
(2009) 12 CHH CK 0020
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 1502 of 2005

Latel Singh Sarsudhe and Others	Vs	APPELLANT
State of M.P. and Others		RESPONDENT

Date of Decision : 15-12-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2010) 3 MPJR 119

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.—h the consent of learned counsel appearing for the parties, the petition is heard finally.

2. By this petition, the petitioners seek a direction to the respondent-authorities to regularize the services of the petitioners as Office Peons.

3. Learned counsel appearing for the petitioners submits that the petitioners were working in the respondent department on temporary, basis since 1989, 1990, 1990, 1991, 1992, 1993, and 1994, respectively, but till date their services have not been regularized in spite of the fact that the petitioners have already spent their major portion of youth in the services of the respondents. The petitioners belong to Scheduled Caste and Scheduled Tribe categories. The respondent authorities have also issued instructions for regularization of the employees working on temporary basis, even then also, the cases of the petitioners have not been considered. Thus, this petition.

4. Per contra, learned counsel appearing for the State submits that the petitioners were not appointed in accordance with the constitutional scheme of employment.

5. I have heard learned counsel appearing for the parties, perused the pleadings

and documents appended thereto.

6. It is evident that the petitioners were not appointed in accordance with the constitutional scheme of employment, without any advertisement or examination or interview, the appointments were made. The appointment of the petitioners was purely on temporary basis. The petitioners have neither pleaded anything with regard to their selection process nor have filed any document in this regard.

7. Be that as it may, a temporary employee/daily wager cannot claim regularization, continuance or reinstatement in service on the basis of appointment, which was temporary and not in accordance with law and de hors the constitutional scheme of employment. (See Secretary, State of Karnataka and Others Vs. Umadevi and Others, , Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd., , Official Liquidator Vs. Dayanand and Others, and State of Punjab and Another Vs. Surjit Singh and Others, .

8. The contention of the petitioners that the State Government directed all the department to regularize the services of the employees working on temporary basis is concerned, the same is noticed to be rejected, as in Umadevi (supra), the Supreme Court observed as under:

Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order up holding a violation of article 14 or in ordering the overlooking of the need to comply with the requirement of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee.

9. The above ratio laid down by the Supreme Court has been reiterated by this Court in Ashwani Kumar Verma & Others v. State of Chhattigarh & Another, WP (S) No. 1743 of 2009 decided on 28.4.2009 and Somendra Pratap Singh v. The State of M.P. & others, WP (S) No. 1347 of 2005, decided on 26.2.2008 against the order passed in Somendra pratap Singh (supra), the petitioner therein preferred a writ appeal being W.A. (PR) No. 2077/2008, which was dismissed by the Division Bench of this Court by order dated 29.04.2008 affirming the order passed by the Single Bench. Thereagainst, the matter was taken upto the Supreme Court by filing SLP being SLP (c) No. 27190/2008 (Somendra Pratap Singh v. State of Chhattisgarh & Others), which was also dismissed by the Supreme Court affirming the view taken by this Court, vide its order dated 23.03.2009.

10. This Court in Sanjay Patil v. State of Chhattisgarh & Another, WP (S) No. 5845 of 2009 decided on 9.10.2009 while dealing with similar issue observed that "if the State Government has regularized some of the daily wagers, not

appointed in accordance with the constitutional scheme of employment, this Court cannot issue a positive direction to legalise the illegal appointment on the ground that certain illegal appointments have been legalized/regularized by the employer."

11. In this context, the Supreme Court, in *Ashok Kumar Sonkar Vs. Union of India (UOI) and Others*, observed as under:

34. It is not a case where appointment was irregular. If an appointment is irregular, the same can be regularized. The Court may not take serious note of an irregularity within the meaning of the provisions of the Act. But if an appointment is illegal, it is non est in the eye of law, which renders the appointment to be a nullity.

12. Further, in *State of Punjab and Another Vs. Surjit Singh and Others*, the Supreme Court reaffirmed the above ratio in the following terms:

39. We would, however, before parting make an observation that the submission of the learned counsel that only because some juniors have got the benefit, the same by itself cannot be a ground for extending the same benefit to the respondents herein. It is now well known that the equality clause contained in Article 14 should be invoked only where the parties are similarly situated and where orders passed in their favour are legal and not illegal. It has a positive concept.

13. In view of foregoing, for the reasons stated hereinabove and applying the well settled principles of law to the facts of the present case wherein the petitioners were appointed purely on temporary basis, thus, they are not entitled to any relief.

14. In the result, the writ petition is dismissed. No order as to costs.