

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No.5778 of 2008**

- N.C. Das, aged 49 years, S/o Shri B. N. Das, Assistant Grade-III, Water Resources Department, Sub Division Bijapur, District Bijapur (C.G.)

----- Petitioner**Versus**

1. State Of Chhattisgarh through Secretary, Water Resources Department, Mantralaya, D.K.S. Bhawan, Raipur
2. The Engineer-in-Chief, Water Resources Department, Mahanadi Project, Raipur (C.G.)
3. The Chief Engineer, Water Resources Department, Bijapur (C.G.)

----- Respondents

For Petitioner	Mr. Ashish Surana, Advocate
For Respondent-State	Mr. Sunil Otwani, Addl. AG and Mr. R. K. Bhagat, Dy. GA

Hon'ble Justice Shri Sanjay K. Agrawal**Order On Board****14/06/2021**

1. The petitioner has called in question the legality, validity and the propriety of the order impugned dated 19.09.2008 (Annexure-P/6) passed by the respondent No.2 cancelling his

regularization order dated 13.08.2008 (Annexure-P/1, by which the petitioner was regularized on the post of Assistant Grade-III by the respondent No.2.

2. Mr. Surana, learned counsel for the petitioner, would submit that though the petitioner was daily wager employee, he was working on the post of Tracer, but his services were not regularized on the said post. On 13.08.2008, the petitioner was appointed on the post of Assistant Grade-III by the respondent No.2 after following the due process of law, but that order has been directed to be withdrawn by the impugned order dated 19.09.2008 (Annexure-P/6) passed by the respondent No.2 itself without affording proper opportunity of hearing to the petitioner, which is in violation of principles of natural justice and in teeth of the decision rendered by the Supreme Court in the matter of **Rajnish Kumar Mishra and others vs State of Uttar Pradesh and others**¹.

3. Learned State counsel would support the

¹ (2019) 17 SCC 648

impugned order and submit that the petitioner was regularized on the post of AG-III but his regularization was not in accordance with law, therefore, that order has been withdrawn by the impugned order dated 19.09.2008 (Annexure-P/6).

4. I have heard learned counsel for the parties, considered their submissions made herein-above and also went through the records with utmost circumspection.
5. It is not in dispute that the petitioner was working on the post of Tracer but he was appointed on the post of Assistant Grade-III on 13.08.2008 vide Annexure-P/1 passed by the respondent No.2, to which he joined his duties on 25.08.2008 (Annexure-P/2) and since then he was discharging his duties on the post of AG-III and admittedly that order has been withdrawn by respondent No.2 without affording any opportunity of hearing to the petitioner, which is in violation of principles of natural justice.
6. The Supreme Court in the matter of **Rajnish**

Kumar (supra) has held as under in para 17:-

"17. As such, apart from the circular issued by the Registrar General of the High Court dated 05.11.2009, the appellants' cases were also required to be taken into consideration in view of the exception carved out in the case of State of Karnataka vs Umadevi². We find that the Committee under the chairmanship of the Additional District Judge had rightly submitted its report dated 12.07.2012 and the then District Judge had rightly passed the order of regularization on 09.11.2012 granting regularization from 01.06.2012. We find that while considering the representation of some of the employees for promotion, the successor in the office of the District Judge could not have annulled the order of the regularization of the appellants which was done after following the proper procedure. The least that was required to be done was to follow the principles of natural justice by giving an opportunity of being heard to the appellants. We find that the three orders passed by the District Judge dated 16.08.2014 also suffer from violation of the principles of natural justice.

7. Reverting to the facts of the case, it is quite apparent that the petitioner's services were regularized on the post of Assistant Grade-III by order dated 13.08.2008 (Annexure-P/1) by respondent No.2, to which the petitioner already joined on the said post and

² (2006) 4 SCC 1

was working, but that order could not have been withdrawn by the impugned order dated 19.09.2008 (Annexure-P/6) passed by the respondent No.2 itself without affording a minimum opportunity of hearing to the petitioner therefore the impugned order is in violation of principles of natural justice and in the teeth of the decision rendered by the Supreme Court in the matter of **Rajnish Kumar** (supra). Accordingly, the impugned order dated 19.09.2008 (Annexure-P/6) is set aside. However, the respondents are at liberty to proceed in accordance with law.

8. The petition is allowed to the extent indicated herein-above. No order as to costs.

Sd/-
Sanjay K. Agrawal
Judge

Nirala