

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 305 of 2019**

*{Arising out of Order dated 06/03/2018 passed in Writ Petition(S) No. 1516 of 2019 by
the learned Single Judge}*

- Smt. Sahodra Jaiswal earlier Sahodra Dansena, W/o Fuleshwar Jaiswal, aged about 31 years, Working as Peon at Govt. Middle School, Jhitipali, Block Kharshiya, District Raigarh, Chhattisgarh

-----Appellant/Petitioner**VERSUS**

1. State of Chhattisgarh Through Secretary, Tribal Welfare Department, Mahanadi Bhawan, Atal Nagar, Raipur, District Raipur Chhattisgarh.
2. Commissioner Tribal Welfare Department, Indrawati Bhawan, Atal Nagar Raipur, District Raipur Chhattisgarh.
3. Collector, Tribal Development Branch, Raigarh, Chhattisgarh
4. Assistant Commissioner, Tribal Welfare Department, Raigarh, Chhattisgarh

-----Respondents

For Appellant	:	Mr. C.J.K. Rao, Advocate
For Respondent-State	:	Mr. Vikram Sharma, Dy. G.A.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****Per P.R. Ramachandra Menon, Chief Justice.****17/10/2019**

1. This appeal arises from the judgment dated 06-03-2019 passed by learned Single Judge whereby the prayer to grant seniority respectively w.e.f. the date on which regularization was given to similarly situated person was turned down and the writ petition came to be dismissed.
2. Heard Mr. C. Jayant K.Rao, Advocate appearing for the appellant as well as Mr. Vikram Sharma, Deputy Government Advocate representing the State.
3. The crux of the factual position is that, there was some scheme for granting compassionate appointment for persons like the appellant/petitioner; who, along with few other persons, came to be appointed as Class-IV employees

vide order dated 24-11-2006 and later, their service came to be regularized in the year 2009. In fact, a list of eligible candidates was proposed and issued, which contained names of 9 persons who were given appointment as per Annexure P/1 order dated 24-11-2006. In Annexure P/1, the appellant/petitioner was placed at serial No. 8 and the last person placed at serial No. 9 was Mr. Jageshwar Yadav. As per Annexure P/2 order dated 09-08-2008, six persons from serial No. 1 to 6 came to be regularized in service w.e.f. 24.11.2006, and regular pay scale was granted to them. It was much later, that service of the appellant/petitioner came to be regularized as per Annexure P/3 order dated 22-02-2009.

4. The claim put-forth by the appellant/petitioner for granting seniority w.e.f. 09-08-2008 (whereby the employees appointed along with appellant/petitioner as per Annexure P/1 were regularized) was not considered favorably. This made the writ petitioner to move to this Court by filing writ petition with the following prayers.

“10.1 That, this Hon'ble may kindly be pleased to direct the respondent authorities to consider the petitioner seniority w.e.f. 09.08.2008 whereby the employees appointed along with the petitioner have been granted seniority.

10.2 That, this Hon'ble may kindly be pleased to direct the respondent authorities to consider the representation made by the petitioner to this affect.

10.3 That, this Hon'ble Court may kindly be pleased to grant any other relief as it may deems fit and appropriate.”

5. The reliefs were sought to be resisted by the respondents, mainly contending that regularization was given, subject to availability of vacancies and that the earlier vacancies were filled up by accommodating persons from Annexure P/1 based on their higher position; whereas the appellant/petitioner was standing

only at serial No. 8, whose turn had not come at that time. It is only on arising a subsequent vacancy, that the claim was considered and accordingly Annexure P/3 was issued granting regularization to the writ petitioner. This was accepted and interference was declined by the learned Single Judge, holding that the writ petitioner was not able to show as to whether any person whose name found a place beneath the writ petitioner had been regularized earlier to her. The observation as given in para-3 of the judgment is to the following effect.

“3. The Court on perusal of record finds that in the order of appointment, the name of petitioner appears at serial no.8. The persons who have been regularized in 2008 are the persons whose name finds place at serial no. 1 to 6. It appears that the regularization has been done subject to the availability of vacancy. The petitioner has not been able to show as to whether any person whose name finds place beneath the petitioner has been regularized earlier to her. In the absence of which it cannot be said that the action on the part of the respondents is with malafide intention.”

The above is under challenge in this appeal.

6. When the matter came up for consideration before this Court on the earlier occasions, this Court wanted to ascertain the 'basis' for placement given in Annexure P/1; for being considered for regularization. It was submitted that the placement was given with reference to the date of receipt of the application and the date of death of the breadwinner under the scheme for compassionate appointment.
7. In the above circumstances, in addition to the return dated 25-09-2019 filed in the writ appeal, the respondents have filed an additional reply dated 30-09-2019, giving the factual particulars and also producing a chart marked as Annexure R/2, giving the details of all the 9 candidates who were recruited

in the year 2006 as per Annexure P/1. So as to have an easy understanding of the factual aspects and to avoid verbal repetition, we find it appropriate to have the relevant portion extracted below:

“वर्ष 2006 में अनुकम्पा नियुक्ति हेतु प्राप्त प्रकरणों की वरिष्ठता सूची-

क्र ०	आवेदक का नाम	आवेदन पत्र किस माध्यम से प्राप्त हुआ	प्राप्त आवेदन दिनांक	अनुकम्पा नियुक्ति दिनांक	नियमित वेतनमान की स्वीकृति तिथि	शास ० कर्मचारी का मृत्यु दिनांक
1	श्रीमती सरिता यादव पति स्व ० श्री सुरेंद्र कुमार यादव बीड़पारा वार्ड क्रमांक 10 सारंगढ़ जिला रायगढ़	आवेदक से सीधे प्राप्त दिनांक 02.01.2006	02.01.2006	24.11.2006	07.06.2007	03.01.2004
2	श्री कार्तिकेश्वर सिदार आत्मज स्व ० श्री जगन्नाथ सिंह सिदार मु० पो० तमनार जिला रायगढ़	वि० खं० शि० अधि० तमनार के पत्र क्रमांक 2063 दिनांक 20.01.2006	23.01.2006	24.11.2006	07.06.2007	07.11.2003
3	श्री चन्द्रभवन पैकरा आत्मज स्व ० श्री लोथेर साय पैकरा ग्राम पालेपखना पो० डुमरिया थाना फरसाबहार जिला जशपुर	प्राचार्य उ० मा० वि० राजपुर का पत्र क्रमांक 341 दिनांक 16.01.2006	03.02.2006	24.11.2006	07.06.2007	28.09.2005
4	श्री अमर लाल उरांव आत्मज स्व ० श्री झंगल सिंह उरांव मु० पो० मड़वा व्हाया चंद्रपुर जिला जांजगीर चाम्पा	आवेदक से सीधे प्राप्त दिनांक 13.02.2006	13.02.2006	24.11.2006	29.09.2007	01.11.2005
5	श्री रामकुमार धिरहे आत्मज स्व ० श्री खेमराम सतनामी ग्राम व पो० कुसमूल तह. डभरा जिला जांजगीर चाम्पा	वि० खं० शि० अधि० लैलूंगा के पत्र क्रमांक 854 दिनांक 20.06.2006	21.06.2006	24.11.2006	07.06.2007	13.04.2006
6	श्री सुरेश कुमार यादव आत्मज स्व ० श्री लक्ष्मीनारायण यादव ग्राम व पो० छाल वि. ख. धरमजयगढ़ जिला रायगढ़	प्राचार्य शास ० उ० मा० वि० छाल के पत्र क्रमांक 137 दिनांक 28.07.2006	17.08.2006	24.11.2006	07.06.2007	24.06.2006

7	श्री दशरथ कुमार सिदार आत्मज स्व ० श्री मतवार सिंह सिदार ग्राम बसंतपुर पो० नारायणपुर वि. खं. लैलूंगा जिला रायगढ़	वि० खं० शि० अधि० लैलूंगा के पत्र क्रमांक 852 दिनांक 25.08.2006	31.08.2006	24.11.2006	07.06.2007	24.11.1999
8	कु० सहोदरा डनसेना आत्मज स्व ० श्री सोमनाथ डनसेना ग्राम डूमरपाली तह डभरा पो० टुंड्री जिला जांजगीर चाम्पा	आवेदक से सीधे प्राप्त दिनांक 02.09. 2006	02.09.2006	24.11.2006	22.02.2009	23.10.1999
9	श्री जगेश्वर यादव आत्मज स्व ० श्री साखीराम यादव ग्राम टिहलीरामपुर पो० लिबरा व्हाया तमनार तह. घरघोड़ा जिला रायगढ़	प्राचार्य हाईस्कूल धौराभाठा का पत्र क्रमांक 118 दिनांक 11.09.2006	11.09.2006	24.11.2006	29.09.2007	03.07.2006

8. The respondents have pointed out in para-4 of the additional reply statement that the date of regularization of other employees happened to be wrongly mentioned as '09-08-2008' in the return filed earlier, as shown by the petitioner in the writ petition, adding that, the correct date is '07-06-2007' and not 09-08-2008. A copy of the relevant order dated 07-06-2007 has been produced as Annexure R/3.

9. The respondents have conceded in para-5 of the additional reply statement that the person named Mr. Jageshwar Yadav, placed at serial No. 9, has been wrongly given regular pay scale over and above the petitioner, as he has been granted regular pay scale w.e.f. 29-09-2007; whereas the writ petitioner was given regular pay scale only by order dated 22-02-2009 (Annexure P/3). A copy of the order dated 29-09-2007, in respect of the person named Jageshwar Yadav (placed at serial No. 9) has been produced as Annexure R/4.

10. On going through the said pleadings and Annexure R/4, in the light of Annexure R/2, it is quite evident that the date of death of the father of the writ

petitioner was on 23-10-1999 and the application for compassionate appointment was submitted on 02-09-2006, whereas in the case of the person named Jageshwar Yadav placed at serial No. 9, the date of death of the breadwinner was on 03-07-2006 and the date of submission of application for compassionate appointment was on 11-09-2006. This clearly indicates that the appellant/petitioner was rightly placed at serial no. 8, above the person named Jageshwar Yadav who placed at serial No. 9, based on his better eligibility.

11. In view of the admission by the respondents in paragraph-9 of the additional reply statement that the regular pay scale has been given wrongly to the person Jageshwar Yadav placed at serial No. 9 in preference to the petitioner/appellant, the observation made by the learned Single Judge in paragraph-3 of the judgment that the petitioner/appellant had not been able to show that any person whose name found a place beneath the petitioner has been regularized earlier to her, is not correct. The respondents unfortunately omitted to bring the correct factual position to the notice of the learned Single Judge when the said finding was rendered.

12. Coming to the relief to be moulded by this Court, we are aware that 'writ of mandamus' cannot be issued to perpetuate a mistake. The respondents, when they concede that the person Jageshwar Yadav, placed at serial No. 9, has been given the benefit by wrongly placing him above the writ petitioner in the matter of regularization, they have not stated anything in the said additional reply that they have taken necessary steps to correct the mistake and to redress the grievance. Another aspect is whether the benefit already given to the said person because of the mistake committed by the authorities could be recovered at this point of time; which cannot be done in view of the law declared by the Supreme Court in **State of Punjab v. Rafiq Masih (Whitewasher) & others** reported in **(2015) 4 SCC 334**. The prayer sought for by the petitioner in the writ petition was only to grant her seniority with effect

from the date on which the other persons were regularized. In fact, the other persons placed above the writ petitioner were given regularization based on availability of the vacancies. However, the respondents granted regularization to the 9th person, skipping the appellant/petitioner, as per Annexure P/4 order dated 24-11-2010, which admittedly is not correct. The fact remains that only the writ petitioner/appellant has been left out. Nothing is mentioned by the respondents as to the steps with regard to the correction of mistake, in respect of granting the benefit to the person placed at serial no. 9. We are of the view that the appellant/petitioner shall not be left out with regard to the benefit of regularization given as in the case of the person Jageshwar Yadav, placed at serial no. 9.

13. Accordingly, we hold that the seniority of the appellant/petitioner is liable to be re-fixed with reference to the date on which the service of the person by name Jageshwar Yadav, placed at serial no. 9 in Annexure P/1, was regularized and to place the appellant/petitioner over and above him. However, we make it clear that the appellant/petitioner will not be entitled to get any monetary benefits because of this exercise and will be having the rights and liberties only to get seniority to the limited extent as above. The proceeding shall be corrected and necessary order shall be issued within a period of one-month from the date of receipt of copy of this judgment. Writ appeal is disposed of as above.

Sd/-
(P.R. Ramachandra Menon)
 Chief Justice

Sd/-
(Parth Prateem Sahu)
 Judge