

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 178 of 2016**

1. State Of Chhattisgarh Through The Secretary, Government Of Chhattisgarh, Department Of Revenue, Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh
2. The Collector, District Durg, Chhattisgarh.

---- Appellants**Versus**

1. Suraj Prasad Soni S/o. Jhukuram Soni, Aged About 48 Years R/o. Bemetara, P.S. Bemetara, Civil And Revenue District Bemetara, Chhattisgarh, Working As Section Writer, Tahsil Office, Bemetara, District Bemetara Chhattisgarh, Chhattisgarh
2. Motilal Sinha S/o Thanwarri Aged About 50 Years R/o. Patan, District Durg, Chhattisgarh, Working As Section Writer, Tahsil Office Patan, District Durg, Chhattisgarh., District : Durg, Chhattisgarh
3. Tilotma Dewangan D/o. Sukh Nandan Lal Dewangan, Aged About 49 Years R/o. Bemetara, P.S. Bemetara, Civil And Revenue District Bemetara, Chhattisgarh, Working As Section Writter, Tahsil Office Bemetara, District Bemetara, Chhattisgarh., District : Bemetara, Chhattisgarh

---- Respondents

For State	:	Mr. Gagan Tiwari, Dy. G.A.
For Respondents	:	Mr. Parag Kotecha with Mr. Amit Kumar Sahu, Advocates

WA No. 396 of 2016

1. Suraj Prasad Soni S/o Jhukuram Soni, Aged About 50 Years R/o Bemetara, P. S. Bemetara, Civil And Revenue District Bemetara Chhattisgarh, Working As Section Writer, Tahsil Office Bemetara, District Bemetara Chhattisgarh., Chhattisgarh
2. Motilal Sinha, S/o Thanwarri Sinha, Aged About 52 Years R/o Patan, District Durg, Civil And Revenue District Durg Chhattisgarh, Working As Section Writer, Tahsil Office Patan, District Durg Chhattisgarh., District : Durg, Chhattisgarh
3. Tilotma Dewangan, D/o Sukhanandan, Aged About 51 Years R/o Bemetara, P. S. Bemetara, Civil And Revenue District Bemetara Chhattisgarh, Working As Section Writer, Tahsil Office Bemetara, District Bemetara Chhattisgarh.,

District : Bemetara, Chhattisgarh

---- Appellants

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Revenue, Mahanadi Bhavan, Naya Raipur, District Raipur Chhattisgarh
2. The Collector, District Durg Chhattisgarh

---- Respondents

For Appellants	:	Mr. Parag Kotecha with Mr. Amit Kumar Sahu, Advocates
For State	:	Mr. Gagan Tiwari, Dy. G.A.

**D.B.: Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Manindra Mohan Shrivastava, Judge**

Order On Board

13/05/2019

Per P. R. Ramachandra Menon, Chief Justice

The benefit of regularization given by the learned Single Judge with reference to the law declared by the Supreme Court in the case of **Secretary, State of Karnataka and others Vs. Uma Devi (3) and others, 2006 (4) SCC 1** and also such other judgments passed by the Division Bench of the Madhya Pradesh High Court and also by this Court under similar circumstances, is put to challenge at the instance of the State by filing Writ Appeal No.178/2016. The other writ appeal is filed by the respondents in the former appeal, who are the petitioners in the writ petition, contending that the benefit granted to them by the learned Single Judge is quite inadequate and that regularization has to be given with retrospective effect.

2. Heard learned counsel for the appellant/State as well as the learned counsel on behalf of the writ petitioners.

3. The sequence of events reveals that the writ petitioners were appointed as Section Writers on temporary basis decades ago; more particularly in 1989-90. They were continuing as above, but their services were never regularized. They putforth a claim for regularizing the services as lower division clerks. In the course of time, the Apex Court made the legal position clear with regard to the right of regularization as per the judgment in the case of Uma Devi (Supra) to the effect that regularization cannot be claimed as a matter of right and merely for the reason that the employees were permitted to continue for years together, by itself, will not confer any right upon them. It was pointed out and declared that in public employment, vacancies could be filled up only by the duly qualified persons in a transparent process of selection. The back door entries could never be permitted, with reference to the long number of years served by the persons concerned. It was held that the persons who got entry through the back door should be sent out through the same door. At the same time, taking note of the distinction between irregular appointment and illegal appointment, the Apex Court granted some limited relief to the persons who were continuing for quite long and were duly qualified, though their recruitment was not in accordance with the prescribed procedure. In the case of the former, the appointment was involving of procedural violation whereas in the case of latter, it was totally bad and void. In the circumstances, the Apex Court granted relief to the persons who came within the purview of the 'irregular appointment' as a 'one time measure' and held that such persons, who had completed 10 years of service as on the date, could be considered for regularization as a one time measure. Pursuant to the verdict, the matter was considered by several State Governments and necessary arrangements were made to have the issue dealt with accordingly, giving effect to the verdict passed by the Apex Court.

4. Coming to the instant case, it is seen that a Circular was issued by the State on 05/03/2008, whereby benefit was decided to be given to the persons who were working on "daily wages" or "adhoc employees" and were having long tenure and

whose appointment was not at all illegal in any manner. Pursuant to that Circular, the benefit of regularisation was given to several persons, however denying it to the petitioners herein, who approached this Court. It is pointed out that under similar circumstances, benefits of the Circular have already been ordered to be given to similarly situated persons as per the judgment passed by the Madhya Pradesh High Court in W.P.No.102/2010; which sought to be extended to the writ petitioners as well. It was after considering the facts and figure, the precedents on the point and also benefit already granted to other similarly situated persons, that the learned Single Judge passed the verdict under challenge, granting relief of regularization.

5. Learned Government counsel submits during the course of submission that the verdict passed by the learned Single Judge is not correct or proper and the writ petitioners are not entitled to get regularization, they being persons not coming within the purview of the Circular. The said Circular does not deal with the case of the 'temporary employees' like the writ petitioners. It is also pointed out that memo dated 05/03/2008 (Annexure A/4) produced in W.A.No.178/16 is a judgment passed by the learned Single Judge granting similar relief but the same was modified by the Division Bench of the Madhya Pradesh High Court in W.A.No.1202/2010 and this being the position, no relief is liable to be extended to the writ petitioners, more so, since the appointment given to the writ petitioners was 'illegal'.

6. With regard to the main contention raised by the learned Deputy Government Advocate that a distinction was drawn by the Apex Court between 'irregular appointment' and 'illegal appointment' and since the petitioners herein had obtained 'illegal appointment', they are not to be given any benefit of the Circular in question, it is to be noted that, at no point of time, was there any case for the State that the act of the Department/State giving appointment to the petitioners as 'temporary employees' was 'illegal' in any manner. The State has not contended that the persons concerned were not having requisite qualification or that they were given

entry by the State/Department through the back door. The only case is that the engagement was as 'temporary hands' and not as 'daily wages or adhoc employees'.

7. We have gone through the pleadings, which form part of the records. The assertion made by the State is that the Circular dated 05.03.2008 is not applicable insofar as it does not deal with the case of 'temporary employee', but only that of a 'daily rated employees' or 'adhoc employees'. Even by the farthest stretch of imagination, no one can say that 'temporary employee' stands on a lower footing than the 'daily rated employee' or 'adhoc employee', which actually is the other way round. The appointment given to the temporary employees could at best be said only as regular and not illegal, as no such illegality is pointed out. When asked by this Court whether specific pleading was ever raised by the State as to 'illegal appointment', the learned Government counsel could not bring to the notice of this Court that such a pleading was raised or argued before the learned Single Judge at any point of time. An argument now advanced, without any pleadings in this regard and without producing any material in support thereof is not liable to be entertained by this Court.

8. It is true that State had moved the Division Bench of this Court earlier, by way of appeal against Annexure A/4 verdict passed by the Single Judge, which culminated in Annexure A/5 judgment. As per Annexure A/5 judgment, modification made by Division Bench is only to the effect that the crucial distinction between 'irregular' or 'illegal' appointment had to be arrived at, which was clearly a question of fact. A direction was given by the Division Bench to the authorities concerned to consider this vital aspect, whether the appointment in question was 'irregular' or 'illegal' and to pass appropriate orders accordingly, giving consequential directions. What transpired thereafter in the hands of the department is not revealed, but for saying that the State has preferred SLP before the Apex Court against Annexure A/5 judgment. It however forms part of record, that the attempt made by the State was

not fruitful and the SLP was dismissed, both on the ground of delay as well as on merit, as disclosed from Annexure A/6 verdict, passed on 17.08.2012. This being the position, the stand now taken by the State to contend that it was an 'illegal appointment', does not find any substance in appeal.

9. Lastly, learned counsel for the appellant submits that there was an occasion for a learned Single Judge to consider the claim of regularization in W.P. No. 1472/06 where Annexure A/3 verdict was passed on 12.12.2006 dismissing the writ petition stating that it was an 'illegal appointment'. Facts of the said case are not brought on record and hence not applicable to the case in hand. We have made observations as mentioned above with specific reference to the clear facts pleaded and argued. The position to the contrary, if it be so, was never brought to the notice of the learned Single Judge as well.

10. With regard to the appeal filed by respondents/writ petitioners for retrospective regularization, as mentioned already, this Court fully agrees with the view taken by learned Single judge. We are of the view that the eligible extent of benefit which can be availed by the writ petitioner with regard to regularization has already been extended. No interference is warranted with respect to the said aspect as well. However, we make it clear that regularization shall be with effect from the date on which their juniors has been given the benefit of regularization.

11. With the above observations, we hold that both the appeals fail and are dismissed accordingly.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Manindra Mohan Shrivastava)
Judge