
(2006) 11 CHH CK 0005
In the Chhattisgarh High Court

Smt. Budhiyarini Bai

APPELLANT

Vs

State of Chhattisgarh and Another

RESPONDENT

Date of Decision : 30-11-2006

Acts Referred:

Constitution of India, 1950 — Article 12, 309

Citation : (2007) 1 MPHT 124

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.—The petitioner was appointed as Hostel Servant (hostel fund) on 1-5-1984. Thereafter the services of the petitioner were regularized and she was promoted on the vacant post of Hostel Servant (contingency fund) w.e.f. 1-6-1989 in the pay scale of Rs. 725-10-735-855-15-900 vide order dated 27-5-1989 (Annexure A-1). The services of the petitioner was terminated vide order dated 26-2-2000 (Annexure A-4) pursuant to the direction issued by the Commissioner, Higher Education vide letter dated 3-2-2000, issued in compliance of the order dated 29-1-2000 passed by the General Administration Department.

2. The petitioner by this petition seeks quashing of the order dated 26-2-2000 and consequential benefits.

3. I have heard learned Counsel appearing for the parties and perused the record.

4. A perusal of the minutes of the meeting of the committee dated 26-2-2000 reveals that the appointment of the petitioner was not made in accordance with law and it was de hors the constitutional scheme. The appointment of the petitioner was not through the advertisement or by inviting any application through any other means from all eligible candidates. It is well settled principle of law that the daily wagers, temporary or ad hoc employees have no right to the post seeking regularization and grant of regular pay scale, if their appointments were de hors the constitutional scheme or the rules made under the proviso to

Article 309 of the Constitution of India.

5. In the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , the Supreme Court has laid down clear enunciation of law which was followed later on in various decisions by the Supreme Court. Some are Accounts Officer (A & I) APSRTC and Ors. v. P. Chandra Sekhara Rao and Ors. (2006) 7 SCC 488 , Surendra Prasad Tewari Vs. Uttar Pradesh Rajya Krishi Utpadan Mandi Parishad and Others, , Nagar Mahapalika (now Municipal Corporation) v. State of U.P. and Ors. AIR 2006 SCW 2497 and U.P. State Road Transport Corporation v. Man Singh AIR 2006 SCW 5159.

6. In the case of Secretary, State of Karnataka and Ors. (supra), the Supreme Court observed as under:

45. While directing that appointments, temporary or casual, be regularized or made permanent, the Courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain - not at arm's length - since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible.

47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission.

7. With regard to regularization of the post, the appointment was not made in accordance with law. The appointment of the petitioner is a back door appointment, which does not have any legal sanction.

8. The Supreme Court in the case of State of Madhya Pradesh and Others Vs. Yogesh Chandra Dubey and Others, , observed in Para 9, as under:

9. It is neither in doubt nor in dispute that the respondents were not appointed in terms of the Statutory Rules. Their services were taken by the officers only to meet the exigencies of situation. No post was sanctioned. Vacancies were not notified. It is now trite that a State within the meaning of Article 12 of the

Constitution of India, while offering public employment, must comply with the constitutional as also statutory requirements. Appointments to the posts must be made in terms of the existing rules. Regularization is not a mode of appointment. If any recruitment is made by way of regularization, the same would mean a back-door appointment, which does not have any legal sanction.

9. In the present case on hand, admittedly, the appointment of the petitioner was not in accordance with law, which was regularized subsequently, by order dated 27-5-1989 (Annexure A-1). She was granted payment of daily wages from contingency fund and the same was treated as regularization/promotion on the basis of the recommendation of the Selection Committee. Since, the initial appointment of the petitioner was not in accordance with law and subsequently, regularization/promotion would mean a back door appointment, without having any legal sanction, therefore, the regularization/promotion is not a mode of recruitment.

10. As a result and for foregoing reasons, the writ petition is dismissed. No order as to costs.