

**(2011) 11 MP CK 0115**  
**In the Madhya Pradesh High Court**  
**Case No : Writ Petition No. 5192 of 1998**

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|-------------------------------|----|------------|
| Santosh Kumar Vishwakarma     | Vs | APPELLANT  |
| M.P. Housing Board and Others |    | RESPONDENT |

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**Date of Decision :** 21-11-2011

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

**Citation :** (2012) 2 MPJR 176

**Hon'ble Judges :** A.K. Shrivastava, J

**Bench :** Single Bench

**Advocate :** B.K. Bajpai, for the Appellant; R.N. Shukla with Mr. R.B. Tiwari, for the Respondent

**Final Decision :** Allowed

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## Judgement

A.K. Shrivastava, J.—By this petition under Article 226 and 227 of the Constitution of India, the petitioner is seeking regularization to the post of Chowkidar. The case of the petitioner is that on 16/6/1984 he was appointed as daily rated employee on the post of Chowkidar and since then he is serving on the said post. But though the junior co-employees have been regularized, he has not yet been regularized.

2. The petitioner along with other co-employees knocked the door of this Court earlier by filing petition which was registered as M.P. No. 3251/87 (Raghvendra Prasad Pathak and others Vs. State of M.P. & others) wherein the present petitioner was figured as petitioner No. 3. This Court on 28/11/1994 passed an order directing the present respondents to consider the case of the petitioner for his regularization within a period of three months from the date of the order. However, the case was considered by the respondents for regularization, as a result of which the present respondents filed Misc. Civil Case before this Court (MCC No. 309/95- The Housing Commissioner and others Vs. Raghvendra Prasad Pathak and others) and prayed that the time be extended to comply the order passed by this Court in M.P. No. 3551/87. This Court on 20/12/1995 extended

the time to comply the order up to 31/1/1996. However, no order was passed as a result of which a contempt petition was filed by the present petitioner along with other persons and the present petitioner was figured as petitioner No. 3. This contempt petition (Contempt Petition No. 196/96) was decided on 7/11/1997 and the contempt proceedings were dropped by holding that the case of regularization of the petitioners was duly considered on the basis of their qualifications and seniority and after giving opportunity of hearing to them. It was further held by this Court that the contemnors have shown their inability to grant necessary relief of regularization to the petitioners on account of their meager resources.

3. The present petitioner along with other persons filed review petition of the order dated 7/1/1997 passed in contempt petition and the review petition was registered as MCC No. 1140/97. This Court on 23/2/1998 while disposing of the review petition observed that it would be open to the petitioners to agitate their rights on the basis of their claim for continuance by way of independent proceedings.

4. It has been contended by Shri Bajpai, learned counsel for the petitioner, assailing the order of respondent No. 2 dated 11/8/1995 (Annexure -P/6-B) that the services of the petitioner were not regularized on the ground that his name figured at serial no. 62 in the merit list and the employees who were figured up to 42 in the said list have been regularized. The contention of learned counsel for the petitioner is that the merit list is prepared according to the length of service i.e. on the basis of seniority. The contention of learned counsel is that the petitioner made entry in the department of the respondents on 16/6/1984 and respondent no. 5 - Lalo Prasad is much junior to him as he was appointed on 1/10/1984 and if that is the position, the petitioner is entitled for regularization from the date when respondent No. 5 was regularized i.e. 1/1/1990.

5. On the other hand, Shri R. N. Shukla, Sr. Advocate assisted by Shri R. B. Tiwari, Advocate, for the respondents, have submitted that the petitioner was not appointed on 16/6/1984. On the contrary he was appointed on 4/11/1984 and if that is the position, it cannot be said that petitioner is senior to respondent No. 5 and, therefore, whenever the post would fall vacant, the services of the petitioner would be regularized in accordance to the merit list. In support of his contention, learned counsel has placed reliance on Annexure R/1 which is Bio-data of the petitioner and it has been filed along with return.

6. By replying the argument of learned senior counsel for the respondents, it has been contended by learned counsel for the petitioner by inviting my attention to averments and the documents made in the second rejoinder, that factually it is incorrect that the petitioner was appointed on 4/11/1984, indeed, he was appointed on 16/6/1984, therefore, he is entitled for regularization w.e.f. 1/1/1990 when respondent No. 5 who is junior to him, was regularized.

7. After having heard learned counsel for the parties, I am of the view that this

petition deserves to be allowed.

8. One important fact which cannot be marginalized and blinked away is that the seniority list of the muster roll employees is filed as Annexure-P/3 and in this list the date of appointment of the petitioner has been shown as 16/6/1984 on the post of Chowkidar. Apart from this, Executive Engineer of the respondents, vide its letter dated 24/6/2004 addressed to Chief Administrative Officer, Head Office, Bhopal enclosed the list of daily rated employees and in that list also the date of appointment of the petitioner has been shown as 16/6/1984. This letter of Executive Engineer along with list has been placed on record as Annexure P/18 along with the second rejoinder of the petitioner. Thus, there is overwhelming material in order to hold that the date of appointment of the petitioner is 16/6/1984 and, therefore, he is senior to respondent No. 5 who was regularized on 1/1/1990.

9. Much emphasis has been placed by learned senior counsel for the respondents on Annexure -R/1, as a matter of fact this is the foundation stone of the case of respondents that the petitioner is junior to respondent No. 5. By inviting my attention to Annexure - R/1 which is Bio-data of the petitioner, it has been submitted by learned senior counsel for the respondents that the date of entry of the petitioner has been shown as 4/11/1984. The argument, so advanced, appears to be quite attractive, however, on deeper scrutiny of it, found to be devoid of any substance. If document Annexure -R/1 (Bio - data of the petitioner) is seen, it is gathered that the said form has been filled by the petitioner in Hindi and in the same hand -writing the date of entry has been mentioned as 16/6/1984. The month "six" is written in Hindi and it can also be said that it may be read as "seven". Even if the petitioner was appointed on 16/7/1984, he is senior to respondent No. 5 as admittedly respondent No. 5 was appointed on 1/10/1984. The date of entry of the petitioner in service 16/6/1984 in Annexure - R/1 has been scored out and in English somebody has written 4/11/1984. It appears that in order to justify their action for not regularising the petitioner, since earlier the contempt petition was filed against the respondents, it cannot be ruled out that somebody else scored out the date of entry written as 16/6/84. For the reasons stated hereinabove, this petition is allowed and respondents no. 1 to 3 are hereby directed to regularize the services of the petitioner w.e.f. 1/1/1990 the date when the services of respondent No. 5 -Lalo Prasad were regularized. The difference of wages be paid to the petitioner from the said date. Let the difference of wages be paid to the petitioner on or before 31/8/2006. Looking to the facts and circumstances the parties are directed to bear their own costs.