

(2006) 12 MP CK 0004

In the Madhya Pradesh High Court

Case No : Writ Petition No. 6088 of 2006 (S)

Rudra Prasad Mishra

APPELLANT

Vs

M.P. Urja Vikas Nigam Ltd. and Others

RESPONDENT

Date of Decision : 11-12-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2008) 1 MPJR 273

Hon'ble Judges : Shantanu Kemkar, J

Bench : Single Bench

Advocate : Ashok Lalwani with Mr. Priyank Awasthy, for the Appellant; Shobha Menon with Mr. Neelesh Pillai, for the Respondent

Final Decision : Allowed

Judgement

Shantanu Kemkar, J.

By filing this petition under Article 226/227 of the Constitution of India, the Petitioner is seeking his regularization from the date on which the post of Helper got vacant on account of death of Mazhar Mohammad and/or on retirement of Ramdas Sen whichever is earlier in time and seeking revised time scale of pay of Rs. 2550-3200 and difference of pay from 16/04/2002 on the basis of revised pay scale and also for grant of benefit of encashment of the earned leaves, reimbursement of medical expenses since initial appointment. By way of interim relief the Petitioner has claimed medial reimbursement stating that he is suffering from High Blood Pressure due to renal artery stenosis and having undergone angiography he has been advised for immediate Angio-plasty which requires a huge amount, which the Respondents be directed to pay him.

Briefly stated, the Petitioner had filed M.P. No. 4589/1993 before this Court seeking direction to the Respondents to treat him as a Filed Assistant cum Clerk from the date of his joining service and to give him all consequential benefits. The said writ petition was allowed in part by this Court vide order dated

16/04/2002 and it was directed to the Respondents to treat the Petitioner as regular on the post of Helper after completion of period of two years from the date he first entered into the contract service. It was further directed that he shall also be granted difference of pay for the period subsequent to his regularization. The said order was assailed by the Respondents by filing L.P.A. No. 388/2003. A Division Bench of this Court vide order dated 23/10/ 2003 disposed of the said L.P.A. and modified the order of learned Single Judge by following order:

Smt. Shobha Menon, learned senior counsel with Ms. Smita Nair, Advocate, for the Petitioner.

Shri R.K. Gupta, learned senior counsel for the Respondents. This appeal is taken up for final disposal with the consent of parties. The Management being aggrieved by the order of the learned single Judge directing the Respondent workman to be absorbed and regularized, has filed this L.P.A. It is a common ground that workman is working from the year 1989 and is continuing to work. Smt. Shobha Menon, learned senior counsel for the Appellant submits that the Appellant is working only from 1989 and after 1999 only by virtue of interim order he is continuously working. In the facts and circumstances of the case, it would be appropriate to modify the order of the learned Single Judge to the extent that the Respondent shall continue in service and shall be regularized as and when vacancy arises. The Appellant is entitled to arrears of salary with effect from the order dated 16/04/2002 passed by the learned single Judge at lowest time scale in his cadre and the same shall be paid within a period of three months from the date of receipt of the copy of this order. It is made clear that the Appellant shall not be removed for the reasons of non-availability of job in view of his service with management since 1989. The L.P.A. stands disposed of with the aforesaid directions. C.C. as per rules.

Pursuant to the order passed by the Division Bench in the aforesaid L.P.A. No. 388/2003 the Respondents issued an order dated 06/03/2004 (Annexure P-3) and fixed the Petitioner at the lowest time scale in the grade of Helper and it was further ordered that the Petitioner shall be regularized as and when vacancy arises as directed by the High Court.

The Petitioner contends that though vacancy arose in the year 2004 when one Mazhar Mohammad who was working as Helper died and also on 14/11/2005 when one Ramdas Sen working as peon/Helper was superannuated, still the Respondents did not issue the order of regularisation in his favour. He also contends that while considering the prayer for interim relief this Court vide interim order dated 20/05/2006 directed the Petitioner to appear before the Medical Board for his examination about physical fitness. It was further ordered by this Court that if the Petitioner is found to be suffering from the said diseases he would be entitled to medical reimbursement presently to the tune of Rs. 1,10,000/- which shall be deposited by the Respondents within a period of two months from the date of opinion of the Medical Board which is an expert body for

the purposes of the issue involved herein. According to him pursuant to the said interim order of this Court he appeared before the Medical Board and the Medical Board on examination vide report dated 29/08/2006 diagnosed that the Petitioner is having hypertension with LHV, right renal artery stenosis 2 Lt. Renal artery thrombosis and needs renal artery angioplasty and continued medical treatment. In view of the aforesaid he submits that the Respondents be directed to pay him Rs. 1,10,000/- as already ordered by way of interim relief.

The Respondents contend that the Petitioner was not an employee of the M.P. Urja Vikas Nigam but was appointed under the project. Therefore, he is not entitled for regularization and other benefits. The Respondents have relied upon the judgment passed by the Supreme Court in case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, to contend that daily wage earners cannot be regularized if appointed dehors the rules. So far as the payment of Rs. 1,10,000/- for the immediate treatment of the Petitioner pursuant to the report dated 29/08/2006 of the medical board, learned senior counsel for the Respondents submits that the Petitioner is not entitled for the said amount as the Petitioner did not submit Bank Guarantee in respect of the said amount as directed by this Court vide interim order dated 20/05/ 2006.

A Division Bench of this Court vide order dated 23/10/2003 directed the Respondents to continue the Petitioner in service and also directed that the Petitioner shall be regularized as and when the vacancy arises. The Petitioner's contention that the vacancy arose on the death of helper Mazhar Mohammad and on the retirement of Ramdas Sen has not been controverted by the Respondents. The aforesaid order of the Division Bench passed in L.P.A. has attained the finality. In this view of the matter the reliance of the Respondents upon the case of Secretary, State of Karnataka v. Uma Devi (supra) is highly misplaced. The contention of the Respondents that the Petitioner is not entitled for regularization, cannot be accepted in view of the order passed by the Division Bench of this Court. The point raised cannot be gone into at this stage having regard to the fact that the said contention was negated by this Court in M.P. No. 4589/1993 and on Respondents filing L.P.A. the directions were given by the Division Bench to regularize the Petitioner as and when vacancy arises. Moreover when the Respondents, pursuant to the aforesaid order of the Division Bench have already issued an order on 06/03/2004 (Annexure P-3) by which they fixed the Petitioner in the lowest time scale in the grade of Helper and have observed that the Petitioner shall be regularized as and when vacancy arises. In view of this now it will not be open for the Respondents to re-agitate the entire issue which attained the finality.

Thus, I hold that the Petitioner is entitled to be regularized from the date of death of Mazhar Mohammad Helper and/or from the date of retirement of Ramdas Sen whichever is earlier. The Respondents are directed to regularize the Petitioner from the date whichever is earlier. The Petitioner be paid arrears of salary at the lowest time scale in the grade from 16/04/2002 till the date on

which he shall be deemed to be regularized in terms of this order. He shall be entitled for consequential benefits of regularization including earned leave, medical reimbursement etc. as are payable to the regular employees of the Respondents from the said date. Appropriate order in this regard be issued within one month. He shall also be paid Rs. 1,10,000/- for his treatment within one month from the date of receipt of copy of this order. Needless to emphasize that the Respondents shall not insist upon furnishing of the bank guarantee for the release of the said amount for his treatment.

Petitioner is allowed with cost of Rs. 5000/-.