
(2002) 04 MP CK 0039
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2808/99

State of M.P. and Others

APPELLANT

Vs

Sukh Lal Choudhary and Another

RESPONDENT

Date of Decision : 12-04-2002

Acts Referred:

Citation : (2003) 1 LLJ 664 : (2002) 4 MPHT 100

Hon'ble Judges : Uma Nath Singh, J; Dipak Misra, J

Bench : Division Bench

Advocate : Sanjay Yadav, for the Appellant; Malti Dadariya, for the Respondent

Judgement

Dipak Misra, J.—The State and its functionaries have visited this Court assailing the order dated 8-1-99 passed in Original Application No. 1096/99 by the Madhya Pradesh Administrative Tribunal (hereinafter referred to as "the Tribunal").

2. The facts as have been depicted are that the respondent No. 1 who was the applicant before the Tribunal instituted the aforesaid proceeding seeking regularization in service. The case of the applicant before the Tribunal was that he was appointed as Time Keeper in Development Block, Bohriband, District Jabalpur by order dated 23-11-87. The order stipulated that he was to be paid from the contingency fund. Thereafter, his services were terminated vide order dated 22-4-88. On 16-11-88 another order was issued in favour of the respondent No. 1 appointing him as Work Assistant on temporary basis with effect from 1-11-88. The said appointment letter stipulated that the payment was to be made from the contingent fund of N.R.E.P./R.L.E.G.P. and it was further stated therein that the appointment would be terminated on the completion of construction work. The respondent No. 1 approached the Tribunal as his salary was not paid and he was not regularised. It was the case of the respondent No. 1 that he was working as time keeper from 24-11-87 to 22-4-88 and as Work Assistant from 23-4-88 to 31-3-89. He enclosed the certificate from the Block Development Officer to justify his working in the job. He placed

reliance on the circular dated 30-12-99 by which the State Government had given instructions that Class IV and Class III employees on daily wages or ad hoc basis employed upto 31-12-88 be regularised either in contingency or work charged posts, and if such posts are not available they should be created. It is also stipulated therein that if such employees are not regularised in contingency or work charge establishment then they should be absorbed on regular establishment and if posts are not available they should be created. A procedure was also provided for carrying out the scheme. The present petitioners who were the respondents before the Tribunal took the stand that the applicant was employed for a particular Project which has been completed and now there is no fund and post available.

3. The Tribunal thought it appropriate not to accept the contentions of the functionaries of the State on the ground that the petitioner therein was employed on the ad hoc basis before 31-12-88 and hence, he was entitled to be considered for regularisation in terms of Government circular dated 30-12-89. Accordingly, it directed that the case of the respondent No. 1 should be considered in terms of Government order dated 30-12-89 by the petitioners herein within a period of three months from the date of receipt of the order passed by the Tribunal. A further direction was given for payment of salary upto 30-6-90.

4. Assailing the aforesaid order it is submitted by Mr. S.K. Yadav, learned Government Advocate, that the respondent No. 1 was not continuing as time keeper after 1988 and by that time Government's order was issued and he was removed from the post of time keeper inasmuch as there was no work by that time. It is also submitted by him that the respondent No. 1 worked under a particular scheme and that work has been handed-over to the Gram Panchayat and, therefore, he cannot claim regularisation. Quite apart from the above, it is also put forth by Mr. Yadav that if the Government's order is construed in proper perspective the applicant cannot claim to be regularised as he has not put in service for considerable length of time on the relevant date. The purpose of the circular, submits learned Government Advocate, is that people who had continued for a considerable length of time in a particular post were to be regularised.

5. Per contra, it is submitted by Ms. Malti Dadariya, learned Counsel for the respondent No. 1 that the respondent No. 1 is protected by the circular and, therefore, the Tribunal has rightly negated the stand of the State Government. It is also submitted by her that in similar matters the Tribunal has passed the orders which have been complied with by the petitioners herein but in the present case the same is not done which is violative of Article 14 of the Constitution.

6. On a perusal of the record and the order of the Tribunal it is perceptible that the respondent No. 1 was appointed as time keeper by order dated 23-11-87 but his services came to an end on 22-4-88 and, therefore, he cannot claim to be time keeper thereafter. On a perusal of document which was brought on record

before the Tribunal as Annexure 3 relates to the appointment of the petitioner therein, on a scrutiny of the same it is clearly perceptible that the respondent No. 1 was appointed as Work Assistant under the Scheme called N.R.E.P./R.L.E.G.P. as a contingent employee. Thereafter, the respondent No. 1's services were terminated. The question that falls for consideration is whether the respondent No. 1's services deserves to be regularised. In this context we may profitably refer to the decision rendered in the case of State of Haryana and others Vs. Piara Singh and others etc. etc., wherein the Apex Court came to hold that only those eligible and qualified candidates who are continuing in service satisfactorily for long period have a right to be considered for regularisation. In the case of Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others, a two Judge Bench of the Apex Court came to hold that if a particular person is appointed under the Government scheme on daily wages basis he is not entitled to regularisation even if he completes 240 days.

7. We may at this juncture conclude that the State Government has regularised the services of other employees because they were time keepers but the petitioner had worked under the Government scheme and was drawing money from the said scheme which was transferred to the Panchayat. If posts are not available it is not possible to consider the case of the respondent No. 1 for regular absorption. Hence, we can not concur with the view of the Tribunal and set aside the same. However, considering the fact that the respondent No. 1 at one point of time has rendered his services it is observed that if he makes an application for employment under any scheme floated by the Government his claim shall be considered sympathetically taking into consideration his past experience.

8. The writ petition is accordingly disposed of.