

(2017) 05 CHH CK 0031
In the Chhattisgarh High Court
Case No : 5744 of 2007

State of Chhattisgarh, Through Executive Engineer,	APPELLANT
Vs	
Rastriya Lok Nirman Mazdoor Sangh & Anr.	RESPONDENT

Date of Decision : 15-05-2017

Acts Referred:

Constitution of India, Article 14, Article 226, Article 16 - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions - Power of High Courts to Issue certain writs - Dissolution of a District or a Regional Council

Citation : (2017) 05 CHH CK 0031

Hon'ble Judges : Sanjay K. Agrawal

Bench : Single Bench

Advocate : Gary Mukhopadhyay, Tanuj Patwardhan, Pradeep Saxena

Judgement

1. The State of Chhattisgarh has filed this writ petition invoking the jurisdiction of this Court under Article 226 of the Constitution of India questioning the award dated 24-2-2007 passed by the Labour Court, Rajnandgaon in Case No.48/ID Act/2002 (Reference) by which the Labour Court has directed the State Government to regularise the services of Sukhraj Ram engaged by the Rashtriya Lok Nirman Mazdoor Sangh, on the post of Gardener.

2. Mr. Gary Mukhopadhyay, learned Deputy Government Advocate appearing on behalf of the State/petitioner, would submit that the order of the Labour Court directing regularisation has been passed after the judgment delivered by the Supreme Court in the matter of State of Karnataka v. Uma Devi (3), (2006) 4 SCC 1. He would further submit that the Labour Court has no jurisdiction to direct regularisation particularly when the workman has not been appointed in accordance with the constitutional scheme. Therefore, the order impugned deserves to be set aside.

3. On the other hand, Mr. Tanuj Patwardhan, Advocate, appearing on behalf of

Mr. Pradeep Saxena, learned counsel for respondent No.1, would oppose the writ petition and would submit that the State Government has itself issued circular dated 5-3- 2008 for appointment of daily wagers.

4. I have heard learned counsel for the parties and perused the documents available on record with utmost circumspection.

5. Be that as it may, the Supreme Court in State of Karnataka (supra) has clearly held that daily wagers have no fundamental right to be absorbed in service as they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution of India. The decision in State of Karnataka (supra) has been followed recently by the Supreme Court in the matter of State of Tamil Nadu Through Secretary to Government, Commercial Taxes and Registration Department, Secretariat and another v. A. Singamuthu, (2017) 4 SCC 113 in which in paragraph 15, Their Lordships of the Supreme Court observed as under: - "15. In a similar issue, concerning part-time sweepers, the State of Tamil Nadu has filed an appeal before this Court, and those appeals were allowed by this Court by judgment dated 21-2-2014 in School Education Deptt., State of T.N. v. R. Govindaswamy. After referring to various judgments on this issue, in paras 5 to 7, this Court held as under: (SCC pp. 770-71)

"5. The issue involved here remains restricted as to whether the services of the part-time sweepers could have been directed by the High Court to be regularised. The is no more res integra.

6. In State of Karnataka v. Umadevi (3) (supra) this Court held as under: (SCC p.40, para 48)

"48. ... There is no fundamental right in those who have been employed on daily-wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily-wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules."

7. In Union of India v. A.S. Pillai, 2010) 13 SCC 448 this Court dealt with the issue of regularisation of part-time employees and the Court refused the relief on the ground that part-timers are free to get themselves engaged elsewhere and they are not restrained from working elsewhere when they are not working for the authority/employer. Being the part-time employees, they are not subject to service rules or other regulations which govern and control the regularly appointed staff of the department. Therefore, the question of giving them equal pay for equal work or considering their case for regularisation would not arise."

6. Admittedly, the petitioner's appointment is not in accordance with the constitutional scheme by regular advertisement and he is merely a daily-wager who has been directed to be regularised by the Labour Court. The order of the Labour Court runs contrary to the decision of the Supreme Court in State of Karnataka (supra) followed in A. Singamuthu's case (supra). Consequently, the award impugned is quashed. However, this would not bar the workman to make representation to the State Government/ competent authority in view of the circular dated 5-3-2008.

7. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).