

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 19 of 2014**

Saraswati Dubey S/o Late Shiv Kumar Dubey Aged About 39 Years
Working As Driver, Distt. Malaria Office, Bilaspur, P.S. Civil Lines, Distt.
Bilaspur, C.G., Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh And Ors S/o Through Secretary, Health And Family Welfare Department, P.S. Rakhi, Tahsil Aarang, Naya Raipur, Distt. Raipur, Chhattisgarh
2. Director Health Services, Sanchanalaya, P.S. Rakhi, Tahsil Aarang, Naya Raipur, Distt. Raipur, Chhattisgarh
3. Chief Medical And Health Officer Bilaspur, Nutan Chowk, New Sarkanda, P.S. Sarkanda, Distt. Bilaspur, Chhattisgarh
4. District Malaria Officer, District Malaria Office, Bilaspur, Composite Building, P.S. Civil Lines, Bilaspur, Distt. Bilaspur , C.G.

---- Respondents

For Petitioner	:	Mr. CJK Rao, Advocate
For State	:	Ms. Akansha Jain, Dy. GA

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

23/11/2020

1. The present is the second round of litigation. The earlier round of litigation by the petitioner was WPS 4645/2012 which was disposed

of on 17.06.2013 where on the claim of the petitioner seeking regularization in service and for treatment at par with the similarly placed persons in the department namely, Shri Rajesh Tiwari. This Court while disposing of the said writ petition in paragraph 8 has held as under :-

“8. The petitioner's claim for grant of revised pay scale upon completion of three years of contingency service is work charged and Contingency Establishment would necessary depend upon the fact as to whether petitioner was appointed on contingency post according to the rules relating to appointment in Work Charged and Contingency Establishment. The petitioner has failed to demonstrate that his appointment in Work charged and Contingency Establishment was according to the rules relating to work charged contingency establishment. Therefore, on the basis of pleadings and documents, no direction can be issued to respondents to grant revised pay scale to the petitioner. The petitioner has relied upon the order passed in favour of the some other employees to submit that some other employees, who were appointed in contingency services on collector rate basis, were declared member of contingency service and granted regular pay scale. However, it is not known whether those contingency employees, who were granted benefit of regular pay scale, were appointed according to the rules relating to Work charged and Contingency Establishment. Merely because, some other employees have been granted regular pay scale, the said benefit cannot be extended to the petitioner, in the absence of relevant material and details. However, consider that the petitioner is working since 2005, the respondents shall examine the petitioner's claim to find out whether the petitioner is entitled to be declared as Member of

contingency and work charged services and thereupon entitled to regular pay scale as claimed by him. Respondent No.4 shall consider this aspect of the matter and if it is found that petitioner and other employees, whose orders has been annexed as Annexure P-4 & P-5 , are similarly situated, case of the petitioner shall also be considered for grant of pay scale payable under contingency services. Respondent No.3 shall examine the matter and if the petitioner is found suitable for grant of pay scale in contingency establishment, the petitioner shall also be granted the benefit. The exercise shall be completed by the respondent No.4 within a period of three months from the date of receipt of copy of this order.”

2. Subsequently the claim of the petitioner was scrutinized by the respondents and vide the impugned order Annexure P-1 his claim for grant of regular pay scale/revised pay scale has been rejected vide the order Annexure P-1 dated 13.11.2013.
3. The facts of the case is that the petitioner was appointed vide Annexure P-2 for the first time vide order dated 23.11.2005 on the post of Driver on temporary basis for the period of 90 days at the daily rate fixed by the Collector under contingency fund.
4. According to the petitioner since then he has been uninterruptedly discharging his duties as Driver under the District Malaria Officer, District Bilaspur. Counsel for the petitioner referring to the circular of the State Government dated 07.10.1994 in respect of the Drivers which in itself was in furtherance to the earlier circular dated 10.05.1984 prescribing regular pay scale and educational qualification for the Drivers under the Contingency Establishment and Contingency Fund. The Said circular further envisages the fact that

on completion of 3 years of continuous service at the Collector rate the said employee would be entitled for regular/revised pay scale.

5. According to the petitioner he fulfills all the eligibility criteria required for the post of Driver in terms of the Government circulars issued from time to time. It was also the contention of the petitioner that there was yet another circular issued by the GAD dated 15.12.1992 which provides for regularization of service of the permanent worker under the Establishment and Contingency Scheme after satisfactory completion of 3 years of continuous service on Collector rate. This also would establish that the petitioner would be entitled for regularization as well as for grant of regular pay scale.
6. According to the petitioner when the claim of the petitioner was not accepted by the State which he had preferred in WPS 4645/2012 which was disposed of on 17.06.2013. Subsequently, the impugned order has been passed whereby the respondent authorities has held that case of the petitioner is quite distinct from that of Rajesh Tiwari and therefore the petitioner would not be entitled for the benefits as claimed i.e. for regularization as well as for grant of regular pay scale.
7. Learned state counsel opposing the petition submits that from the order passed in respect of the Rajesh Tiwari it clearly reflects that he was appointed on temporary basis at collector rate and in his order of appointment itself it was mentioned that for 3 years the said person would be entitled for the benefits as has been enumerated in the circular of the State Government dated 10.05.1984 and circular dated 07.10.1994. According to the State Counsel, reference of these memos are not available in the order of appointment issued in favour

of the petitioner, therefore it cannot be construed that he was an employee working in the contingency establishment. It was further contention of the State counsel that from the order Annexure R-5 it also reflects that when the Committee was scrutinizing the case of the petitioner they did not find sufficient record to ascertain the continuity of service of the petitioner as also they could not get the documents by which it could be established that petitioner was in fact an employee working in the Work-charged Establishment and Contingency. State counsel also tried to canvass the fact that conduct of the petitioner was also such which does not deserves regularization in service. Further contention of the State counsel was that from the documents available, it appears that there was periodical break in service as would be evident from the periodical order of appointment which were issued. It was also contention of the State counsel that as far as the parity claimed by the petitioner to that of Rajesh Tiwari it is denied, for the reason that Rajesh Tiwari was appointed after due process of selection whereas in the instant case no such recruitment process was adopted before issuing the order of appointment in favour of the petitioner.

8. Having heard the contentions put forth on either side and on perusal of records what stands undisputed is the fact that original order of appointment issued in favour of the petitioner was that of 23.11.2005. Vide the said order the petitioner was for the first time appointed in service. The said order clearly reflected that appointment of the petitioner was at collector rate and wages to be paid under the contingency fund. This reflection of the payment to be made from the

contingency fund in fact is not there in the order of appointment of the Rajesh Tiwari.

9. Moreover, considering the documents along with the writ petition we find that there is a correspondence made vide Annexure P-12 by District Malaria Officer dated 20.08.2013 wherein while submitting the report to the Chief Medical and Health Officer the District Malaria Officer has categorically recommended in favour of the petitioner and has also in his report held that petitioner's claim is identical to that of Rajesh Tiwari and that there services were under Contingency Establishment.
10. Counsel for the petitioner submits that even as on date he has specific instructions to state that petitioner is still discharging his duties in the Health Department posted at Kota District Bilaspur.
11. From all the aforesaid facts and circumstances of the case and particularly keeping in view the recommendation made with the District Malaria Officer vide Annexure P-12 dated 20.08.2013 and also referring to the appointment order Annexure P-2 & R-3 dated 23.11.2005 which clearly reflected that his appointment and salary was to be paid from the contingency fund, establishes the fact that petitioner was appointed under the contingency rules, salary was paid from the contingency fund, the petitioner has been working with the respondents now for about 15 years.
12. As regards, the finding of the Committee disallowing the claim of the petitioner and the grounds of rejection they are not sustainable for the reason that non availability of the records with respondents cannot be a ground for denying an employee any right which otherwise he may

be entitled for. If the office was not in a position to get or collect the records to determine the continuity of service of the petitioner the safest option available to the respondents was to check the payment and salary made from the place wherever he was posted during the intervening period which would have easily helped respondents in reaching to the proper conclusion as to whether the petitioner was working with the respondents or not?

13. Moreover, there is yet another document which would show that respondents themselves had considered the case of the petitioner for regularization as would be evident from Annexure P-7 dated 11.08.2011 wherein 21 similarly placed persons case was considered and out of which 11 persons were regularized vide Annexure P-8 dated 04.10.2012. The document P-7 dated 11.08.2011 would also reflect that so far as 21 persons whose cases were considered for regularization the informations and documents in respect of those candidates which included the name of the petitioner was already submitted with the office and was available with the respondents in fact.

14. As regards, the parity which is being sought for with the case of Rajesh Tiwari Annexure P-5 which is the order of appointment issued in favour of the Rajesh Tiwari on 29.02.2005 which would clearly reflect that first part of the order of appointment in favour of the Rajesh Tiwari was similar to that of petitioner. However, in the case of the petitioner it has been specifically also mentioned that his wages would be paid from the contingency fund which was not reflected in the case of the Rajesh Tiwari's appointment order. So far as memo dated

10.05.2004 is concerned that was not in respect of the any service conditions pertaining to the said Shri Rajesh Tiwari. It was the memo issued by the General Administration Department reiterating the earlier circulars of the State Government so far as granting of regular pay scale to those collector rate contingency paid employees who have continuously worked for 3 years.

15. The very fact that petitioner in spite of being in service with the respondents for continuously and uninterruptedly for the period of 15 years would force this Court to reach to the conclusion that service of the petitioner was satisfactory. There is no adverse order passed by the respondents against the petitioner so far as his conduct is concerned.

16. Given the aforesaid factual matrix of the case and taking note of the decision of this High Court while disposing of the earlier round of writ petition Annexure P-11 whereby this Court had given specific direction to the respondents to compare the case of the petitioner to that of similarly placed persons, particularly that of Rajesh Tiwari, it was expected of the respondents to have scrutinize the case of the petitioner in more detailed manner rather deciding the same superfluously rejecting the same only on the ground of nonavailability of records or any documents to show continuity in service of the petitioner when the same could be easily verified from the department itself where the petitioner was discharging his duties or at least the Committee would have asked the petitioner to have produced these documents before the Committee so as to ascertain factual matrix.

17. At this juncture it would be relevant to refer, that High Court on an earlier round itself has specifically held that the petitioner cannot be granted an order of regularization by the Writ Court keeping in view of the judgment of the Supreme Court in the case of **Secretary, State of Karnataka and others Vs. Uma Devi (3) and others, 2006 (4) SCC 1**. However, still the claim of the petitioner so far as grant of regular pay scale is concerned that would still hold good and was required to be considered by the petitioner in the light of the directions given by the High Court vide its order dated 17.06.2013 which in the opinion of this Court has not been properly done in as much as the factual details as narrated in the preceding paragraphs have not been properly discussed or considered by the Committee or by the authority while passing the impugned order Annexure P-1.
18. Reluctance of this Court in issuance of any writ for a direction to the respondents for regularizing the petitioner would not preclude the department for considering the claim of regularization keeping in view the various circulars of the State Government and thus also the continuous length of service of the petitioner has worked to the satisfaction of the authorities concerned and for which the respondents would be free to take appropriate decision on the administrative side.
19. However, as regards the revised pay scale/ regular pay scale which petitioner is entitled for, this Court finds no good reason why the same should not be granted to the petitioner as this Court finds that case of the petitioner is similar in nature as that of Rajesh Tiwari who was working in the Health Department as Cleaner and nature of

appointment of the two persons were also similar. Moreover, the department themselves had vide Annexure P-7 ordered for considering the case of the petitioner for regularization and coupled with the fact that there is recommendation made by the District Malaria officer vide Annexure P-12 dated 20.08.2013. The impugned order to that extent is not sustainable and same deserves to be set aside and accordingly ordered to be set aside and matter stands remitted back to the authorities concerned for passing a fresh order in the case of the petitioner so far as grant of regular pay scale/ revised pay scale is concerned.

20. With the aforesaid observations, the writ petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

Rohit