

(2012) 01 CHH CK 0024
In the Chhattisgarh High Court
Case No : Writ Petition S. No. 94 of 2012

Ganesh Kumar Yadav and others	Vs	APPELLANT
State of Chhattisgarh and others		RESPONDENT

Date of Decision : 09-01-2012

Acts Referred:

Citation : (2012) 01 CHH CK 0024

Hon'ble Judges : Prashant Kumar Mishra, J

Bench : Division Bench

Advocate : V. K. Pandey, for the Appellant; Ajay Dwivedi Dy G A for the State, for the Respondent

Final Decision : Dismissed

Judgement

Hon''ble Shri Prashant Kumar Mishra J

1. Heard. Petitioners have preferred this writ petition claiming the following relief :

1. The Hon''ble Court may kindly be pleased to issue notices to the respondents returnable within early date of hearing.

2. That, the Hon''ble Court be pleased to direct the respondents to give benefit of regularizations with all consequential service benefits to petitioners w.e.f. 09.01.1990 as it has been done in case of other daily wagers by issuing appropriate writ or direction.

3. That, the Hon''ble Court be pleased to mould the relief as and when deemed fit in the interest of justice.

4. That, the Hon''ble Court be pleased to issue any other writ or writs order or orders direction or directions deemed fit in the interest of justice.

5. Cost of the petition.

2. It is the case of the petitioners that on an earlier occasion they had preferred W.P. No.1781/2003 through Chhattisgarh Dainik Vetan Bhogi Van Karmchari Sangh and in the other connected writ petition individuals had preferred writ petitions all of which were disposed of by this court vide order dated 19/04/2006 directing the respondents in the following manner :

We have heard learned Counsel for the parties and perused the material papers placed before us, particularly Government Circular dated 09/01/1990. It is quite clear from that document that the daily wagers appointed by the various Departments of the Government prior to 31/12/1988 are required to be regularized in those departments against the vacancies available. It is further directed in the Circular that if no vacancies are available, supernumerary posts should be created in order to regularize the services of the eligible daily-wagers. It is complained that in pursuance of the above circular, similarly circumstanced daily-wagers" services were regularized in other departments. We do not find any justification for the State to treat the petitioner-daily wagers differently from the similarly circumstanced other daily wagers appointed prior to 31/12/1988 in other departments of the State. In that view of the matter, we dispose of these writ petitions directing the respondents to consider the claims of the members of the petitioner-Association or the petitioners for regularization of their services, in the first instance, by verifying the records whether they were appointed prior to 31/12/1988 in the department, and if it is found that they were appointed prior to 31/12/1988, then, the respondents shall regularize their services of such daily-wagers in terms of the Circular dated 09/01/1990. It is further directed that if required number of posts are not available presently to regularize services of all the petitioners, in terms of the Circular dated 09/01/1990, the respondents shall create required number of supernumerary posts and regularize their services. The above direction shall be complied with within a period of three months from the date of receipt of a copy of this order. No costs.

3. In pursuance to the above order the petitioners were regularized on different dates in the year 2007-2008, however they are entitled for regularization and all consequential benefits with effect from 9/01/1990 when the circular directing regularization was issued by the erstwhile State of M.P.

4. The relief claimed in the writ petition cannot be granted and this writ petition cannot be entertained for two specific reasons. Firstly, order of regularization takes effect from the date when it is passed and a daily wager cannot claim regularization from a retrospective date. This is because on the date when the petitioners claimed to be regularized posts may not be available and secondly, in the earlier writ petitions preferred by the association and individuals no such relief was either claimed nor this court directed for regularizing the services from a particular date.

5. In the matter of Vijay K. Dhand and others Vs. State of Punjab and others, (2004) 13 SCC 707 the Hon"ble Supreme Court has held that claim for regularization from the date of initial appointment cannot be ordered being

contrary to government instructions. In the present case the government has not fixed any cut-off date, therefore the petitioners are not entitled to be regularized from the date of their initial appointment in the absence of any specific direction by the State Government fixing a particular date of regularization.

6. In the matter of Punjab State Electricity Board and others Vs. Swaran Singh, (2005) 13 SCC 246 the Hon''ble Supreme Court has held that the workman appointed on ad hoc basis in 1976 being regularized in 1982 is not entitled to be regularized w.e.f. earlier date.

7. In the matter of Union of India and others Vs. Sheela Rani, (2007) 15 SCC 230 the Hon''ble Supreme Court has again held that regularization should be prospective and not retrospective as chances of their upsetting the seniorities of regular appointees cannot be overlooked. In the case before the Supreme Court the concerned employee was engaged as casual worker on 17/11/1982 and was regularized w.e.f. 26/09/2001 her claim for regularization from the date of initial appointment was rejected by the Hon''ble Supreme Court.

8. Regularization from a particular date has several aspects on which the order is passed since it depends on availability of post in a particular office, inter se seniority of persons working on casual basis/daily wagers and seniority of regular appointees, this court in the light of above judgments of Supreme Court feels that to pass an order of regularization from a particular date is basically a policy decision and this court need not interfere in such matters unless a right has accrued in favour of the employees to be regularized from a particular date which is taken to be cut-off date by the government. Even otherwise, the petitioners had earlier filed a writ petition claiming regularization and in that writ petition no order was passed for consideration of their cases for regularization w.e.f. a particular date. In view of the above, the instant writ petition has no substance, it deserves to be, and is accordingly dismissed.