated as continued in service i.e. those who have been appointed prior to 31/12/1997 but continuing, their case for regularisation should be considered. There is nothing in the order of the Supreme Court to show that prior to 31/12/1997, employee's services is required to be continuous.

This reason appears to be irrational and destructive of the very object of issuance of circular dated 05/03/2008 in view of what has been observed by the Supreme Court in para 53 in the case of **Uma Devi** (Supra).

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *State of Mysore v. S.V. Narayanappa*, AIR 1967 SC 1071, *R.N.Nanjundappa v. T. Thimmiah*, (1972) 1 SCC 409 and *B.N.Nagarajan v. State of Karnataka* (1979) 4 SCC 507 and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed,

who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

6. Accordingly, this petition is allowed. Respondents are directed to consider petitioners' case in accordance with policy dated 05/03/2008 and judgment of the Supreme Court without creating any impediment only on the ground that before 31/12/1997, there were breaks in service.

Sd/-
(Manindra Mohan Shrivastava)
Judge