
(2011) 01 CHH CK 0060

In the Chhattisgarh High Court

Case No : Writ Petition (S) No. 6798 of 2010 with Writ Petition (S) No's. 6112, 6398 and 6521 of 2010

Dhaniram and Others

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 20-01-2011

Acts Referred:

Citation : (2011) 1 CG.L.R.W. 459

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Shashank Thakur, Mr. Sunil Sahu and Mr. A.V. Sridhar appears on behalf of Mr. G.S. Ahluwalia, for the Appellant; Y.S. Thakur, Dy. Advocate General for the State and Shri Sanjay K. Agrawal, Shri B.D. Guru and Shri Sudeep Agrawal, for the Respondent

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—W.P. (S) Nos. 6798, 6112, 6398 & 6521 of 2010, involve the same question of law and common facts and, as such, they are being disposed of by this common order. Being aggrieved by the action of the respondent Municipal Corporations (for short "the Corporations") to remove the daily wagers pursuant to the memo dated 23-9-2010 (Annexure-P/1 in W.P. (S) No. 6798 of 2010), the petitioners have preferred these writ petitions seeking a direction to the respondent authorities to continue their services as daily wagers and to take steps to regularize their services.

2. Shri Shashank Thakur, Shri Sunil Sahu & Shri A.V. Sridhar, learned counsel appearing for the petitioners, submit that pursuant to the memo dated 23-9-2010, the petitioners have been asked to discontinue their services in spite of the fact that they have been appointed on daily wages basis and have been serving for the last several years. The action of the respondents, without taking recourse to appointment of a committee for scrutinizing the cases of daily wagers for regularization as directed by the Supreme Court in Secretary, State of

Karnataka and Others Vs. Umadevi and Others, and further directions of the Supreme Court in State of Karnataka and Others Vs. M.L. Kesari and Others, are bad and irregular. Accordingly, the said action of the respondent authorities removing the petitioners deserve to be quashed.

3. On the other hand, Shri Sanjay K. Agrawal, Shri B.D. Guru & Shri Sudeep Agrawal, learned counsel appearing for the Corporations, submit that pursuant to the memo dated 23-9-2010 wherein it has been directed that if the posts are vacant for a long indefinite period, no appointment on daily wages and on Collector's rate be made in future. Thus, all the daily wagers are being removed. Even otherwise, the petitioners have no right to the post or continuation, regularization in the light of judgments of the Supreme Court in Umadevi (3) (supra) and M.L. Kesari (supra).

4. Shri Thakur, learned Dy. Advocate General appearing for the State, submits that the State by memo dated 5-3-2008 (Annexure-P/2 in W.P. (S) No. 6798 of 2010) directed all the Departments, Collectors to take steps for regularization of daily wagers, who have been working for the last 10 years, in view of the direction of the Supreme Court in Umadevi (3) (supra). Certain guidelines were also issued in the memo dated 5-3-2008. The memo dated 23-9-2010 does not provide for removal of all the daily wagers without any rhyme & reason. It was further provided in the said memo that if illegal appointments have been made by the Corporations the recovery may be made from the Commissioners/Chief Municipal Officers, as the case may be.

5. Having heard learned counsel appearing for the parties, perused the pleadings and the documents appended thereto, it is clear that neither the memo dated 5-3-2008 directs removal of all the daily wagers without scrutinizing their cases for regularization as per the direction of the Supreme Court in Umadevi (3) (supra) nor the subsequent memo dated 23-9-2010. Memo dated 23-9-2010, as aforesaid directs recovery of the payment made to the employees who have been appointed illegally by the Commissioners/Chief Municipal Officers. Thus, the action of the Corporations for removal of the daily wagers without following the directions of the State Government, as contained in the memo dated 5-3-2008 and subsequently in the memo dated 23-9-2010 is not sustainable unless and until there is some order passed against the daily wagers. By oral instructions, they cannot be discontinued when they were appointed by written order. If there is a case of illegal appointment de hors the constitutional provisions of the scheme, the authority have to follow the directions issued by the Supreme Court in the above stated cases.

6. In Umadevi (3) (supra) the Supreme Court observed as under :

53...In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duty sanctioned post but not under cover of orders of the courts or of tribunals

and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub Judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.

7. Subsequently, in M.L. Kesari (supra) the Supreme Court reiterated and clarified the object behind the direction passed by the Supreme Court in Umadevi (3) (supra) as under:

8. The object behind the said direction in para 53 of Secretary, State of Karnataka and Others Vs. Umadevi and Others, Para 44) is two-fold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in Secretary, State of Karnataka and Others Vs. Umadevi and Others, 1 was rendered, are considered for regularization in view of their long service. Second is to ensure that the departments/ Instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad hoc/casual for long periods and then periodically regularize them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10-4-2006 (the date of decision in Umadevi) without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularization...

8. In compliance of the aforesaid directions, the State Government has rightly framed the scheme by memo dated 5-3-2008 and directed all the Departments to securitize the cases of daily wagers and pass orders accordingly.

9. For the foregoing reasons and applying the well settled ratio laid down by the Supreme Court in the above stated cases, the action of the respondent Corporations pursuant to the memo dated 23-9-2010 for removal of the daily wagers without proper scrutiny as per the memo dated 5-3-2008 is bad and the same is not at all sustainable in the eyes of law. Thus, the same is quashed.

10. In the result, the writ petitions are allowed to the above extent. However, liberty is reserved to the authorities to take steps, if so advised, in accordance with law as aforestated. No order as to costs.