

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 3490 of 2019**

Tijram Sahu S/o Shri Manbodh Sahu Aged About 43 Years Village -
Tohiradih, Post - Jajang, Sakti, District Janjgir Champa Chhattisgarh.,
District : Janjgir-Champa, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of Panchayat And Rural Development, Mantralaya, Atal Nagar, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Chief Engineer Rural Engineering Services, O/o Development Commissioner, Vikas Bhawan, Civil Line, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. S. P. Kale, Advocate
For State	:	Mr. P. Acharya, PL

Hon'ble Shri Justice P. Sam Koshy**Order on Board****08/05/2019**

1. The present writ petition has been filed seeking a relief of a direction to the respondents to consider the claim of the petitioner for regularization.
2. Facts of the case is that the petitioner was initially engaged as Daily Wage Worker on 16/08/2002. He continued to work on the said post till 13/04/2010. On 13/04/2010 services of the petitioner was abruptly discontinued. The discontinuance was subjected to challenge by way of dispute raised before the State Government who in turn referred the matter to the Labour Court, Korba in the year 2012. The case was registered as case No. 54/I.D. Act/2012(Claim). Labour Court initially vide award dated 12/09/2013 granted the relief of reinstatement with 25% of back wages. The order of the labour Court was challenged in

WPL 33/2014. This High Court vide its order dated 19/12/2014 maintained the order of labour Court to the extent of granting reinstatement. However, so far as the granting of 25% of back wages is concerned same was set aside. Thereafter the petitioner has been reinstated in service on 11/06/2014 and since then he has been continuously working till date with the respondents.

3. Counsel for the petitioner submits that discontinuance of the petitioner in 2010 has been held to be bad in law and subsequently the petitioner as per the order of labour Court having been reinstated for all practical purposes the services of the petitioner has to be counted from 2002 till date for the purpose of regularization. Intervening period would also be treated as continuous service. Thus, counsel for the petitioner prayed for an appropriate order to the respondents to consider claim of the petitioner for regularization.
4. State counsel on the other hand however opposing the petition submits that petitioner does not have an indefeasible right for the reason that the substantive status of the petitioner is of a Daily Wage Worker and the order of reinstatement is also only on the post of daily wage worker which does not carry any indefeasible right on the petitioner and thus prayed for rejection of the writ petition.
5. Having heard the contentions put forth on either side and on perusal of records what is undisputed is the fact that petitioner admittedly had worked between 16/08/2002 to 13/04/2010 when his services were discontinued. Discontinuance has been held to be bad in law by the labour Court vide order dated 12/09/2013. The relief of reinstatement has been affirmed by the High Court in WPL No. 33/2014 in its order dated 19/02/2014. Thereafter, the petitioner has been reinstated in service.

6. In view of the aforesaid given factual matrix of the case, this Court is of the opinion that case of the petitioner also is one which needs consideration for regularization considering the fact that the petitioner for all practical purposes would be deemed to have been in continuous employment of the respondent from 16/08/2002 onwards.
7. Given the facts, let respondent consider the claim of the petitioner for regularization in terms of circular dated 05/03/2008 and other subsequent circulars issued by the State Government in this regard. Let appropriate decision be taken by the respondents so far as the claim of the petitioner for regularization is concerned within an outer limit of four months from the date of receipt of copy of this order. It need not be mentioned that while considering the claim for regularization of the petitioner, the department would be duty bound to see overall seniority of the petitioner in the department and length of service that he has rendered. That is to say in case if there are seniors to the petitioner as a daily wage employee available in the department their right for regularization would also be taken note of by the department while considering the claim of the petitioner. The department while considering the same would also take note of the judgment of the Supreme Court in the case of **Narendra Kumar Tiwari & Others v. State of Jharkhand, (2018) 8 SCC 238** and also take note of the availability of the vacancies with the department for this purpose.
8. The writ petition accordingly stands disposed off.

Sd/-
(P. Sam Koshy)
Judge