

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

1	Case No.	Writ Petition No.218/2012 & connected Writ Petitions
2	Parties Name	Manoj Kumar Vs. State of MP & others
3	Date of Judgment	06/09/18
4	Bench constituted of	Hon'ble Shri Justice Prakash Shrivastava
5	Judgment delivered by	Hon'ble Shri Justice Prakash Shrivastava
6	Whether approved for reporting	Yes
7	Name of counsels for parties.	Shri A.K.Sethi, learned Sr.Counsel with Shri Harish Joshi, counsel for petitioner in WP No.218/2012, 301/2012, 344/2012, 345/2012, 430/2012, 683/2012, 684/2012 &WP No.11337/2012. Shri Dwarka Sawale & Shri Shashank Patwari, learned counsel for petitioner in WP No.6771/2014. Shri Apoorv Joshi, learned counsel for petitioner in WP No.8002/2016 & WP No.1645/2017. Shri Pushyamitra Bhargava, learned Dy.AG for respondents.
8	Law laid down	The peon and salesman etc. appointed in country/foreign liquor shops run by the excise department and were terminated 4-5 years thereafter on account of the subsequent change in policy to auction such shops, are not entitled to regularization/absorption in government service as they do not fulfill the requisite conditions contained in the scheme dated 16/5/2007 framed by the State government on the basis of the judgment of the supreme court in the case of <u>Secretary, State of Karnataka and others Vs. Umadevi and others (2006) 4 SCC 1</u>
9	Significant paragraph numbers	7 to 16

(PRAKASH SHRIVASTAVA)
J u d g e

HIGH COURT OF MADHYA PRADESH BENCH AT INDORE
(S.B.: HON. SHRI JUSTICE PRAKASH SHRIVASTAVA)

Writ Petition No. 218/2012

Manoj Kumar **Petitioner**

Vs.

State of MP & Others **Respondents**

Writ Petition No. 301/2012

Rajesh Singh Rathore **Petitioner**

Vs.

State of MP & Others **Respondents**

Writ Petition No.344/2012

Mukesh Rathor **Petitioner**

Vs.

State of MP & Others **Respondents**

Writ Petition No.345/2012

Govind Singh **Petitioner**

Vs.

State of MP & Others **Respondents**

Writ Petition No.430/2012

Mansingh **Petitioner**

Vs.

State of MP & Others **Respondents**

Writ Petition No.683/2012

Bharvindar Singh **Petitioner**

Vs.

State of MP & Others **Respondents**

Writ Petition No.684/2012

Shankarsingh **Petitioner**

Vs.

State of MP & Others **Respondents**

Writ Petition No.11337/2012

Rajesh Kumar Dubey **Petitioner**

Vs.

State of MP & Others **Respondents**

Writ Petition No.6771/2014

Mohah **Petitioner**

Vs.

State of MP & Others **Respondents**

Writ Petition No.8002/2016

Rajendra **Petitioner**

Vs.

State of MP & Others **Respondents**

Writ Petition No.1645/2017

Rajesh **Petitioner**

Vs.

State of MP & Others

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Respondents

Shri A.K.Sethi, learned Sr.Counsel with Shri Harish Joshi, learned counsel for petitioner in WP No.218/2012, 301/2012, 344/2012, 345/2012, 430/2012, 683/2012, 684/2012 & WP No.11337/2012.

Shri Dwarka Sawale & Shri Shashank Patwari, learned counsel for petitioner in WP No.6771/2014.

Shri Apoorv Joshi, learned counsel for petitioner in WP No.8002/2016 & WP No.1645/2017.

Shri Pushyamitra Bhargava, learned Dy.AG for respondents.

Whether approved for reporting :

ORDER

(Passed on 06th September , 2018)

This order will govern the disposal of WP No.218/2012, 301/2012, 344/2012, 345/2012, 430/2012, 683/2012, 684/2012, 11337/2012, 6771/2014, 8002/2016 & WP No.1645/2017 since it is jointly submitted by learned counsel for parties that all these writ petitions involve the same issue on the identical fact situation.

2] For convenience, the facts have been noted from WP No.218/2012.

3] By this writ petition, the petitioner has challenged the order dated 31/8/2009 by which the petitioner's case for absorption has been rejected.

4] The petitioner has approached this court with the plea that he was appointed as choukidar in the country/foreign liquor shop run by the Excise Department of the State government and the services of the petitioner were terminated by order dated 31/3/2001 on the ground that as per the change in the government policy the country/foreign liquor shop in the tribal sub plan area would be auctioned. The petitioner had

earlier filed OA No.694/2001 before the State Administrative Tribunal which on abolition of the tribunal was transferred to this court and registered as WP No.8725/2003 and was disposed of vide order dated 10/11/2003 with certain directions. The respondents thereafter had passed the order dated 13/6/2005 rejecting the claim of the petitioners for absorption/government employment. Challenging this order the petitioners had filed WP No.2442/2005 which was disposed of vide order dated 22/3/2006 in the light of the order passed in WP No.2054/2005(s) dated 22/3/2006 in the case of **Pandhari Chouhan Vs. State of MP and others**. The said order of the single bench was subject matter of challenge in WA No.572/2006 and connected Writ appeals and the division bench by order dated 18/2/2008 had disposed of the appeal with certain directions to consider the petitioners case and thereafter the impugned order dated 31/8/2009 has been passed rejected the petitioners claim for absorption in government service.

5] Learned counsel for petitioner submits that the directions issued by the Tribunal in OA No.700/1999 and this court in WP No.8725/2003 have attained finality, therefore, the petitioners have right of absorption in view of those directions. He has also submitted that the petitioners are entitled to absorption in view of the policy of the State government dated 25/1/2007 and 24/5/2007 and that the entitlement of the petitioner also flows from the judgment of the supreme court in the case of **State of M.P. Vs. M.K. Vyas Shraavan Kumar Namdeo**. Hence, the claim of the petitioners have wrongly been examined in the light of the circular of the State government dated 16/5/2007.

6] Learned counsel for State opposing the prayer has submitted that the cases of the petitioners have been considered in the light of the directions issued by the division bench and that the petitioners have not completed 10 years

service, therefore, they are not entitled for absorption/regularization in terms of the circular dated 16/5/2007.

7] Having heard the learned counsel for parties and on perusal of the record, it is noticed that the initial appointment of the petitioners was a pure temporary appointment on daily wages and the appointment order itself states that their services could be terminated at any time without any prior notice. The record further reflects that these petitioners on the strength of the said appointment order have worked only for 4-5 years and their services were terminated because the scheme of running the country/foreign liquor shop by excise department itself was put to an end by the State government.

8] The record further reflects that in the earlier round of litigation though vide order dated 22/3/2006 passed in WP No.2154/2005 in the case of **Pandhari Chouhan** (supra) the single bench had issued certain directions, but the said order of the single bench was subject matter of challenge before the division bench in WA No.572/2006 and other connected writ appeals. The issue relating to the applicability of the circular dated 16/5/2007 was considered by the division bench while disposing of the writ appeals by order dated 18/2/2008 and the division bench had directed consideration of the case of the petitioners in accordance with the scheme dated 16/5/2007. While issuing that direction the division bench had duly considered the constitution bench judgment of the supreme court in the case of **Secretary, State of Karnataka and others Vs. Umadevi and others (2006) 4 SCC 1**. The division bench in para 4 of the judgment has noted that the judgment of **Umadevi** (supra) rendered by the Constitution bench has overruled all previous judgments which are inconsistent with the observations/findings and the conclusions made in the said judgments. In the said back ground the division bench in WA

No.572/06 had issued the following directions:-

“06. However, such of the persons who have claimed absorption/re-appointment but who were appointed under political consideration or whose appointments suffer from illegality, *ab-initio*, cannot claim re-entry/reinstatement, in view of the judgment of the Supreme Court in **Municipal Corporation, Bilaspur versus Veer Singh Rajput and others [JT 1998 (7) SC 390]**. We are, therefore, of the view that in implementation of the scheme for absorption/re-induction of the respondents employees, the above principles should be borne in mind by the selection body / the appointing authority. Learned senior counsel for the appellants has submitted that insofar as preparation of the scheme and absorption of these Chowkidars and Salesmen is concerned, the same is no longer *res integra* because a division bench of this Court at Jabalpur has already taken the view that cases of the respondents employees may be considered in accordance with the scheme dated 16.05.2007 as directed in order dated 09.10.2007 in Writ Appeal No.103/2007. In the said decision, the division bench has duly taken into account the case of Umadevi (*supra*) and also of **State of M.P. and others versus Padamchand and others [2006 (2) MPLJ 397]**. Since, the State has already framed a scheme and as absorption of all the eligible respondents is underway in accordance with the direction contained in the order dated 09.10.2007 passed in Writ Appeal No.103/2007 (**State of M.P. and others versus Mehboob Khan Rangrej and others**), the same direction should be followed in all these cases.”

9] The aforesaid judgment clearly reveals that on the basis of another division bench judgment in the matter of **State of MP and others Vs. Mehboob Khan Rangrej and others** in WA No.103/2007 dated 9/10/2007 the division bench had directed for consideration of the case in accordance with the scheme dated 16/5/2007.

10] The division bench in the principal seat in the case of **Mehboob Khan** (*supra*) on 9/10/2007 had issued the following directions:-

“In view of the aforesaid, it is directed that the case of the respondents be considered in accordance with the scheme dated 16.5.2007. We may hasten to clarify, we have not expressed any opinion with regard to the entitlement of the respondents herein.”

11] Having regard to the aforesaid, it is clear that in pursuance to the directions of the division bench the case of the petitioners for absorption/regularization was required to be considered in the light of the circular/scheme dated 16/5/2007. The circular/scheme dated 16/5/2007 itself has been issued by the State government in the light of the judgment of the constitution bench in the matter of **Umadevi** (supra) and clause 5.1 of the Scheme requires minimum 10 years service. In the present case, none of the petitioner has completed 10 years service, therefore, the impugned orders have rightly been passed rejecting the petitioners case for regularization/absorption.

12] In the light of the aforesaid factual and legal position, contention of the learned counsel for petitioners that the order dated 10/11/2003 passed in WP No.8725/2003 has attained finality cannot be accepted because in the petitioners case itself subsequently the division bench has passed the order dated 18/2/2008, therefore, the order of the division bench will hold the field. Even otherwise in view of the constitution bench judgment in the case of **Umadevi** (supra) earlier contradictory decisions have been over-ruled. For this reason the petitioner is also not entitled to the benefit of the judgment of the supreme court in the case of **M.K. Vyas** dated 21/12/1990 passed in CA No.16490, 16398 and 14597/1990 and the judgment of the tribunal dated 13/3/2002 passed in OA No.700/1999 in the case of **M.P. Rajya Karmachari Sangh and others Vs. State of MP and others**. It is also worth noting that the order of the supreme court in the case of **M.K.Vyas** (supra) was for those persons who were appointed under a different scheme prior to

1990 and whereas the petitioners are appointees of a subsequent scheme. Hence, otherwise also they stand on the different footing.

13] Supreme Court considering the similar issue in the matter of **Nand Kumar Vs. State of Bihar and others AIR 2015 SC 133** has held:-

“22--We have consciously noted the aforesaid decisions of this Court. The principle as has been laid down in Umadevi (AIR 2006 SC 1806: 2006 AIR SCW 1991) (supra) has also been applied in relation to the persons who were working on daily wages. According to us, the daily wagers are not appointees in the strict sense of the term ‘appointment’. They do not hold a post. The scheme of alternative appointment framed for regular employees of abolished organisation cannot, therefore, confer a similar entitlement on the daily wagers of abolished organisation to such alternative employment. [See Avas Vikas Sansthan v. Avas Vikas Sansthan Engineers Association (2006 (4) SCC 132)]. Their relevance in the context of appointment arose by reason of the concept of regularisation as a source of appointment. After Umadevi (supra), their position continued to be that of daily wagers. Appointment on daily wage basis is not an appointment to a post according to the rules. Usually, the projects in which the daily wagers were engaged, having come to an end, their appointment is necessarily terminated for want of work. Therefore, the status and rights of daily wagers of a Government concern are not equivalent to that of a Government servant and his claim to permanency has to be adjudged differently.

23-- In these circumstances, in our considered opinion, the regularisation/absorption is not a matter of course. It would depend upon the facts of the case following the rules and regulations and cannot be dehors the rules for such regularisation/absorption.”

14] So far as the alleged policy dated 25/1/2007 relied upon by the learned counsel for petitioner is concerned, it is not a policy but a minutes of the meeting wherein certain directions was issued for absorption. Similarly the document dated

24/5/2007 is a circular which also does not contain any scheme of absorption and even otherwise since these circulars and minutes of the meeting run counter to the directions in the case of **Umadevi** (supra), therefore, no mandamus can be issued on the basis of these minutes or circular.

15] The record further reflects that the petitioners services were terminated 17 years back. The impugned order of rejecting the petitioner's case was passed on 31st August, 2009 and the petitioner has filed the present writ petition in the year 2012 after an inordinate delay.

16] In view of the above analysis, I find that those who were appointed on daily wages as peon, salesman etc. in the country/foreign liquor shops run by the excise department and have been terminated after 4-5 years on account of subsequent change in policy to auction such shop, are not entitled to regularization/absorption in government as they do not fulfill the requisite conditions contained in the Scheme as framed by the State on the basis of judgment of the Supreme Court in the matter of **Umadevi** (supra).

17] Having regard to the aforesaid analysis, I am of the opinion that the writ petitions are devoid of any merit which are accordingly dismissed.

18] The signed order be placed in the record of WP No.218/2012 and copy whereof be placed in the record of connected Writ Petitions.

(Prakash Shrivastava)
Judge

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