
(2011) 02 CHH CK 0046
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 7450 of 2010

Virendra Das Manikpuri and Others

APPELLANT

Vs

State of C.G. and Others

RESPONDENT

Date of Decision : 10-02-2011

Acts Referred:

Constitution of India, 1950 — Article 162

Citation : (2011) 3 CGLJ 352

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—The Petitioners, apprehending their removal from service pursuant to the memo dated 23.09.2010 (Annexure P/2) issued by the Respondent No. 1. have filed this petition seeking cancellation/modification of the memo dated 23.09.2010 (Annexure P/I) and further, to direct the Respondent State to consider the case of the Petitioners individually, if fresh recruitment drive for regular appointment are made.

2. At the very outset, learned Counsel appearing for the parties jointly submit that facts and question of law involved in this case is squarely covered by the judgment of this Court in Dhaniram and Ors. v. State of Chhattisgarh and Ors. W.P. (S) No. 6798/2010, decided on 20-1-2011 and other connected matters wherein, this Court, after relying on the decisions of the Supreme Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, and State of Karnataka and Ors. v. M.L. Kesari and Ors. A1R 2010 SC 2587, has held that the action of the Respondent-Corporations pursuant to the memo dated 23.09.2010 for removal of daily wagers without proper scrutiny as per the memo dated 05.03.2008 was bad and the same was not sustainable in the eyes of law.

3. The decision of the Supreme Court in Satya Prakash and Others Vs. State of Bihar and Others, was not brought into the notice of the Court when Dhaniram

and Ors.1 and other connected matters, were considered. In Satya Prakash and Ors.4, the facts involved therein are different. In the said case, a writ petition was filed by the employees working on daily wages, seeking a direction to the State authorities to regularize their services in the light of para 53 of the Constitution Bench judgment in Umadevi (3) and Others². The Supreme Court observed that the employees appointed illegally de hors the constitutional scheme of employment may not be considered for regularization. However, the other employees whose appointment is irregular, may be considered for regularization. Thus, the case of Satya Prakash and Others Vs. State of Bihar and Others, is distinguishable on the facts.

4. In the instant case, the Petitioners are not seeking for a direction to the State Government and the Municipal Council to regularize services of those who are illegally appointed, but for compliance of the memo dated 05.03.2008 issued by the State Government, wherein it is provided that the case of regularization of the employees who have been working for the last 10 years, may be considered in the light of the decision of the Supreme Court. The Municipal authorities, in order to save their skin, it appears, have been endeavouring to throw away all the employees without examining the facts as to whether their appointment was legal or not, in accordance with the constitutional scheme of employment or the same was irregular. The memo dated 05.03.2008 of the State government does not provide for regularizing all the employees working on daily wages or otherwise, but for scrutiny of their cases individually having regard to the several factors like availability of vacancies, their appointment against the sanctioned post and nature of appointment etc. etc. Thus, the action of the Respondent-Corporation to throw the employees without complying with the memo dated 05.03.2008 relying on the next memo dated 23.09.2010 is not sustainable in the eyes of law.

5. This Court, in the matter of Dhaniram and Ors. W.P. (S) No. 6798/2010, decided on 20-1-2011 has not quashed either the memo dated 23.09.2010 or 05.03.2008 but the action, whereby under the garb of the above stated memos, the daily wager employees were removed, was quashed. The authorities, without examining their individual cases, as mandated by the State's memo dated 05.03.2008, cannot throw away the daily wagers or other similarly situated employees, in the light of the memo dated 23.09.2010 which, by no stretch of imagination, directs removal of all the employees who are appointed as daily wagers in accordance with law and constitutional scheme of employment and other similarly situated employees, without examining as to whether they were illegally or irregularly appointed.

6. In Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd., , the Supreme Court observed as under:

34. Thus, it is well settled that there is no right vested in any daily-wager to seek regularisation. Regularisation can only be done in accordance with the rules and not de hors the rules. In E. Ramakrishnan v. State of Kerala this Court held that

there can be no regularisation dehors the rules. The same view was taken in *Kishore (Dr.) v. State of Maharashtra, Union of India v. Bishamber Dutt*. The direction issued by the Services Tribunal for regularising the services of persons who had not been appointed on regular basis in accordance with the rules was set aside although the Petitioner had been working regularly for a long time.

35. In *Surinder Singh Jamwal (Dr.) v. State of J&K* it was held that ad hoc appointment does not give any right for regularisation as regularisation is governed by the statutory rules.

7. The issue of regularization was considered in *Ashok Kumar Sonkar Vs. Union of India (UOI) and Others*, , the Supreme Court held as under:

34. It is not a case where appointment was irregular. If an appointment is irregular, the same can be regularised. The court may not take serious note of an irregularity within the meaning of the provisions of the Act. But if an appointment is illegal, it is non est in the eye of the law, which renders the appointment to be a nullity.

8. The observations made in *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, and *Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd.*, , with approval, the Supreme Court in *Official Liquidator Vs. Dayanand and Others*, , further explained about the rights of the daily wagers and regularization. Para 70 reads as under:

70. The shift in the Court's approach became more prominent in *A. Umarani v. Coop. Societies*, decided by a three-Judge Bench, wherein it was held that the State cannot invoke Article 162 of the Constitution for regularisation of the appointments made in violation of the mandatory statutory provisions.

9. For the reasons stated in *Dhaniram and Ors. W.P. (S) No. 6798/2010*, decided on 20-1-2011 and further, in view of the above, the Respondent authorities are directed to scrutinize case of each and every individual, as per the memo dated 05.03.2008 and in the light of the well settled principles of law, as aforestated.

10. It must be made clear, in view of the above that this Court is not directing to retain the employees who have been illegally appointed dehors the constitutional scheme of employment.

11. Accordingly, the writ petition is allowed to the above extent. No order as to costs.