

(2013) 02 CHH CK 0021
In the Chhattisgarh High Court
Case No : Writ Petition (S) No"s. 1029 of 2009

Smt. Kumari Bai and Others

APPELLANT

Vs

State of C.G. and Another

RESPONDENT

Date of Decision : 11-02-2013

Acts Referred:

Citation : (2013) 1 CGBCLJ 554 : (2013) 3 CGLJ 176 : (2013) 137 FLR 721 : (2013) LabIC 2021 : (2013) 2 LLJ 803 : (2013) 2 MPJR 67

Hon'ble Judges : Prashant Kumar Mishra, J

Bench : Division Bench

Advocate : V.G. Tamaskar, for the Appellant; Yashwant Singh Thakur, Dy. Advocate General for the State, for the Respondent

Final Decision : Dismissed

Judgement

Prashant Kumar Mishra, J.—Heard learned counsel for the parties. The petitioners in W.P. (S). No. 6722/2008) have sought for issuance of a direction commanding the respondents to treat the petitioners having been regularized along-with those daily wagers who were regularized immediately after notification/Scheme dated 09.01.1990 (Annexure P-1 in W.P.(S). No. 6722/2008) as Assistant Grade-III. The petitioners in other writ petitions are working on different posts like Forest Guards, Peons, Watchmen, Drivers etc.

2. It is the case of the petitioners that pursuant to the Scheme of Regularization framed by the erstwhile State of Madhya Pradesh vide Government Circular dated 09.01.1990 they were entitled to be regularized immediately after issuance of the Circular, however, when such benefit of regularization was not granted, the Chhattisgarh Dainik Vetan Bhogi Van Karmachari Sangh preferred W.P. No. 1781/2003 before this Court along-with other individual writ petitioners who filed separate writ petitions and the said writ petitioners were disposed of by the Division Bench of this Court vide order dated 19.04.2006 directing the respondents in the following manner:

We have heard learned counsel for the parties and perused the material papers placed before us, particularly Government Circular dated 09.01.1990. It is quite clear from that document that the daily wagers appointed by the various Departments of the Government prior to 31.12.1988 are required to be regularized in those departments against the vacancies available. It is further directed in the Circular that if no vacancies are available, supernumerary posts should be created in order to regularize the services of the eligible daily-wagers. It is complained that in pursuance of the above circular, similarly circumstanced daily-wagers' services were regularized in other departments. We do not find any justification for the State to treat the petitioner-daily wagers differently from the similarly circumstanced other daily wagers appointed prior to 31.12.1988 in other departments of the State. In that view of the matter, we dispose of these writ petitions directing the respondents to consider the claims of the members of the petitioner-Association or the petitioners for regularization of their services, in the first instance, by verifying the records whether they were appointed prior to 31.12.1988 in the department, and if it is found that they were appointed prior to 31.12.1988, then, the respondents shall regularize their services of such daily-wagers in terms of the Circular dated 09.01.1990, It is further directed that if required number of posts are not available presently to regularize services of all the petitioners, in terms of the Circular dated 09.01.1990, the respondents shall create required number of supernumerary posts and regularize their services. The above direction shall be complied with within a period of three months from the date of receipt of a copy of this order. No costs.

3. Pursuant to the above order passed by Division Bench, the petitioners were regularized on different dates in the year 2008 to 2009. However, according to them, they are entitled for regularization and all consequential benefits with effect from 09.01.1990 or from the date when other daily wagers, were regularized.

4. Shri Tamaskar learned counsel for the petitioners has drawn attention of the Court to the Circular issued by the erstwhile State of Madhya Pradesh at different points of time between 1990 to 1999 repeatedly directing the State to pass appropriate orders of regularization by creating supernumerary posts. However, since despite such directions issued in the name of His Excellency the Governor of State, benefits were not made admissible to them and as such the State has acted in absolute arbitrariness and the petitioners are entitled for the relief(s) claimed for.

5. Per contra, learned State Counsel would submit that all the petitioners have been regularized following the direction issued by the Division Bench of this Court and further that regularization cannot be prayed for or directed with retrospective effect.

6. Although, learned counsel for the petitioners have referred to the orders of regularization issued by the Department of Forest on different points of time in favour of other persons, however, it is to be seen that the regularization depends

upon several factors like availability of vacancies, availability of regular work in the department etc.

7. Ordinarily, the order of regularization takes effect from the date when such order is issued and a daily-wager cannot claim regularization from retrospective date. It may happen that when the petitioners claimed the benefit of regularization, sanctioned permanent posts may not be available. In the earlier writ petition preferred by the Association and other individuals, no such relief for regularization with retrospective effect was claimed nor this Court directed for regularizing the services from a particular date.

8. In the matter of Vijay K. Dhand and others Vs. State of Punjab and others (2004) 13 SCC 707, Hon"ble the Supreme Court has held that claim for regularization from the date of initial appointment cannot be ordered being contrary to Government instructions. In the present case, the Government has not fixed any cut-off date, therefore, the petitioners are not entitled to be regularized from the date of their initial appointment in the absence of any specific direction by the State Government fixing a particular date of regularization.

9. Further in Punjab State Electricity Board and others Vs. Swaran Singh, (2005) 13 SCC 246, it has been held that the workman appointed on ad-hoc basis in 1976 being regularized in 1982 is not entitled to be regularized w.e.f. earlier date.

10. Yet again, in the matter of Union of India (UOI) and Others Vs. Sheela Rani, , it has been held that regularization should be prospective and not retrospective as chances of their upsetting the seniorities of regular appointees cannot be overlooked. In the said case before the Supreme Court the concerned employee was-engaged as casual worker on 17.11.1982 and was regularized with effect from 26.09.2001 and her claim for regularization from the date of initial appointment was rejected by Supreme Court.

11. Learned Counsel for the petitioners has relied on a decision of the Supreme Court in the matter of State of Madhya Pradesh and Others Vs. Satyavrata Taran, to contend that the matter can be remanded to the State Government for decision afresh. The said matter before the Supreme Court was with respect to interse seniority of Assistant Professors appointed through different means/ modes and sources and it was not a case of regularization of daily-wagers, therefore, the said case is clearly distinguishable from the facts of the present cases. Learned Counsel for the petitioners has further relied on a decision of the Supreme Court in State of Karnataka and Others Vs. M.L. Kesari and Others, to put forth his case that even after the decision in Secretary, State of Karnataka and Others Vs. Umadevi and Others, the Supreme Court is directing regularization to be made when the employer has not undertaken exercise of regularization after issuance of direction by the Supreme Court. The said case pertains to claim for regularization whereas in the present cases, the petitioners have already been regularized, therefore, for this reason, the case is

distinguishable from the present ones.

12. The regularization from a particular date has several aspects on which the order is passed since it depends upon availability of posts in a particular office/cadre, inter-se seniority of persons working on casual basis/daily-wagers and seniority of regular appointees, therefore, this Court, in the light of the above decisions of the Supreme Court, is of the considered opinion that to pass an order of regularization from a particular date is basically a policy decision and this Court need not interfere in such matters unless a right has accrued in favour of the employees to be regularized from a particular date, which is the cut-off date declared by the State Government.

13. At this stage, Shri Tamaskar would submit that in fact the claim for regularization made in these writ petitions is atleast from the date when the Division Bench had passed the order in W.P.(S). No. 1781/2003 in which the State Government preferred an MCC because the order passed by the Court could not be complied with within the stipulated time. In the judgment passed by the Division Bench, the direction was to consider the claims of the members of the Petitioner-Association or the individual petitioners for regularization of their services, in the first instance, by verifying the records whether they were appointed prior to 31.12.1988 in the department and if it is found that they were appointed prior to 31.12.1988, then, to regularize their services in terms of the circular dated 09.01.1990 with further direction that if required number of posts are not available presently for regularizing services of all the petitioners, the respondents shall create required number of supernumerary posts and regularize their services within a period of 3 months. The direction was to be complied with within a period of 3 months from the date of receipt of a copy of this order. There is nothing in the order to suggest that this Court had ever intended to fix a particular date of regularization of the services of the petitioners. This Court had not issued any direction that services of the members of the Petitioner-Association or the individual petitioners stand regularized from the date of judgment. The fact that this Court had issued direction to consider the claims of the members of the Petitioner-Association or the petitioners for regularization of their services and the expression "if required number of posts are not available then to create supernumerary posts for regularization of their services" would itself demonstrate that the direction was only for consideration and not for regularizing their services from a particular date.

14. In W.P.(S). No. 94/2012 (Ganesh Kumar Yadav and others -vs- State of Chhattisgarh and others) decided by this Court on 09.01.2012 a similar view was taken. In the said case also the petitioners who were daily-wagers of the forest department were relying on Division Bench Order of this Court passed in W.P. No. 1781/2003.

15. For the foregoing reasons, this Court is not convinced with the arguments raised by learned counsel for the petitioners. In the result, all the writ petitions fail and are dismissed.

W.P.(S). No. 1029 of 2009 (Smt. Kumari Bai and others v. State of Chhattisgarh and another) and other connected matters

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Government not fixing any cut off date for regularization. The same cannot be granted retrospectively.