IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

ON THE 2nd OF FEBRUARY, 2024

WRIT PETITION No. 26406 of 2021

BETWEEN:-

TEHSILDAR SINGH GURJAR S/O SHRI HAKIM SINGH GURJAR, AGED ABOUT 59 YEARS, OCCUPATION: SERVICE ON DAILY WAGES AS AMIN, WATER RESOURCES SUB DIVISION GORMI, BHIND (MADHYA PRADESH)

.....PETITIONER

(BY SHRI ALOK KUMAR SHARMA - ADVOCATE AND SHRI RAMESH SHARAN SHARMA - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH PRINCIPAL SECRETARY, WATER RESOURCES DEPARTMENT, VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**

2. **ENGINEER IN CHIEF WATER RESOURCE DEPARTMENT JAL SANSADHAN BHAWAN, TULSI NAGAR (MADHYA PRADESH)**

3. **CHIEF ENGINEER YAMUNA BASIN, WATER RESOURCES, DEPARTMENT, CHAMBAL COLONY, THATIPUR, MORAR (MADHYA PRADESH)**

4. **SUPERINTENDENT ENGINEER WATER RESOURCE DEPARTMENT CIRCLE GWALIOR, DISTT. GWALIOR (MADHYA PRADESH)**

5. **EXECUTIVE ENGIENEER, WATER RESOURCE DEPARTMENT, BHIND (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI K.S. TOMAR - GOVT. ADVOCATE)

This petition coming on for admission this day, the court passed the following:

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ORDER

At the outset Shri Alok Sharma while placing reliance on the order passed in W.A. No. 159 of 2022 dated 13.6.2022 passed by Division Bench of this Court contended that the case of the petitioner is squarely covered by the aforesaid order and therefore rejection of the representation of the petitioner vide Annexure P/1 dated 9.12.2020 is per se illegal. It has further been contended that the Division Bench of this Court has already put the controversy to rest and has observed that if the State has increased the age limit in all fairness, all existing private respondents performing duties having passed in the departmental examination could not have been denied regularization as Ameen only for the reason that they did not have the degree of graduation. It is submitted that in the present case this is not the issue but since the petitioner was working as daily wager as Ameen and the respondent department denied his case for regularization on the ground that initial appointment was irregular in the light of the judgment passed by Hon'ble Supreme Court in the case of **Secretary, State of Karnataka Vs.Umadevi** reported in **(2006)4 SCC 1** is per se, illegal.

Per contra Shri Tomar appeared for the State submitted that no illegality has been committed by the respondent in rejecting the representation of the petitioner as the very appointment of the petitioner as a daily wager was not in consonance with the rules or procedure nor any procedure was followed and in the light of the order passed by the Hon'ble Apex court in the matter of **Uma Devi (supra)** the petitioner cannot be regularized.

After hearing the rival contentions this Court finds that the services of the petitioner is governed by the MP Water Resources Department (non gazetted)

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Service Recruitment Rules, 1965 and as per the aforesaid rules the petitioner was held to be qualified to work as daily wager and he was working as a Ameen for the last 40 years and this fact has not be denied by the respondents. Thus, this Court in the light of the order passed by this Court in W.A. 159 2022, relegates the matter to the competent authority to decide the case of the petitioner for regularization in the light of the aforesaid order and in case the petitioner is found to be eligible he may be regularized from the date of his entitlement.

In that regard petitioner is directed to file fresh representation before the competent authority within a period of 15 days from today, thereafter the competent authority shall decide the representation within a further period of four weeks.

(MILIND RAMESH PHADKE)
JUDGE

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