

**(2011) 03 CHH CK 0045**  
**In the Chhattisgarh High Court**  
**Case No : Writ Petition No. 2369 of 2009**

Rajeev Rathore

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

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**Date of Decision :** 08-03-2011

**Acts Referred:**

**Citation :** (2012) 2 SLJ 435

**Hon'ble Judges :** Satish K. Agnihotri, J

**Bench :** Division Bench

**Advocate :** Rakesh Anthony, for the Appellant; N.N. Roy, Panel Lawyer, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Satish K. Agnihotri, J.—By this petition, the petitioner seeks a direction to the respondents to grant regular pay scale from the date of his initial appointment i.e. w.e.f. 4.4.1985. The facts, in brief, as projected by the petitioner, for proper adjudication of the case, are that initially the petitioner was appointed as Salesman in Government Country Liquor Shop, as daily wager employee vide order dated 4.4.1985 (Annexure P/1) passed by the Collector (Excise), Khargoun. However, in view of change of policy, the services of the petitioner as well as other employees were terminated w.e.f. 21.6.1990.

2. Being aggrieved by the said action, the terminated employees preferred an original application before the State Administrative Tribunal (for short "the Tribunal") being O.A. No. 1006/1990 (M.P. Class III Government Employees Association and Others v. State of M.P. and Others). The said original application was disposed of by the Tribunal in favour of the employees.

3. According to the petitioner, thereagainst, the Government preferred an appeal before the Supreme Court. The Supreme Court while dismissing the appeal of the Government directed to frame scheme within six months. In spite of the order passed by the Supreme Court, the services of the petitioner has not been

absorbed.

4. The Collector (Excise), Rajnandgaon, by order dated 26.3.1993 (Annexure P/3) appointed the petitioner on the post of Salesman for a period of 89 days on temporary basis. When the services of the petitioner was not absorbed, he preferred a writ petition before this Court i.e. W.P.No. 397/2003. The said writ petition was disposed of by this Court by order dated 2.4.2003 (Annexure P/4) with a direction to the respondent authorities to consider and decide the representation of the petitioner.

5. In compliance of the order of the Supreme Court, as well as this Court, the services of the petitioner was absorbed by order dated 26.7.2004 (Annexure P/5) in the Excise Department on the post of Excise Constable. Since then the petitioner has been working in the respondent department. However, no annual increments have been granted to the petitioner from the date of initial appointment of the petitioner till the date of absorption. Being aggrieved by the said inaction on the part of the respondent authorities, the petitioner submitted representations before the respondent authorities, but no action has been taken till date. Thus, this petition.

6. Mr. Anthony, learned Counsel appearing for the petitioner, would submit that the impugned action of the respondents is illegal, arbitrary and against the well settled principles of law. The petitioner worked on the post of salesman continuously; therefore, the petitioner is entitled to get the benefit of annual increments. In spite of the order passed by the Supreme Court, the respondents have not absorbed the services of the petitioner immediately. The impugned action of the respondents is bad in law. Thus, the respondent authorities may be directed to grant necessary financial benefits to the petitioner, as aforestated.

7. On the other hand, Mr. Roy, learned Panel Lawyer appearing for the State, would submit that during the service of the petitioner as daily wage employee, there had been several complaints against the petitioner with regard to sale of country liquor on higher price and purchase of empty bottles in lower price. On the basis of said complaint, an enquiry was contemplated against the petitioner. Looking to the situation, the petitioner tendered resignation on 31.5.1995 (Annexure R/1), which was duly accepted by the Collector, Rajnandgaon on 15.6.1995 (Annexure R/2), but the said fact has not been disclosed by the petitioner, before this Court. However, looking to the application of the petitioner for withdrawal of resignation and considering the several representations made by the petitioner, the Collector, Rajnandgaon appointed the petitioner again on daily wages basis w.e.f. 5.1.1996 for a period of 89 days. Thereafter, on the basis of direction issued by the Supreme Court, this Court as well as by the Tribunal, the services of the petitioner was absorbed as Excise Constable on 30.7.2004.

8. Mr. Roy would further submit that the present petition suffers from delay and laches, as the cause of action arose in the year 2004 whereas, the petitioner has preferred this petition on 05.05.2009. Therefore, the petitioner is not entitled to

any relief and the petition deserves to be dismissed on the ground of delay and laches and also on concealment of relevant facts.

9. I have heard learned Counsel appearing for the parties, perused the pleadings and the documents appended thereto.

10. Against termination of the service of the petitioner, an application was filed by the association, before the Tribunal being O.A. No. 1006/1990, wherein the Tribunal, in its order dated 01.08.1990 (Annexure P/2) held as under:

11. State Government shall within four months or even earlier if possible, frame some scheme absorbing the applicants and other retrenched or removed employees (Salesmen and Chowkidars) in its various departments taking into consideration their suitability for various posts falling vacant. The age bar shall be relaxed for such ex-employees. It will not be necessary for such retrenched employees to get their names sponsored by the Employment Exchange.

11. Thereagainst, according to learned Counsel for the petitioner, an appeal was preferred by the respondents to the Supreme Court wherein, the Supreme Court dismissed the appeal with a direction to frame a scheme within six months. However, no order of the Supreme Court has been produced for perusal of this Court. Thereafter, the petitioner was again appointed on the post of salesman for a period of 89 days on temporary basis on 26.3.1993 (Annexure P/3). The petitioner filed a writ petition, being W.P. No. 397/2003, in this Court seeking compliance of the order passed by the Tribunal and the decision of the Supreme Court. This Court, while disposing of the matter, by order dated 2.4.2003 (Annexure P/4), granted liberty to the petitioner to make a fresh representation with a direction to the respondents to consider the representation within a period of four months. The respondents, by order dated 26.7.2004 (Annexure P/5) appointed the petitioner on the post of Excise Constable, on absorption, on temporary basis. In the instant petition, the petitioner claims seniority and regular pay scale after granting annual increments w.e.f. 4.4.1985, i.e. the date, he was appointed on daily wages for a period of 89 days.

12. The petitioner remained out of service on his termination w.e.f. 21.6.1990, till he was re-appointed on 26.3.1993 again for 89 days on daily wages basis. The petitioner resigned from the service on 31.5.1995 (Annexure R/1) which was duly accepted on 15.6.1995 (Annexure R/2). The said fact was not disclosed by the petitioner in this petition. Thereafter, on the basis of several representations made by the petitioner, the Collector, again appointed the petitioner on 5.1.1996 for a period of 89 days. This fact was also not disclosed by the petitioner. The petitioner was thereafter sanctioned proper pay scale by order dated 17.6.2010 (Annexure R-J/2) treating the period of absence from 13.2.1991 to 31.3.1993 as extraordinary leave for "no work-no pay". Thereafter, the pay scale was fixed w.e.f. 1.1.1996 and revised pay scale w.e.f. 1.1.2006.

13. Contention of the petitioner that the petitioner is entitled to get regular annual increments from the date of initial appointment and fixation of his salary

accordingly, is noticed to be rejected as it is evident from the order dated 17.6.2010 (Annexure R-J/2) that the petitioner was initially appointed as daily wager for a period of 89 days and further, there was also a break in his service not for one or two days, but from 21.6.1990 till 31.03.1993. Even otherwise, the appointment of the petitioner was not in accordance with the constitutional scheme of employment as appointment of the petitioner as daily wager was without inviting applications from other eligible candidates. Thus, that period cannot be held as an appointment in accordance with law and if the appointment was not in accordance with law, the petitioner is not entitled to continuity in service for the purpose of fixation of his pay scale. The petitioner, in fact was born in service on the date he was absorbed in service on regular post.

14. Reliance of the petitioner on a circular dated 19.7.1973 (Annexure P/9) is misplaced as the circular provides for absorption into service on declaring an employee as surplus in other department. There should be continuity of service. In the case on hand, the petitioner was neither a surplus employee as the petitioner was employed on daily wages basis, and secondly, there was no continuity in his employment also. The petitioner remained absent from duties firstly on his termination w.e.f. 21.6.1990, till his reappointment on 26.3.1993 again for 89 days on daily wages basis. The petitioner again remained absent from duties on submission of his resignation, which was accepted immediately on 15.6.1995 and thereafter, he was again appointed on daily wages basis on 5.1.1996 subsequently, on sympathetic consideration. Thus, the petitioner cannot get any advantage of the above stated circular.

15. The Supreme Court, in *Shri Anil Kumar Chowdhury Vs. State of Assam and Others*, held as under:

12. Moreover, there is a break in the officiating service of the petitioner between March 3, 1996 and March 9, 1966. Continuity once disrupted, the claim breaks down. Service for long years comes to nought merely because of a week's discontinuity. In law a short gap may prove a costly failure. The plea that this little interval was bridged by the joining time taken by the official may be good as an explanation for not taking charge immediately, but cannot cover up the legal ingredient of continuity in service.

16. In *Banaras Hindu University, Varanasi and another Vs. Dr. Indra Pratap Singh*, , the Supreme Court held as under:

9. In case of shift from one University to other-or from one institution to the other--it can reasonably be presumed that there is bound to be some interval. The interval may be of a day, week or a month. What is relevant is not the length of the interval or break, as it may be called, but its nature. We do not mean to say that length of such interval is totally irrelevant; what we mean, however, is that one must take into consideration the reason for which break--or the circumstances in which such break--has occurred. Another factor to be taken into consideration in understanding and construing the said expression is the object

underlying the said requirement.

17. In the case on hand, admittedly the break in service was on account of the nature of the appointment of the petitioner as the same was on daily wages basis and secondly, the petitioner tendered resignation and thereafter, again he was permitted to join the service on sympathetic consideration. Thus, the case of the petitioner does not come within the expression of "continuous service".

18. In view of the foregoing and for the reasons mentioned hereinabove, the petition is without merit and is accordingly dismissed. There shall be no order as to costs.