



2025:CGHC:10475

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 5746 of 2021

1 - Onkar Singh Thakur S/o Late Shri Ripudaman Singh Thakur, Aged About 58 Years R/o Ward No. 3, Janpad Colony, Beside Post Office Bagbahara, Bagbahara, District Mahasamund Chhattisgarh, District : Mahasamund, Chhattisgarh

... **Petitioner**

versus

1 - State Of Chhattisgarh Through The Secretary, Department Of Panchayat And Rural Welfare Department, Mantralaya, Rakhi, New Raipur, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh

2 - The Office Of Development Commissioner, Through Under Development Commissioner, Atal Nagar, New Raipur, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh

3 - The Collector Mahasamund, District Mahasamund Chhattisgarh., District : Mahasamund, Chhattisgarh

4 - Chief Executive Officer, District Panchayat Mahasamund, District Mahasamund (Chhattisgarh), District : Mahasamund, Chhattisgarh

5 - Chief Executive Officer, Janpad Panchayat Bagbahara, District Mahasamund (Chhattisgarh), District : Mahasamund, Chhattisgarh

6 - Block Development Officer Bagbahara, District Mahasamund Chhattisgarh, District : Mahasamund, Chhattisgarh

... **Respondents**

For Petitioner	: Mr. Mayank Chandrakar, Advocate
For State	: Mr. Tarkeshwar Nande, Panel Lawyer
For Respondent No. 4	: Mr. Vikram Sharma, Advocate

Hon'ble Shri Justice Narendra Kumar Vyas

Order on Board

**BHUMIKA
ANGARE**

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04.03.2025

1. The petitioner has preferred the present writ petition challenging the orders dated 04.08.2021 (Annexure P/9) and 18.02.2021 (Annexure P/10) and also to direct the respondents to regularize services of the petitioner along with all consequential benefits from the date of initial appointment i.e. 25.07.1989.
2. The brief facts as reflected from the record are that the petitioner is appointed as Choukidar on 25.07.1989 on Collector rate by respondent No. 6/Block Development Officer, Bagbahara, District Mahasamund (C.G.). The petitioner worked from 25.07.1989 to 31.03.2014. On 31.03.2014 his services were terminated by the Chief Executive Officer/Respondent No. 5 alleging that he was negligence towards discharging his duty. Thereafter, he moved an application before the Chief Executive Officer, District Panchayat Mahasamund for condoning his negligence and prayed for reinstatement. Considering his prayer he was reinstated on 01.08.2014 by the Chief Executive Officer, Janpad Panchayat, Bagbahara, District Mahasamund. Thereafter the petitioner moved a representation for regularization of his services to the Chief Executive Officer, Janpad Panchayat Bagbahara who has forwarded the same to the Chief Executive Officer, District Panchayat, Mahasamund and in turn Chief Executive Officer, Zila Panchayat, Mahasamund forwarded the matter to the Chief Engineer Rural Engineering Service Development Officer, Vikas Bhawan. The matter was pending between government departments.
3. Thereafter, the Chief Executive Officer, District Panchayat, Mahasamund directed Chief Executive Officer, Janpad Panchayat Bagbahara to constitute a committee for scrutinizing the case of the

petitioner for regularization. Accordingly, the Chief Executive Officer, Janpad Panchayat, Bagbahara constituted a committee who has ascertained the record wherein past record of the petitioner has been taken into consideration and also considering that since there was no regular post available and also on the count that he has been reinstated on 01.08.2014, therefore, case of the petitioner cannot be considered for regularization vide impugned order dated 04.08.2021 (Annexure P/9). Thereafter the Chief Executive Officer, District Panchayat, Mahasamund has also written a letter to the Development Commissioner Raipur mentioning the fact that since no vacant posts are available and also on the count that he has been reinstated on 01.08.2014 his case cannot be considered for regularization vide its memo dated 12.08.2021 (Annexure P/10). Being aggrieved with these Memos/orders the petitioner has preferred this writ petition under Article 226 of the Constitution of India.

4. Learned counsel for the petitioner would submit that as per circular issued by the State Government on 05.03.2008 the petitioner has already completed more than 10 years of service prior to his discontinuation from service, thus his case should have been considered. Secondly, he would submit that even if the posts are not lying vacant still the Hon'ble Supreme Court in case of ***Shripal & Anr. Vs. Nagar Nigam, Ghaziabad*** reported in **Civil Appeal No. 8157 of 2024, Neutral Citation No. 2025 INSC 144** in paragraph 18 has issued direction to regularize the workmen even if the posts are not vacant. Thus, he would pray for quashing of the impugned orders dated 04.08.2021 and 12.08.2021.

5. Per contra learned counsel for the respondent No. 4 and State support the orders passed by the respondents and would submit that since the petitioner was discontinued from his service, therefore, past services rendered by him have lost its significance for considering regularization and would submit that the impugned orders are legal and justified which do not warrant any interference by this Court. They would further submit that since posts are not available, therefore, no regularization can be ordered and the order of the Hon'ble Supreme Court does not come in rescue of the petitioner and would pray for dismissal of the writ petition.
6. I have heard learned counsel for the parties and perused the documents placed on record.
7. It is not in dispute that the petitioner was initially appointed on 25.07.1989 and has completed more than 10 years of service on 05.03.2008 it means he has completed 19 years of service, therefore, his case should have been considered in terms of circular dated 05.03.2008. The relevant clause of the circular dated 05.03.2008 reads as under:

(ब) दिनांक 01-01-1989 से दिनांक 31-12-1997 तक की अवधि में नियुक्त दैनिक वेतन भोगी/तदर्थ नियुक्त कर्मचारियों का नियमितकरण:-

माननीय सर्वोच्च न्यायालय द्वारा सचिव कर्नाटक राज्य एवं अन्य विरुद्ध उमादेवी एवं अन्य (2006) 4 एस.सी.सी. के प्रकरण में दिनांक 10-04-2006 को आदेश पारित कर यह सामान्य निर्देश दिया है कि केवल एक बार/एक समय के लिये 10 वर्षों या अधिक समय से नियमानुसार स्वीकृत पदों पर लगातार कार्यरत दैनिक वेतन भोगी/तदर्थ/अस्थाई कर्मचारियों की अनियमित नियुक्ति (Irregular Appointments) को नियमित करने की कार्यवाही की जानी चाहिए।

2. उपरोक्त माननीय उच्चतम न्यायालय के निर्णय के परिप्रेक्ष्य में राज्य शासन द्वारा सहानुभूतिपूर्वक विचार कर दैनिक वेतन भोगी/तदर्थ रूप से नियुक्त कर्मचारियों की नियमितकरण की प्रक्रिया निम्नानुसार निर्धारित की जाती है:-

- (i) व्यक्ति, रिक्त/स्वीकृत नियमित पद के विरुद्ध पदस्थ किया गया हो और विभागीय भरती नियमों में निर्धारित शैक्षणिक एवं अन्य योग्यताएं रखता हो तो ही नियमित करने योग्य है।

- (ii) दैनिक वेतन पर, तदर्थ रूप से अथवा कलेक्टर दर पर (दैनिक वेतन पर) जब नियुक्ति हुई तब से अब तक उस पद की आवश्यकता रही है और आगे भी उस पद की आवश्यकता हो तो संबंधित पद के विरुद्ध ऐसे व्यक्ति को पदस्थ मानते हुए विचार किया जा सकेगा।
- (iii) संबंधित व्यक्ति ने दैनिक वेतन भोगी (चाहे कलेक्टर दर पर) के रूप में अथवा तदर्थ रूप में दिनांक 31-12-1997 तक लगातार उसी पद पर या समकक्ष पद पर कार्य किया हो के संबंध में लगातार कार्य करना (सेवा देना) तब ही माना जायेगा यदि प्रत्येक वर्ष में कुल सेवा ब्रेक एक माह से अधिक की न हो। लगातार सेवा के लिये हड़ताल की अवधि में सेवा में ब्रेक नहीं मानी जायेगी।
- (iv) दिनांक 31-12-1997 तक दैनिक वेतन पर अथवा तदर्थ नियुक्त एवं कार्यरत तृतीय एवं चतुर्थ श्रेणी कर्मचारियों का नियमितिकरण किया जाय।
- (v) व्यक्ति यदि कार्यभारित पदों के विरुद्ध कार्यरत है तो कार्यभारित पद पर ही नियमित किया जाए नियमित पद के विरुद्ध कार्यरत हो तो नियमित पद पर ही नियमित किया जाए।
- (vi) छत्तीसगढ़ लोक सेवा (अनुसूचित जातियों, अनुसूचित जनजातियों, और अन्य पिछड़े वर्गों के लिये आरक्षण) अधिनियम, 1994 का पालन किया जावे अर्थात् दैनिक वेतन भोगी/तदर्थ रूप में कार्यरत व्यक्ति जिस वर्ग से संबंधित है रोस्टर के अनुसार उसी बिन्दु के समक्ष उसका नियमितिकरण किया जाये एवं रोस्टर में अनुसूचित जाति, अनुसूचित जनजाति, अन्य पिछड़े वर्ग के बिन्दु यदि उम्मीदवार के अभाव में रिक्त रहते हैं तो भविष्य में होने वाली रिक्तियों की पूर्ति आरक्षित बिन्दुओं के लिये प्राथमिकता के आधार पर बैकलाग की पूर्ति की तरह की जायेगी।
- (vii) नियमितिकरण स्वीकृत एवं रिक्त पद पर ही किया जाएगा। इस हेतु जिन विभागों में आवश्यक हो वहां सांख्येतर पद निर्मित किये जायें। यदि पद ही कलेक्टर दर पर स्वीकृत हो तो स्वीकृत पदों (दैनिक वेतन पर) को नियमित वेतनमान में परिवर्तित (सृजित) करना होगा।
- (viii) परिपत्र जारी होने के बाद शासकीय विभागों द्वारा नियमितिकरण के आदेश जिस दिन जारी किये जायेंगे उसी दिनांक से ही नियमित कर्मचारी माने जावेंगे। पूर्व के किसी दिनांक से नहीं। पद क्रम सूची में इनके नाम आपसी वरिष्ठता अनुसार एनब्लाक सबसे नीचे रखे जायेंगे।
- (ix) उपरोक्तानुसार नियमित रूप से नियुक्ति दी गई व्यक्तियों की आपसी वरिष्ठता दैनिक वेतन भोगी कर्मचारी/कलेक्टर दर पर, अथवा तदर्थ रूप से कार्यभार ग्रहण के दिनांक के आधार पर निर्धारित की जावेगी। वरिष्ठताक्रम निर्धारित करते समय यदि एक से अधिक व्यक्ति एक ही दिनांक में नियुक्त किये गये हों तो उनमें से जो आयु में अधिक होगा उसे वरिष्ठ माना जायेगा।

From perusal of circular it is quite vivid that if an employee who has worked continuously for more than 10 years from 1997 his case should have been regularized as a one time measure in terms of judgment passed by the Hon'ble Supreme Court in case of **State of Karnataka and Others Vs. Uma Devi**, reported in **(2006) 4 SCC 1**. Thus, the case

of the petitioner should have been considered in the year 2008, still respondents have not taken any steps for regularization and his services were discontinued without any regular enquiry by putting certain allegations though subsequently, the mistake has been rectified by the respondents by reinstating the petitioner on 01.08.2014, as such also his past services rendered by him should have not been wiped up by subsequent discontinuation and reinstatement as prior to 31.03.2014 he has already completed requisite length of service of 10 years as required by the circular issued by the State on 05.03.2008 as well as in the judgment passed by the Hon'ble Supreme Court in case of *State of Karnataka and Others Vs. Uma Devi (supra)* wherein the Hon'ble Supreme Court has categorically held that the daily wage employee who has continued for 10 years of service without any intervention of Court their services should have been considered for regularization, still respondent has not taken any action which shows that they have acted in an arbitrary manner. Even otherwise it is well settled position of law that reinstatement means the act of restoring someone or something to a previous position state or condition. The word reinstatement is subject matter of interpretation by the Hon'ble Supreme Court in case of **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya {(2013) 10 SCC 324}** wherein Hon'ble Supreme Court has held as under :-

21. The word "reinstatement" has not been defined in the Act and the Rules. As per Shorter Oxford English Dictionary, Vol.II, 3rd Edition, the word "reinstatement" means to reinstall or re-establish (a person or thing in a place, station, condition, etc.); to restore to its proper or original state; to reinstate afresh and the word "reinstatement" means the action of reinstating; re-establishment. As per Law Lexicon, 2nd Edition, the word "reinstatement" means to reinstall; to re-establish; to place again in a former state, condition or office; to restore to a state or position from which the object or

person had been removed and the word “reinstatement” means establishing in former condition, position or authority (as) reinstatement of a deposed prince. As per Merriam Webster Dictionary, the word “reinstate” means to place again (as in possession or in a former position), to restore to a previous effective state. As per Black’s Law Dictionary, 6th Edition, “reinstatement” means

‘To reinstall, to re- establish, to place again in a former state, condition, or office? To restore to a state or position from which the object or person had been removed.’

22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer employee relationship, the latter’s source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.

8. As such also the past services rendered by the petitioner should have been considered by the respondents for considering the case of petitioner for regularization.
9. The Hon’ble Supreme Court in case of Shripal (supra) has issued directions for regularization relying upon the judgment of State of Karnataka (supra) and all the judgment and in paragraph 18 in case of

Shripal & anr. Vs. Nagar Nigam, Ghaziabad the Hon'ble Supreme Court has held as under:

“18. The impugned order of the High Court, to the extent they confine the Appellant Workmen to future daily-wage engagement without continuity or meaningful back wages, is hereby set aside with the following directions:

I. The discontinuation of the Appellant Workmen's services, effected without compliance with Section 6E and Section 6N of the U.P. Industrial Disputes Act, 1947, is declared illegal. All orders or communications terminating their services are quashed. In consequence, the Appellant Workmen shall be treated as continuing in service from the date of their termination, for all purposes, including seniority and continuity in service.

II. The Respondent Employer shall reinstate the Appellant Workmen in their respective posts (or posts akin to the duties they previously performed) within four weeks from the date of this judgment. Their entire period of absence (from the date of termination until actual reinstatement) shall be counted for continuity of service and all consequential benefits, such as seniority and eligibility for promotions, if any.

III. Considering the length of service, the Appellant Workmen shall be entitled to 50% of the back wages from the date of their discontinuation until their actual reinstatement. The Respondent Employer shall clear the aforesaid dues within three months from the date of their reinstatement.

IV. The Respondent Employer is directed to initiate a fair and transparent process for regularizing the Appellant Workmen within six months from the date of reinstatement, duly considering the fact that they have performed perennial municipal duties akin to permanent posts. In assessing regularization, the Employer shall not impose educational or procedural criteria retroactively if such requirements were never applied to the Appellant Workmen or to similarly situated regular employees in the past. To the extent that sanctioned vacancies for such duties exist or are required, the Respondent Employer shall expedite all necessary administrative processes to ensure these longtime employees are not indefinitely retained on daily wages contrary to statutory and equitable norms.”

10. Learned counsel for the respondent No. 4 would submit that performance of the petitioner was unsatisfactory in the scrutiny done by them but no document was placed on record to demonstrate the said facts. As such, the submission made by learned counsel for

respondent No. 4 that performance of the petitioner was unsatisfactory which disentitles the petitioner from regularization, cannot be considered accordingly it is rejected. Consequently, the impugned orders/memo dated 04.08.2021 (Annexure P/9) and 12.08.2021 (Annexure P/10) are quashed.

11. In light of the above judgment and considering the fact that the petitioner has already worked from 1989 to 2014 and circular dated 05.03.2008 also provides that the daily wages employee who has worked for 10 years from 1997 should have been considered for regularization, I am of the view that this Court shall issue *writ of mandamus* directing respondents to consider the case of the petitioner for regularization in terms of circular dated 05.03.2008 and the law laid down by the Hon'ble Supreme Court in case of Shripal (*supra*) within an outer limit of 02 months from the date of receipt of copy of the order. From the cause title it is quite vivid that the petitioner is likely to retire shortly therefore, even retirement of the petitioner will not come in way against the respondents in considering the case of the petitioner for regularization as he has already completed 10 years before 2014 itself. It is made clear that respondents shall act in accordance with the circular and law laid down by the Hon'ble Supreme Court without prejudice to the fact that earlier orders passed by them have already been quashed by this Court .
12. Accordingly, the writ petition is allowed.

Sd/-
(Narendra Kumar Vyas)
Judge