

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 4936 of 2008

1. Rajaram Dewangan, S/o Shri Nathuram Dewangan, Aged about: 37 years, R/o Nagar and Post- Champa, District: Janjgir- Champa, C.G.
2. Modestus Tigga, S/o Shri Phildiyus Tigga, Aged about: 34 years, R/o Village-Brahminpura, Thana- Portenga, District: Jashpur, (C.G.)
3. Krishna Kumar Pathak, S/o Shri Ram Kumar Pathak, Aged about: 38 years, R/o Opposite Rahesh Bada, Champa, District: Janjgir- Champa, C.G.
4. Santosh Kumar Dewangan, S/o Shri Manbodh Prasad Dewangan, Aged about : 36 years, R/o Village & Post: Kurda, District: Janjgir- Champa, C.G.
5. Srawan Kumar Dewangan, S/o Shri Aniruddha Dewangan, Aged about : 37 years, R/o Village & Post: Dewarbija, Tehsil: Berla, District: Durg, C.G.
6. Yashwant Rishikesh Tarar, S/o Shri Kiran Lal Tarar, Aged about : 30 years, R/o Village: Salehebhata, Post: Morwa, District: Durg, C.G.
7. Surendra Kumar Verma, S/o Shri Dhabaram Verma, Aged about : 51 years, R/o Village: Chatod, Thana: Newara, District: Raipur, C.G. .
8. Tekram Dewangan, S/o Shri Balaram Dewangan, Aged about: 42 years, R/o Village: Mandlor, Post: Pond, District: Raipur, C.G.
9. Govind Prasad Dewangan, S/o Shri Ramratan Dewangan, Aged about: 25 years, R/o Village and Post: Pondi Shankar, Thana: Sargaon, District: Janjgir- Champa, C.G.
10. Shailendra Kumar Khatik, S/o Late Shri Murli Manohar Khatik, Aged about: 41 years, R/o Town- Champa, Opposite Town School Rani Road, District: Janjgir- Champa, C.G.
11. Ram Kishun Dewangan, S/o Shri Gendram Dewangan, Aged about: 28 years, R/o Village and Post: Kuwanrgarh, Thana: Dharsiwa, District: Raipur, C.G.

12. Sonuram Dewangan, S/o Shri Phool Singh Dewangan, Aged about: 50 years, R/o Opposite Pramila Kirana Store, District: Raipur, C.G.
13. Doman Singh Uddey, S/o Shri Krishna Kumar Uddey, Aged about: 29 years, R/o Jhanda Chowk Pandri Tarai, District: Raipur, C.G.
14. Satanand Singh Thakur, S/o Shri Rohit Singh Jakur, Aged about: 36 years, R/o House No. 74, R.D.A Building, District: Raipur, C.G.

---- Petitioners

Versus

1. State Of Chhattisgarh Through Registrar, Cooperative Societies, Raipur, C.G.
2. Director, Gram Udyog (Hathkargha) Directorate, Raipur, C.G.
3. Managing Director, Chhattisgarh Rajya Hathkargha Vikas Eywam Vipadnan Sahakari Sangh Maryadit, D-60, Sector 03, Devendra Nagar, Raipur, C.G.

---Respondents

For Petitioners	:	Mr. Vinay Pandey, Advocate.
For State	:	Mr. Jitendra Pali, Dy. A.G.
For Respondent No. 02	:	Mr. Anshul Singhania on behalf of Mr. Rakesh K. Jha, Advocate
For Respondent No. 03	:	Mr. Pankaj Singh, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

18.07.2019

1. The challenge in the present Writ Petition is to the Order Annexure P/1 dated 01.09.2008, whereby the Respondent No. 01 had passed on order for terminating the services of the petitioners immediately. The challenge also is to Annexure P/6 dated 26.06.2008, whereby the Registrar has issued an order for recovering the salary which was paid to the petitioners from the date of order of appointment minus the wages the Daily Wage Employee was getting.

2. The facts of the case is that, the petitioners were working as Daily Wage Employees under the Chhattisgarh Rajya Hathkargha Vikas Eywam Vipadnan Sahakari Sangh Maryadit under the Respondent No. 02 and 03 since long. When the petitioners were appointed under the said society, there was no service rules or service condition governing the said society. The society for the first time framed its service condition on 23.05.2007 (Annexure P/2) which was known as the Chhattisgarh Rajya Hathkargha Vikas Evyam Vipdnan Sahakari Sangh Maryadit Karmachari Sewa Niyam, Raipur. Clause 5 of the said service rules deals with the recruitment. Clause 5.9 empowers the Board of Directors for relaxing the service rules and conditions to those Daily Wage Employees who were already working with the society prior to the enforcement of the service rules for the purpose of granting appointment.
3. Based on the said conditions in the service regulation, the Board of Directors of the respondent-society in its meeting that was held on 09.06.2007 resolved to grant appointment to the petitioners who were already working with the respondent-society as Daily Wager Employees when the service condition of the respondent-society was enforced on 23.05.2007.
4. Based on the Board of Directors' Resolution dated 09.06.2007, the petitioners were granted appointment on 14.06.2007 (Annexure P/4). The petitioners were working on the said posts uninterruptedly and abruptly the impugned order Annexure P/1 dated 01.09.2008 was passed, cancelling the appointment issued in favour of the

petitioners. For ready reference, the order impugned Annexure P/1 reproduced as under:

“उपरोक्त विषयांतर्गत संदर्भित पत्र से प्राप्त प्रस्ताव का परीक्षण किया गया। उक्त प्रस्ताव अस्वीकृत किया जाता है तथा लेख किया जाता है कि नियम विपरीत नियुक्त किये गये कर्मचारियों को सेवा से पुथक करें एवं पालन प्रतिवेदन 7 दिवस के भीतर भिजवाना सुनिश्चित करें।”

5. The petitioners had challenged the said order, immediately before this Court. This Court on 08.09.2008 had granted interim protection to the petitioners staying the effect and operation of the impugned order Annexure P/1 and the consequential order dated 26.06.2008 until further orders. By virtue of the interim protection, the petitioners were still discharging on the posts they were appointed vide Annexure P/4 dated 14.06.2007.
6. The contention of the petitioners is that, the order Annexure P/1 is *per se* illegal and bad for the reason that, firstly it has been issued without affording opportunity of hearing to the petitioners. Secondly, the impugned order does not reveal the reason for cancelling the appointment issued in favour of the petitioners. Thirdly, the respondents have not taken note of the fact that, the order of appointment was issued in the light of the Resolution passed by the Board of Directors and the representative of the State and an officer of the rank of Deputy Registrar was present and it was the Deputy Registrar who had advised the Board of Directors, so far as granting of appointment to the petitioners are concerned. Thus, the

respondents could not have gone back on their stand taken before the Board of Directors.

7. The counsel for the petitioners further referred to the subsequent decision of the Board of Directors of its meeting that was held on 12.05.2008 itself (Annexure P/7), wherein also the Board of Directors had specifically resolved that the appointment granted to the petitioners was in accordance with the Rules and Regulations and was also in the presence of the Deputy Registrar of the State Government in the meeting of the Board of Directors. For all these reasons, the impugned orders Annexure P/1 and P/6 were to be set-aside/quashed.
8. The State Counsel on the other hand, justifying the impugned order of termination submits that, it is a case where the appointment issued in favour of the petitioners was contrary to the instructions given by the State Government vide Annexure R-1 dated 25.05.2007, whereby it was specifically ordered by the Registrar that, the service condition stood approved, subject to the condition of the Daily Wage Employee working with the respondent-society would not be permitted to be regularized.
9. According to the State Counsel, once when this condition was imposed by the Registrar, the order of appointment automatically gets nullified. Moreover, the service conditions which have been referred to by the petitioners does not come into force without due approval from the State Government and due approval was given only by Annexure R/1 dated 25.05.2007, where the condition

specifically reflected that, the Daily Wage Employees should not been regularized. Therefore, the order passed by the Respondent No. 01 cannot be said to be bad-in-law.

10. So far as the Society is concerned, they have taken a stand, since the order of cancellation of appointment has been passed by the Respondent No. 01, it is the State Government who has to justify the impugned order. However, the society did not dispute the fact that, the order of appointment being issued pursuant to the Resolution passed by the Board of Directors in its meeting held on 09.06.2007.
11. Having heard the contentions put-forth on either side and on perusal of record, there is no dispute as per the impugned order of cancellation of appointment has been issued after a period of more than 15 months. These 15 months, the petitioners were enjoying the fruits that were attached to the order of appointment dated 14.06.2007. It is not in dispute that before issuance of the impugned order, the petitioners were never given an opportunity of hearing. The fact that, the impugned order snatches away the order of appointment from the petitioners it would have adverse civil consequence the least that was required was the compliance of the basic principles of natural justice. In the instant case, apparently the principles of natural justice has not been followed before issuance of the impugned order.
12. On the merits also, if we look at the documents enclosed along with the Writ Petition, it clearly reflects that the petitioners admittedly were working with the society as Daily Wage Workers since long.

The service conditions of the society was for the first time framed on 23.05.2007 while framing the service conditions, the society had taken care of the Daily Wage Workers working in the establishment before the rules came into force. The society had empowered the Board of Directors for relaxing the condition for grant of appointment to those Daily Wager Workers who fulfill the minimum eligibility criteria. There is no dispute as of now, of the petitioners not fulfilling the minimum eligibility criteria as per the Rules and Regulations governing the society. Nor does there appear to have been an enquiry conducted in this regard.

13. At the same time, there is a categorical statement made by the petitioners that each of the petitioner do fulfill all the requisite eligibility criteria under the service regulations for the respective posts that were holding. If you look into the resolution of the Board of Directors of its meeting dated 09.06.2007, it would reveal that apart from the Board of Directors, representative of the Respondent No. 01 was deputed for the meeting. Now, the resolution also reflects that, it is the representative of the Respondent No. 01 who had pin-pointed to the Board of Directors for invoking provision of Clause 5.9 of service regulation for granting employment to the Daily Wage Employees. The same fact further stands again reiterated in the Board of Directors' Resolution dated 12.05.2008. In the light of the decision of the Board of Directors and on perusal of the order Annexure P/4 dated 14.06.2007 what clearly reflect is that, the case of each of the petitioners were duly scrutinized by the Board of Directors and they had invoked the powers in Clause 5.9 of the

service rules and have recommended for giving appointment to the petitioners vide Annexure P/4. The order dated 14.06.2007 also would reveal that, it is the order of appointment which has been issued, it is not an order of regularizing the services of the petitioners. So far as the Annexure R/1 dated 25.05.2007, the order of approval granted by the State Government is concerned, there was only an embargo on regularization of the Daily Wage Workers. There was no condition as such restricting the respondents from invoking clause 5.9 or in granting appointment to the Daily Wage Workers. Under the circumstances, the decision of the Respondent No. 02 and 03 in granting appointment to the petitioners vide order dated 14.06.2007 cannot be said to be in any manner bad-in-law or contrary to the Rules governing the service condition of the society. For all the aforesaid reasons, the impugned orders Annexure P/1 and Annexure P/6 dated 01.09.2008 and 26.06.2008 both are bad-in-law and deserve to be and are accordingly set-aside/quashed.

14. The present Writ Petition, accordingly stands allowed consequences to follow.

**Sd/-
(P. Sam Koshy)
Judge**