
(2004) 01 MP CK 0008

In the Madhya Pradesh High Court

Case No : Writ Petition No. 493 of 2003

Ramesh Chandra Sharma

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 19-01-2004

Acts Referred:

Citation : (2005) 2 MPJR 260

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : Rajendra Shrivastava, for the Appellant; Manish Chawra, Advocate for respondents no. 1 and 2 and Mr. Deepak Awasthi, Advocate, for the Respondent

Judgement

Arun Mishra, J.

In this writ petition, petitioner has come with the prayer of issuance of writ of mandamus to regularize the service of the petitioner in Municipal Council, Budhni, District - Sehore.

Briefly stated facts indicate that petitioner was engaged as a daily wage employee in Municipal Council Budhni in the year 1987. Respondent No. 1, State of M.P. issued a circular (P-2) dated 20th June, 1995 and it was directed that process of regularization could be done of the daily wage/adhoc employees who were working before 31.12.1988. Petitioner fulfilled the conditions. Petitioner filed a writ petition No. 20/95. An order (P-3) was passed on 9.7.1999 by this Court and respondents were directed to consider the regularization in accordance with law. The respondents have not taken any action for regularization of the service of the petitioner and on the contrary the junior persons to the petitioner namely Shri. Rajendra Kumar Yadav, Vijay Pal Singh and Mithilesh Kumar Malviya were regularized by them. Rajendra Kumar Yadav rendered the services w.e.f. 1.12.1987, Shri. Vijay Pal Singh Senger rendered the services w.e.f. 1.12.1987 and Shri. Mithilesh Kumar Malviya rendered the services w.e.f. 15.4.1988. Petitioner Ramesh Chandra Sharma rendered the services w.e.f. 30.1.1987.

Petitioner is a physically handicapped person and State Govt. has directed 3% reservation for physically handicapped persons. However, wrong information was submitted by Municipal Council to the Commissioner on 11.4.1991 that no physically handicapped person was serving in the Municipal Council. Petitioner is a disabled person as evinced from the certificate (P-6). Representation has not been considered, hence the present writ petition has been filed.

A return has been filed by respondent No. 3. It is contended in the return that petitioner was appointed as a daily wage employee in the year 1987 and worked continuously as daily wagger upto 20.9.1995. On 20.9.1995 the petitioner has applied for one day casual leave and thereafter again on 18.10.1995, made an application for leave on the ground of ill health and submitted his joining only on 5.6.1996. The petitioner was not on duty in the intervening period and in this manner services of the petitioner has come to an end, by implication. Petitioner submitted an application with medical certificate on 5.6.1996. The Municipal Council, Budhni, vide resolution (R-3/ 1) dated. 12.6.1996 considered the application and ordered reappointment. Petitioner has joined the duty on 7.8.1996. Now the date of appointment of the petitioner has to be treated as 7.8.1996. Thus his services cannot be regularized. Petitioner has been placed at Sr. No. 20 in the seniority list and is a junior most daily wagger employee and his date of appointment is 7.8.1996 as apparent from the Gradation List (R-3/2). Petitioner has suppressed the fact of his reappointment, hence is not entitled for the relief, in this writ petition. There is no vacant post available at present for the purpose of regularizing of services of the petitioner. Other persons were working as on 31.12.1988. The case of the petitioner is not on the same footing. No undue favour has been done to the other individuals.

Shri Rajendra Shrivastava, learned counsel appearing for the petitioner has submitted that the stand of the respondent Municipal Council is totally untenable. There was no break and Council by its resolution has condoned the absence and allowed joining. Thus past services rendered by the petitioner for the period of 8-9 years have to be counted. He has further submitted that in the circular (P-2) it is clearly provided that the employees who were serving as on the date mentioned therein i.e. 31.12.1988, have to be regularized. Circular was issued on 20.6.1995. There were earlier circulars also issued for regularizing the services of such employees. The condition of 10 years service, which was fixed in the policy dated 5.6.1991 for regularization of the employees, was also deleted, hence right had ripened to the petitioner of consideration for regularization before he proceeded on leave on 21.10.1995. He was in service on 20th June, 1995, is not in dispute. Thus when his juniors have been regularized, petitioner ought to have been regularized earlier in point of time.

Shri Deepak Awasthi, learned counsel appearing for respondent No. 3 has supported the action and has contended that in the case of daily wage employee if there is any discontinuance employee is not entitled for regularization. In the instant case though a resolution was passed, allowing joining on 12.6.1996 but it

has to be treated as fresh appointment. Petitioner has not assailed Gradation List in which his name was placed at Sr. No. 20 and the date of appointment of the petitioner is mentioned as 7.8.1996. Thus petitioner is not entitled for any relief in this writ petition as none of the juniors of the petitioner have been regularized.

Shri. Manish Chawra, learned counsel appearing for respondent No. 1 and 2 has supported the stand of respondent No. 3

After due consideration of the circular (P-2), it is clear that regularization is provided in accordance with the memo dated. 9.1.1990, to all such employees who were appointed before 31.12.1988, which was the cut-off date. This fact is also not in dispute that petitioner was in service when the memo dated 9.1.1990 was issued, which was later modified on 5.6.1991 wherein it was mentioned that 10 years service has to be completed by a daily wage employee, which was the another condition of regularization, said condition also stood deleted by policy (P-2) dated 20.6.1995. It is not in dispute that petitioner was in service on 31.12.1988 and as on 20.6.1995, thus right has ripened for regularization of his service before he had proceeded on leave. Regularization could not have been denied to petitioner when services of junior have been regularized.

Even otherwise, in my opinion the stand taken by the respondents No. 3 that it is case of fresh appointment offered, is not borne out from the resolution dated 12.6.1996 passed by the Municipal Council. A bare perusal of the Resolution (R-3/1) dated. 12.6.1996 goes to show that it was decided unanimously that petitioner had proceeded on causal leave as he was not well he had submitted an application about the ailment and joining, which was accepted. It appears that absence was condoned and joining was allowed. It is not the case of fresh appointment offered/ordered. It has not been disputed that petitioner has submitted medical certificate and he was ill. Considering the fact that petitioner was ailing, medical certificate submitted by him was accepted, joining was allowed, it was not decided to treat the joining as fresh appointment, hence it is not open to the respondent No. 3 to take such stand in this writ petition.

It is clear that case of the petitioner ought to have been considered by Municipal Council, treating him as on service w.e.f. 30.10.1987. Let the case of the petitioner be considered in accordance with his seniority and let needful be done in terms of the order (P-3) passed by this Court in W.P. No. 20/1995 on 9.7.1999 wherein this Court has directed to consider the regularization of the services of the petitioner in accordance with law. Respondent No. 3 has to regularize the services in accordance with seniority. Petitioner has been wrongfully deprived of regularization when services of juniors have been regularized. Let the respondents do the needful now and case for regularization be considered within 4 months from today and appropriate order be passed.

Writ petition is disposed of with the above directions. Parties to bear their own costs as incurred.