

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 2138 of 2019

1. Byash Nath Tiwari S/o Triguna Nand Tiwari, Aged About 42 Years Qtr. No. - 5a, Street - 30, Sector-7, Bhilai Chhattisgarh.
2. Yogesh Kumar Chandrakar S/o Lt. Manohar Lal Chandrakar, Aged About 44 Years R/o Bajrang Chowk, Kurmi Para, Kurud Chhattisgarh.
3. Santosh Kumar Sahu S/o Late Baisakhu Ram Sahu, Aged About 43 Years R/o Block - A, Street - 12 Karan Nagar, New Changorabhata, Raipur Chhattisgarh.
4. Abhijeet Dubey S/o Lt. B N Dubey Aged About 45 Years Street - 32, Qu. No. - B/582, Smriti Nagar, Bhilai Chhattisgarh.
5. Smt. Sangeeta Yadav W/o Ashvani Yadav Aged About 42 Years Kasaridih Durg Chhattisgarh.
6. Devendra Kumar Chandrakar S/o Kashi Ram Chandrakar, Aged About 44 Years R/o Lakholi Ward No- 34, Rajnandgaon Chhattisgarh.
7. Vijyant Nigam S/o G S Nigam Aged About 46 Years R/o 18/18, Nehru Nagar (East) Bhilai Chhattisgarh.
8. Onkar Dutt Kashyap S/o Lt. Ram Prasad Kashyap Aged About 39 Years R/o Qu. No. - 5b, Street No. - 43, Sector - 7, Bhilai Nagar Durg Chhattisgarh.
9. Lalit Kumar Dewangan S/o Nakul Dewangan Aged About 43 Years R/o Near Shitla Talab, Arya Nagar, Kohka, Bhilai Chhattisgarh.
10. Keshav Bhandari S/o Lt Balwant Rai Bhandari Aged About 39 Years Santra Bari, Near Apsara Talkies, Durg Chhattisgarh.
11. Jayant Kumar Sahu S/o Ramdas Sahu Aged About 37 Years R/o Ram Nagar, Post Office Supela, Bhilai Chhattisgarh.
12. Bhoj Lal Hirwani S/o Mehataru Ram Hirwani, Aged About 36 Years Ward No. - 44 Kanhaiyapuri Chowk, Kasaridih Durg Chhattisgarh.
13. Satya Prakash Mishra S/o Ram Nath Mishra Aged About 46 Years R/o Plot No. 613/54, Daya Nagar, Risali Bhilai - Durg Chhattisgarh.
14. Vinay Sharma S/o Lt. Rambishal Sharma, Aged About 44 Years R/o Near Vishal - Vihar Building, Arya Nagar Durg Chhattisgarh.
15. Alok Sharma S/o G P Sharma, Aged About 51 Years R/o Arya Nagar, Qt. No. - 80, Durg Chhattisgarh.

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Versus

1. Chhattisgarh Swami Vivekananda Technical University, Through The Registrar, Nevai, Post Office Nevai, Bhilai, District Durg Chhattisgarh. 491107

2. State Of Chhattisgarh, Through The Secretary, Technical Education Manpower, Science And Industries Department, Mahanadi - Bhawan, Mantralaya, Capital Complex, Atal Nagar, Naya - Raipur, Raipur Chhattisgarh.

---Respondents

For Petitioners	:	Mr. Kshitij Sharma, Advocate
For Respondent No.1	:	Mr. Rajeev Shrivastava, Advocate
For State/Respondent No.2	:	Mr. Rahul Mishra, Dy. G.A.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

27/03/2019

1. The prayer made by the petitioners through the present writ petition is for a direction to the respondents to consider the case of each the petitioners for regularization on the posts they have been appointed and are working for last more than a decade.
2. The facts of the case is that the respondent No.1-University was established by a statute of 2004 and it became functional from January, 2005 onwards. At the time of establishment of the University itself, the petitioners were appointed against sanctioned vacant posts and since then the petitioners are working uninterruptedly. The Rules and service conditions applicable in the Department were framed much later in the year 2009.
3. The petitioners herein submit that all the petitioners do fulfill all the eligibility criteria required under the Rules framed in the year 2009. The further contention of the petitioners is that the institution has already recommended the case of the petitioners for regularization in as much as the Executive Council has resolved to recommend for regularization of each of the petitioners vide their resolution dated 13.08.2013 (Annexure P/8). Subsequently, another reminder was

issued to the State Government vide Annexure P/7 dated 20.08.2013, but till date no decision has been taken by the authorities concerned on the said resolution.

4. The counsel appearing for the State Government submits that since the resolution forwarded by the University is already pending consideration, let the writ petition be disposed of with a direction to the respondent No.2 to take an early decision on the resolution.
5. Given the aforesaid facts and circumstances of the case, particularly taking note of the fact that all the petitioners have been working with the Department from the time the University itself was established and all the petitioners do fulfill all the eligibility criteria under the Rules, the State Government may take a decision as a one time measure considering regularization of the petitioners against the posts each of the petitioners are working subject to verification of they fulfilling the requisite eligibility criteria under the Rules.
6. It would be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of ***"Narendra Kumar Tiwari v. State of Jharkhand"*** [\(2018\) 8 SCC 238](#), dealing with regularization. The Hon'ble Supreme Court in the said judgment in paragraphs No. 7 to 10 has held as under:

"7. The purpose and intent of the decision in Umadevi (3) was therefore two-fold, namely, to prevent irregular or illegal appointments in the future and secondly, to confer a benefit on those who had been irregularly appointed in the past. The fact that the State of Jharkhand continued with the irregular appointments for almost a decade after the decision in Umadevi (3) is a clear indication that it believes that it was all right to continue with irregular appointments, and whenever required, terminate the services of the irregularly appointed employees on the ground that they were irregularly appointed. This is nothing but a form of exploitation of the employees by not giving them the benefits of regularisation

and by placing the sword of Damocles over their head. This is precisely what Umadevi (3) and Kesari sought to avoid.

8. If a strict and literal interpretation, forgetting the spirit of the decision of the Constitution Bench in Umadevi (3), is to be taken into consideration then no irregularly appointed employee of the State of Jharkhand could ever be regularised since that State came into existence only on 15th November, 2000 and the cut-off date was fixed as 10th April, 2006. In other words, in this manner the pernicious practice of indefinitely continuing irregularly appointed employees would be perpetuated contrary to the intent of the Constitution Bench.

9. The High Court as well as the State of Jharkhand ought to have considered the entire issue in a contextual perspective and not only from the point of view of the interest of the State, financial or otherwise – the interest of the employees is also required to be kept in mind. What has eventually been achieved by the State of Jharkhand is to short circuit the process of regular appointments and instead make appointments on an irregular basis. This is hardly good governance.

10. Under the circumstances, we are of the view that the Regularisation Rules must be given a pragmatic interpretation and the appellants, if they have completed 10 years of service on the date of promulgation of the Regularisation Rules, ought to be given the benefit of the service rendered by them. If they have completed 10 years of service they should be regularised unless there is some valid objection to their regularisation like misconduct etc.”

7. Let the respondent No.2 take a suitable decision at the earliest preferably within a period of 4 months from the date of receipt of the copy of this order. It is expected that the respondents would be taking a sympathetic approach against the petitioners considering the past services that they have rendered.
8. Meanwhile, it is also expected that till the decision is taken upon the claim of the petitioners for regularization, the respondents should not go in for any regular recruitment against the posts, on which the petitioners are working.
9. With the aforesaid observations, the writ petition stands disposed off.

Sd/-
(P. Sam Koshy)
Judge