

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR

Judgment reserved on 15/02/2019

Judgment delivered on 25/03/2019

Writ Appeal No. 444 of 2016

Kameshwar Singh, S/o Shri B. Singh, aged about 50 years, R/o Civil Lines, Raipur, District Raipur (CG)

---- Appellant

Versus

1. State of Chhattisgarh, Through Secretary, Rural Engineering Services, Mahanadi Bhawan, Mantralaya, Naya Raipur (CG).
2. The Superintending Engineer, Rural Engineering Services, Raipur Circle, Raipur (CG).
3. The Executive Engineer, Rural Engineering Services, Raipur (CG).
4. The Presiding Officer, Labour Court, Raipur (CG)
5. The State Industrial Court, Raipur.

---- Respondents

Writ Appeal No. 447 of 2016

Prahlad Ram Dewangan, S/o Shri D.R. Dewangan, aged about 48 years, R/o Telibandha, Raipur, district Raipur (CG)

---- Appellant

Versus

1. State of Chhattisgarh, Through Secretary, Rural Engineering Services, Mahanadi Bhawan, Mantralaya, Naya Raipur (CG).
2. The Superintending Engineer, Rural Engineering Services, Raipur Circle, Raipur (CG).
3. The Executive Engineer, Rural Engineering Services, Raipur (CG).

---- Respondents

Writ Appeal No. 448 of 2016

Abdul Azim, S/o Shri Abdul Hakim, aged about 47 years, R/o Mohadapara, Raipur, District Raipur (CG)

---- Appellant

Versus

1. State of Chhattisgarh, Through Secretary, Rural Engineering Services, Mahanadi Bhawan, Mantralaya, Naya Raipur (CG).
2. The Superintending Engineer, Rural Engineering Services, Raipur Circle, Raipur (CG).
3. The Executive Engineer, Rural Engineering Services, Raipur (CG).
4. The Presiding Officer, Labour Court, Raipur (CG)
5. The State Industrial Court, Raipur.

---- Respondents

Writ Appeal No. 449 of 2016

Krishna Kumar Chandraker, S/o Shri Radheshyam Chandraker, aged about 49 years, R/o Gram Post Khowli via Kharora, District Raipur (CG)

---- Appellant

Versus

1. State of Chhattisgarh, Through Secretary, Rural Engineering Services, Mahanadi Bhawan, Mantralaya, Naya Raipur (CG).
2. The Superintending Engineer, Rural Engineering Services, Raipur Circle, Raipur (CG).
3. The Executive Engineer, Rural Engineering Services, Raipur (CG).
4. The Presiding Officer, Labour Court, Raipur (CG)
5. The State Industrial Court, Raipur.

---- Respondents

Writ Appeal No. 456 of 2016

Satish Sinha, S/o Shri M.L. Sinha, aged about 55 years, R/o Qr. No.282, Priyadarshini Colony, Raipur, District Raipur (CG)

---- Appellant

Versus

1. State of Chhattisgarh, Through Secretary, Rural Engineering Services, Mahanadi Bhawan, Mantralaya, Naya Raipur (CG).
2. The Superintending Engineer, Rural Engineering Services, Raipur Circle, Raipur (CG).
3. The Executive Engineer, Rural Engineering Services, Raipur (CG).
4. The Presiding Officer, Labour Court, Raipur (CG)
5. The State Industrial Court, Raipur.

---- Respondents

Writ Appeal No. 462 of 2016

O.P. Sarang, S/o Shri K.S. Sarang, aged about 48 years, R/o through K.K. Shrivastava, Shyamnagar, Raipur, District Raipur

---- Appellant

Versus

1. State of Chhattisgarh, Through Secretary, Rural Engineering Services, Mahanadi Bhawan, Mantralaya, Naya Raipur (CG).
2. The Superintending Engineer, Rural Engineering Services, Raipur Circle, Raipur (CG).
3. The Executive Engineer, Rural Engineering Services, Raipur (CG).
4. The Presiding Officer, Labour Court, Raipur (CG)
5. The State Industrial Court, Raipur.

---- Respondents

Writ Appeal No. 463 of 2016

Mahendra Kumar Sharma, S/o Shri N.P. Sharma, aged about 49 years, R/o Vivekanand Ashram, Ramkund, Raipur, District Raipur (CG)

---- Appellant

Versus

1. State of Chhattisgarh, Through Secretary, Rural Engineering Services, Mahanadi Bhawan, Mantralaya, Naya Raipur (CG).
2. The Superintending Engineer, Rural Engineering Services, Raipur Circle, Raipur (CG).
3. The Executive Engineer, Rural Engineering Services, Raipur (CG).
4. The Presiding Officer, Labour Court, Raipur (CG)

5. The State Industrial Court, Raipur.

---- Respondents

Writ Appeal No. 466 of 2016

Bireshwara Lal Sahu, S/o Shri Tukeshwara Lal Sahu, aged about 50 years, R/o Shyamnagar, Gandhi Chowk, Raipur, District Raipur (CG)

---- Appellant

Versus

1. State of Chhattisgarh, Through Secretary, Rural Engineering Services, Mahanadi Bhawan, Mantralaya, Naya Raipur (CG).
2. The Superintending Engineer, Rural Engineering Services, Raipur Circle, Raipur (CG).
3. The Executive Engineer, Rural Engineering Services, Raipur (CG).
4. The Presiding Officer, Labour Court, Raipur (CG)
5. The State Industrial Court, Raipur.

---- Respondents

For Appellants : Shri S.P. Kale & Shri KPS Gandhi
Advocates
For Respondent: : Smt. F. Mirza, Addl. Adv. General
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Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

C A V JUDGMENT

Per Parth Prateem Sahu, J

25/03/2019

1. Since a common question is involved in the above writ appeals for adjudication, they are being disposed off by this common judgment.
2. The appellants have challenged the impugned order dated 14.3.2016 passed by the learned Single Judge in a batch of writ petitions, leading case of which was WP No.1114/2005, whereby learned Single Judge has allowed writ petitions preferred by respondent - State herein and set aside the orders

passed by the Labour Court and the Industrial Court directing permanent categorization / classification of appellants herein.

3. Facts of the case in nutshell are that in the year 1990 & 1992 appellants herein have been appointed as 'daily wage employee' on different posts like Time-Keeper, Khalasi, Driver & Sub-engineer for a fixed period of 89 days and thereafter also they continued in service. After completion of satisfactory period of service, the appellants moved applications before the Labour Court separately on different dates under the provisions of Section 31 (3) read with Section 61 of the Chhattisgarh Industrial Relations Act, 1960 (for short "the Act of 1960") basically for categorization of their employment as a permanent employee. The Labour Court allowed their applications vide different orders and directed for their categorization of employment as permanent employee. Against the orders passed by the Labour Court the appellants and the respondents herein both have preferred appeal under the provisions of the Act of 1960. Appellants herein have challenged the order of Labour Court on the ground that the Labour Court has not granted the order from two years from the date of passing of award. Whereas, the respondent State authorities have assailed the order on the ground that the appellants were not in continuous service and employment but they were engaged in employment as and when required and that the Rural Engineering Services do not come within the category of industry, therefore, the provisions of the Act of 1960 would not apply.
4. The Industrial Court dismissed the appeal filed by the respondent State and partly allowed the appeal

of the appellants herein and while upholding the order of classification of employment of the appellants herein as permanent employee had further directed for grant of benefits to appellants from two years prior to the date of filing of the application before the labour Court.

5. Aggrieved by the order of the Industrial Court, the respondent State preferred writ petitions before the learned Single Judge.
6. To appreciate the facts in a proper manner, details of each employee with respect to his date of engagement, orders passed by the labour Court & the Industrial Court and posts which he was holding are given herein below:-

WA No.	WP No.	Post	Year of Joining	Order of Labour Court	Order of Industrial Court
462/16	1112/05	Sub Engineer	1992	04.5.2002	22.12.2003
448/16	1114/05	Time Keeper	1990	04.5.2002	22.12.2003
456/16	1107/05	Time Keeper	1990	14.2.2003	05.01.2004
466/16	1108/05	Time Keeper	1990	14.2.2003	05.01.2004
444/16	1109/05	Driver	1990	14.2.2003	05.01.2004
447/16	1110/05	Khalasi	1990	04.5.2002	22.12.2003
	1111/05	Time Keeper	1990	14.2.2003	05.01.2004
463/16	1113/05	Time Keeper	1990	04.5.2002	22.12.2003
449/16	1115/05	Time Keeper	1990	04.5.2002	22.12.2003

7. All the writ petitions filed by the respondent State have been heard and decided together by the learned Single Judge by order impugned. Learned Single Judge after scrutinizing the facts and materials available on record has arrived at a conclusion that appellants herein have not fulfilled the condition precedent as provided under the Standard Standing Orders framed under the

Chhattisgarh Industrial Employment (Standing Orders) Act, 1961. Learned Single Judge has further held that appellants herein failed to prove their employment against clear vacancy, which is a pre-condition for classification of an employee as a permanent employee. Before arriving at afore conclusion, learned Single Judge had considered all the relevant provisions applicable to the case of appellants herein and also number of decisions of the Hon'ble Supreme Court dealing and deciding the issue involved in the writ petitions, which are as under:-

“MP Housing Board & another v. Manoj Shrivastava (2006) 2 SCC 702; State of MP & ors vs. Lalit Kumar Verma AIR 2007 SC 528; Executive Engineer, ZP Engg. Divn. And another v. Digambara Rao AIR 2004 SC 4839; Madhyamik Shiksha Parisahd UP v. Anil Kumar Mishra & others (2005) 5 SCC 122; Indian Drugs & Pharmaceuticals Ltd. V. Workmen, Indian Drugs & Pharmaceuticals Ltd. (2007) 1 SCC 408; Mahendra L Jain & ors v. Indore Development Authority and others (2005) 1 SCC 639 & Municipal Council, Sujapur, vs. Surinder Kumar (2006) 5 SCC 173.”

8. After considering the facts of the case of each of the appellants in the light of provisions of the Act of 1961, the Rules of 1963 and the aforementioned decisions of the Hon'ble Supreme Court, has held thus:-

“6.The law concerning permanent classification even under the MP/CG Industrial Employment (Standing Orders) Rules, 1963 is no longer *res integra*, as it has been set at rest by the Supreme court in Lalit Kumar Verma (Supra). In

the said matter, the Supreme Court has laid down the law considering the provisions of the same enactment i.e. MP/CG Industrial Relations Act, 1960 and the Standard Standing Order. The following has held by the Supreme Court in para 6, 7, 9 & 10:-

6. Clause 2 of the Standard Standing Orders reads as under:

"2. Classification of employees. Employees shall be classified as (i) permanent, (ii) permanent seasonal, (iii) probationers, (iv) badlies, (v) apprentices, and (vi) temporary:

(i) A permanent employee is one who has completed six months satisfactory service in a clear vacancy in one or more posts whether as a probationer or otherwise, or a person whose name has been entered in the muster roll and who is given a ticket of permanent employee;

* * *

(vi) temporary employee means an employee who has been employed for work which is essentially of a temporary character, or who is temporarily employed as an additional employee in connection with the temporary increase in the work of a permanent nature; provided that in case such employee is required to work continuously for more than six months he shall be deemed to be a permanent employee, within the meaning of clause (i) above."

7. A workman, therefore, would be entitled to classification of permanent or temporary employee, if the conditions precedent therefor are satisfied. Respondent was not appointed against a clear vacancy. He was not appointed in a permanent post or placed on probation. He had also not been given a ticket of permanent employee. Working on daily wages alone would not entitle him to the status of a permanent employee.

8. It was further opined :

"The Standing Orders governing the terms and conditions of service must be read subject to the constitutional limitations wherever applicable. Constitution being the *suprema lex*, shall prevail over all other statutes. The only provision as regards recruitment of the employees is contained in Order 4 which merely provides that the manager shall within a period of six months, lay down the procedure for recruitment of employees and notify it on the notice board on which Standing Orders are exhibited and shall send copy thereof to the Labour Commissioner. The matter relating to recruitment is governed by the 1973 Act and the 1987 Rules. In

the absence of any specific directions contained in the Schedule appended to the Standing Orders, the statute and the statutory rules applicable to the employees of the respondent shall prevail.

* * *

For the purpose of this matter, we would proceed on the basis that the 1961 Act is a special statute vis-à-vis the 1973 Act and the Rules framed thereunder. But in the absence of any conflict in the provisions of the said Act, the conditions of service including those relating to recruitment as provided for in the 1973 Act and the 1987 Rules would apply. If by reason of the latter, the appointment is invalid, the same cannot be validated by taking recourse to regularisation. For the purpose of regularisation which would confer on the employee concerned a permanent status, there must exist a post. However, we may hasten to add that regularisation itself does not imply permanency. We have used the term keeping in view the provisions of the 1963 Rules."

10. The said decision shall apply in all fours to the facts of the present case. {See also M.P. Housing Board & Anr. vs. Manoj Shrivastava [(2006) 2 SCC 702], Municipal Council, Sujampur vs. Surinder Kumar, (2006) 5 SCC 173 and Indian Drugs and Pharmaceuticals Limited vs. Workman, Indian Drugs and Pharmaceuticals Limited, Civil Appeal No. 4996 of 2006 decided on 16.11.2006}

(emphasis supplied)

7. The Supreme Court had an occasion to consider the issue of permanent classification under the M.P. Industrial Employment (Standing Orders) Rules, 1963 in the matter of Manoj Shrivastava (supra), wherein the Supreme Court held thus in para 6 to 11 & 17:-

6. The appellant Board was constituted under the M.P. Grih Nirman Mandal Adhiniyam, 1972 ("the 1972 Act"). Indisputably, the terms and conditions of employment of its employees are governed by a statute. The State of Madhya Pradesh enacted the 1960 Act with a view to regulate the relations of employers and employees in certain matters, to make provisions for settlement of industrial disputes and to provide for matters connected therewith. In the year 1961, the State of Madhya Pradesh also enacted the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 (for short "the 1961 Act") to provide for rules defining with sufficient precision certain matters relating to the conditions of employment of employees in the State of Madhya Pradesh.

7. "Permanent employee" and "temporary employee" have been defined in clauses 2(i) and (vi) of the Standard Standing Order made under the 1961 Act which read as under:

"2. (i) A 'permanent' employee is one who has completed six months' satisfactory service in a clear vacancy in one or more posts whether as a probationer or otherwise, or a person whose name has been entered in the muster roll and who is given a ticket of permanent employee;

* * *

(vi) 'temporary employee' means an employee who has been employed for work which is essentially of a temporary character, or who is temporarily employed as an additional employee in connection with the temporary increase in the work of a permanent nature; provided that in case such employee is required to work continuously for more than six months he shall be deemed to be a permanent employee, within the meaning of clause (i) above."

8. A person with a view to obtain the status of a "permanent employee" must be appointed in terms of the statutory rules. It is not the case of the respondent that he was appointed against a vacant post which was duly sanctioned by the statutory authority or his appointment was made upon following the statutory law operating in the field.

9. The Labour Court unfortunately did not advert to the said question and proceeded to pass its award on the premise that as the respondent had worked for more than six months satisfactorily in terms of clause 2(vi) of the Standard Standing Orders, he acquired the right of becoming permanent. For arriving at the said conclusion, the Labour Court relied only upon the oral statement made by the respondent.

10. It is one thing to say that a person was appointed on an ad hoc basis or as a daily-wager but it is another thing to say that he is appointed in a sanctioned post which was lying vacant upon following the due procedure prescribed therefor.

11. It has not been found by the Labour Court that the respondent was appointed by the appellant herein, which is "State" within the meaning of Article 12 of the Constitution, upon compliance with the constitutional requirements as also the provisions of the 1972 Act or the Rules and Regulations framed thereunder.

17. It is now well settled that only because a person had been working for more than 240 days, he does

not derive any legal right to be regularised in service. (See *Madhyamik Shiksha Parishad, U.P. v. Anil Kumar Mishra*⁸; *Executive Engineer, ZP Engineering Divn. v. Digambara Rao*⁹; *Dhampur Sugar Mills Ltd. v. Bhola Singh*¹⁰; *Manager, Reserve Bank of India v. S. Mani*¹¹ and *Neeraj Awasthi*⁴.)”

(emphasis supplied)

8. Having thus held, the Supreme Court set aside the order passed by the labour Court by which the said Manoj Shrivastava, a Sub Engineer was directed to be categorized in the permanent category two years prior from the date of application. The same relief, which has been granted by the labour Court to the present set of private respondents.

9. In the present set of cases the Labour Court has granted relief of permanent classification only on the ground that the private respondents have worked continuously for 240 days since after their appointment. However, there is no finding as to whether sanctioned posts were available and the recruitment rules were followed before making the appointment.

10. In view of the settled legal position, the orders passed by the labour Court and the Industrial Court directing permanent categorization/classification of the private respondents from two years prior to the date of application are wholly illegal, which deserve to be and are hereby set aside.”

9. Learned counsel for the appellants submitted that appellants were engaged in the year 1990 & 1992 and thereafter they continuously worked on the respective post of their employment without any break in service. It has also been submitted that the applications under the Act of 1960 before Labour Court have been filed in the year 1997 i.e. after completion of more than five years of their continuous employment and therefore they fulfil the requirement of completion of six months’ satisfactory service with respondent Department, as required under Rule 2 of the Rules of 1963. He further submitted that the respondents have not led any evidence to show that appellants have not worked continuously in the employment for more than five years on the date of filing of applications before the Labour Court. In view of the above arguments, he submits that the Labour Court and the Industrial Court

have rightly allowed the claim of the appellants and granted permanent status in the employment to the appellants.

10. Per contra, learned counsel appearing for the respondent State opposed the submissions made by learned counsel for the appellants and submitted that the question for consideration, in view of relief sought by the appellants in their applications filed before the labour Court under Section 31 (3) r/w 61 of the Act of 1960, is not only the period of continuous satisfactory service but one of the essential consideration was whether employment of appellants was against clear vacancy? He further submits that appellants failed to prove before the labour Court by adducing cogent and reliable piece of evidence that they were appointed against clear vacancy. Even the Labour Court has not given a clear finding to this effect.

11. We have heard learned counsel for the parties and meticulously perused the impugned order and the records.

12. From the materials available on record it appears that appellants herein were taken into employment on the dates as mentioned in the table given in the preceding paragraphs and even the respondents have not disputed this fact. In respect of continuous employment on the date of filing of application under Section 31 (3) r/w 61 of the Act of 1960 before the labour Court, the appellants have only pleaded that they were taken into employment and since then they were continuously working.

13. To consider all other requirements, the prime and essential consideration before this Court is whether the appellants were employed by the respondent

against clear vacancy on the date of their initial engagement in service?

14. We have minutely perused the record which goes to show that appellants have not produced any material and evidence before the labour Court to establish that they were employed against a clear vacancy. Neither the labour Court nor the Industrial Court has given any finding based on the evidence to this effect.
15. Requirement of employment against clear vacancy under Rule 2 of the Rules of 1963 i.e. Standard Standing Orders, very clearly specifies two conditions for classifying an employee as a permanent employee. Firstly, an employee must have completed six months satisfactory service and secondly, the employment should be against a clear vacancy.
16. As the appellants failed to prove by adducing material and evidence before the labour Court that their employment was against clear vacancy, which is a pre-condition for classifying/categorization of an employee as a permanent employee. As the appellants failed to prove their engagement against clear vacancy, they could not have been granted the relief as claimed by them in their application for declaring and classifying them as permanent employee. The labour Court as well the Industrial Court has committed gross error of law. Learned Single Judge has correctly applied the law laid down by the Hon'ble Apex Court as mentioned above.
17. Learned counsel for the appellant placed his reliance on the judgment rendered by Hon'ble Supreme Court in the matter of **ONGC Ltd. Vs. Petroleum coal Labour Union** reported in 2015 AIR SCW 2866.

18.The reliance placed by learned counsel for appellants is misplaced. Case law relied upon by him is for regularization whereas the relief claimed by appellants herein is of classification of their status as 'permanent employee' under statutory provisions. The judgment relied upon by the counsel for the appellant does not apply to the facts of case.

19.In view of above discussions and in the light of the judgments rendered by Hon'ble Supreme Court, we do not find any infirmity in the findings and rationale given for allowing the writ petitions by the impugned judgment.

20.The appeal being sans merit is liable to be dismissed and is hereby dismissed.

Sd/-
(Ajay Kumar Tripathi)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Roshan/-