

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 161 of 2017**

{Arising out of order dated 07.10.2015 passed by the learned Single Judge in Writ Petition (S) No. 373 of 2011}

- Ballu Singh Thakur, S/o Nohar Singh Thakur, aged about 45 years, R/o Rajmahal Chowk, Kawardha, District Kabirdham (C.G.)

---- Appellant**Versus**

1. State of Chhattisgarh, Through The Secretary, Department of Water Resources, Mantralaya, Naya Raipur, District Raipur (C.G.)
2. Chief Engineer, Mahanadi Godawari Kachar, Water Resources Department, Raipur (C.G.)
3. Superintending Engineer, Water Resources Department Shivnath Division, Durg, District Durg (C.G.)
4. Executive Engineer, Water Resources Department, Chhattisgarh Raipur (C.G.)

---- Respondents

For Appellant	:	Shri Varun Sharma, Advocate.
For Respondents/State	:	Shri Gagan Tiwari, Deputy Government Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Justice Parth Prateem Sahu, Judge****Judgment on Board****Per Parth Prateem Sahu, Judge****21.11.2019**

1. Appellant aggrieved by the order of the dismissal of the claim of regularization in writ petition by the learned Single Judge filed this appeal.
2. The facts of case in nut shell are that the Appellant was engaged as Chowkidar on daily wages on 31.12.1989 by the Executive Engineer, Water Resources Department, Raipur. On 02.08.1994 the Appellant was disengaged from his

services which was challenged in Original Application before the State Administrative Tribunal at Jabalpur. The Appellant succeeded to get an interim order of stay and as per the averment of the Appellant he thereafter continued to work as Chowkidar. Subsequently on 31.01.2000 the Appellant was again disengaged from his services and retrenchment compensation was paid to him. The second order of the disengagement by the Department was also challenged by the Appellant in an Original Application and that order was stayed.

3. After abolition of the State Administrative Tribunal, the Original Application was transferred to High Court which came to be dismissed as withdrawn on 21.07.2009 with a liberty to file a representation in view of the circular dated 05.03.2008.
4. The Appellant thereafter moved a representation/application for regularization of his services on the post of Chowkidar. The said representation came to be dismissed and thereafter Writ Petition (S) No. 1180 of 2005 also dismissed on the ground as the Appellant was not continuing in service.
5. The learned counsel for the Appellant submits that there was an interim order in his favour by the Tribunal in the earlier writ petition and therefore, looking to the withdrawal of the writ petition his services cannot be said to be discontinued. He also submits that the writ petition was withdrawn only with an understanding that the Respondent/Department will consider the application for regularization of his services.
6. Per contra, the learned counsel for State submits that the regularization order could not have been passed because the Appellant is not continuing in his services and the learned writ Court rightly dismissed the writ petition. He also submits that after 31.01.2000, Appellant was not permitted to join his duties and

the petition filed against order of disengagement was not decided on merits. The effect of above that the Appellant remained disengaged since 31.01.2000. It is also submitted that the retrenchment compensation was also paid to the Appellant.

7. We have heard learned counsel for parties.
8. The fact that even after getting interim order in his favour the Appellant was not permitted to work after 31.01.2000 is not disputed by the Appellant. The Appellant remained continuously out of service from 31.01.2000 till date. The writ petition challenging the disengagement was not decided on merit, but it was withdrawn for whatever be the reason. The law of regularization is very clear that the relief of regularization can only be, granted to a person who is continuing in his service. The Appellant was also paid retrenchment compensation.
9. The learned Single Judge recorded following reasons in the order:

“5. It would appear that the petitioner was working on daily wages in the Department of Water Resources in the year 1995. He was terminated but the said order was stayed by the State Administrative Tribunal, however, the second order of termination was passed on 31.1.2000 on the ground that his services are no longer required. Despite the second interim order, the petitioner was not taken back and the petitioner did not initiate any contempt proceedings.

6. The earlier writ petition was preferred to challenge the order of termination, however, the petitioner withdrew the writ petition with liberty to make representation for his regularization.

7. It is settled law that regularization cannot be considered when the person is not on the roll of the department on the date of such consideration.

8. Unless and until the petitioner's termination is set

aside, he is not entitled for consideration of his case for regularization. In his earlier writ petition also, there was no direction to consider his representation against termination but it was only for seeking regularization of service. The judgment relied by the petitioner is distinguishable inasmuch as in the said case the person was in service and similarly situated employees were regularized, whereas in the present case, the petitioner is not in service since after the year 2000.”

10. In view of the above discussion, we do not find any error or infirmity in the order impugned passed by learned Single Judge. The appeal being devoid of any substance is liable to be and is hereby dismissed.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge