
(2018) 04 MP CK 0076
In the Madhya Pradesh High Court
Case No : W.P. No. 2782 OF 2009

Ram Bahadur Yadav

APPELLANT

Vs

State Of Madhya pradesh & Another

RESPONDENT

Date of Decision : 12-04-2018

Acts Referred:

Citation : (2018) 04 MP CK 0076

Hon'ble Judges : VIVEK RUSIA, J

Bench : Single Bench

Advocate : Manoj Manav, Amit Singh Sisodia

Final Decision : Disposed Of

Judgement

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The petitioner has filed the present petition being aggrieved by the action of the respondents, whereby he has been discontinued from services without",

any valid reason and justification.,

2. According to the petitioner, he was appointed in the year 1993 on the post of Attendant on temporary basis for a period of 89 days. By order dated",

22.12.1993, the Principal, Govt. Arts & Commerce College, Indore, appointed him as a Peon in Library on a fixed honorarium of Rs.450/- per month.",

The payment was directed to be made from local funds. The said period of appointment was extended from time to time and the honorarium was also,

increased accordingly. The petitioner was deputed from time to time in various work against the regular post. After completing 12 years' service, he",

submitted a representation seeking regularisation. Thereafter, he approached this Court by way of W.P.No.1719/2009 and this Court vide order dated",

23.3.2009 disposed of the writ petition with direction to submit a detailed and

comprehensive representation before the competent authority along with, all the relevant documents and the competent authority was also directed to decide the representation by passing a detailed and speaking order within, a period of six months. In compliance of the aforesaid order, he submitted the representation to the Principal of the College, but which has resulted", into his termination by way of oral order. According to the petitioner, he has been stopped allocating the work and was prevented to record his", attendance. Being aggrieved by the aforesaid action of the respondents, the petitioner again approached this Court by way of present writ petition."

3. After notice, the respondents have filed the return by submitting that the petitioner had never been appointed against the vacant post of Library",

Attendant. In fact, he was called on the basis of requirement and appointed only for specific period as and when required. He has never worked",

continuously for the last 15 years as daily rated worker. The petitioner was allotted the work in the Library like cleaning of rooms and to assist the,

staff of the College and he was paid as a daily rated employee. The appointment of the petitioner was not made under the provisions of M.P. Class IV,

Recruitment Rules, 1997, therefore, he cannot claim reinstatement and regularisation against the post of Library Attendant. The case of the petitioner",

cannot be considered in the light of the judgment of apex Court in the case of Secretary, State of Karnataka V/s. Umadevi : AIR 2006 SCW 1991. By",

order dated 13.8.2009, the representation of the petitioner has been rejected with a liberty to submit an application after the advertisement is issued to",

fill up the vacancies.,

4. The petitioner filed rejoinder to the return filed by the respondents along with copy of the bank statement of account to demonstrate that the,

respondents have credited the salary in his account up to March, 2009 and thereafter stopped making payment.",

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

6. From the documents filed by the petitioner and the respondents, it is established that the petitioner was appointed against the post of Peon in the",

Library for a period of 89 days by the Principal of the College. The said appointment continued up to the year 1997. By that time, the petitioner had",

crossed the maximum age for appointment in the Government establishment.

The respondent No.2 took the work from the petitioner till he filed a petition and obtained the order for consideration of his case for regularisation. The petitioner has served for more than 15 years in the College of, respondent No.2. The respondents have rejected the claim of the petitioner treating his appointment as an illegal appointment.,

7. It is correct that at the time of appointment of the petitioner, the procedure prescribed under the law was not followed, but he was appointed against", the post of Peon. The Full Bench of this Court in the case of Dr. Geeta Rani Gupta V/s. State of M.P. : 2015 (4) MPLJ 476 has considered distinction, between 'illegal' and 'irregular' appointment in the light of judgment of the apex Court in the case of Umadevi (supra) and also in the light of judgment, of apex Court in the case of State of Karnataka V/s. M.L. Kesari : (2010) 9 SCC 247. Para 7 of the aforesaid judgment of Full Bench is reproduced, below :-,

“7. On the issue of initial appointment to be considered as illegal or irregular, the Supreme Court in the case of Secretary, State of Karnataka vs.", Uma Devi and others, (2006) 4 SCC 1 and also the recent decision in the case of State of Karnataka and others vs. M.L. Kesari and others, (2010)", 9 SCC 247, has noted that where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess", the prescribed minimum qualifications, the appointments be considered as illegal and not amenable to regularization. These decisions also amplify the", conditions to be observed while considering the proposal for one time regularization of any employee, as can be discerned from Paragraph No. 53 of", the Judgment in the case of Umadevi (supra), which reads thus :--",

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V.", Narayanappa (supra), R.N. Nanjundappa (supra), and B.N. Nagarajan (supra), and referred to in paragraph 15 above, of duly qualified persons in duly", sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders, of Courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the, principles settled by this Court in the cases above referred to and in the light of this judgment. 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 duly sanctioned posts but not under cover of orders of 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 subjudice, 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."",

(emphasis supplied),

Â In the case of M.L. Kesari (supra), in Paragraph No. 7, the Court observed thus :--",

Â ""7. It is evident from the above that there is an exception to the general principles against 'regularization' enunciated in Umadevi, if the following",
conditions are fulfilled :,

(i) The employee concerned should have workedfor 10 years or more in duly sanctioned post without the benefit or protection of the interim order of,

any Court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service",

voluntarily and continuously for more than ten years.,

(ii) The appointment of such employee should notbe illegal, even if irregular. Where the appointments are not made or continued against sanctioned",

posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But",

where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without",

undergoing the process of open competitive selection, such appointments are considered to be irregular."",

(emphasis supplied)â??,

8. As per direction given by Hon'ble the apex Court in the case of Ram Naresh Rawat V/s. Ashwini Ray & others : (2017) 3 SCC 436, the State of",

M.P. has come with the policy of grant of status of permanent employee to the daily rated employees. The circular dated 7.10.2016 is reproduced,

below for ready reference :-,

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