

WP-6201-2008

(BRIJ MOHAN SHARMA Vs THE STATE OF MADHYA PRADESH)

08-04-2015

HIGH COURT OF MADHYA PRADESH : JABALPUR

SINGLE BENCH : JUSTICE MS.VANDANA KASREKAR

WRIT PETITION NO.6201/2008

Brij Mohan Sharma

Vs.

State of M.P.and another

Shri Shekhar Sharma, learned counsel for the petitioner.

Smt. J. Pandit, learned Dy. Govt. Advocate for the respondents.

O R D E R

(08/04/2015)

The petitioner has filed the present writ petition challenging the order dated 15/04/2008 passed by respondent No.2 thereby rejecting the representation submitted by the petitioner on 22/7/2004 and 14/12/2007 without assigning any cogent reason.

2. The brief facts of the case are that the petitioner is working on the post of Sub Engineer in the Capital Project at Bhopal. The petitioner was appointed as daily wages employee on 27/7/1985 in the office of Executive Engineer, Public Works Department, National Highway Division, M.P., Gwalior. The State Government has issued circular dated 24/11/1987 through Department of General Administration for regularization of their daily wagers and work-charged employees. As per the said circular, those daily wages employees having degree holder are entitled to be regularized who had worked on or before 30/3/1986. The petitioner submits that he is fully eligible and fit candidate to be regularized. Executive Engineer has issued a certificate dated 25/5/1985 stating

therein that the petitioner is working in the department from 27/5/1985 to 29/9/1985 and 28/4/1986 to October, 1986 and he is a degree holder. The services of the petitioner has been regularized in the year 1991 instead of 1988, the petitioner has, therefore, submitted a representation on 22/7/2004, however, without considering the said representation, the respondents have published gradation list on 26/11/2007 indicating his position as on 1/4/2007 and the name of the petitioner has been shown at serial No.92 in the said gradation list. Being aggrieved by the said gradation list, the petitioner again submitted a representation on 14/12/2007. The said representation has been rejected by the respondents by the impugned order dated 15/4/2008 without adverting to the contentions raised by the petitioner.

3. The respondents have filed their reply and in the reply they have stated that as per para-1 of the said circular, it is clear that those degree/diploma holder engineers were to be regularized who were working as on 30/3/21986 and prior to it. As per petitioner's own admission, he had worked only during the period 27/7/1985 to 29/9/1985 and thereafter from 28/4/1986 till October, 1986, that is to say that the petitioner was not working as on 30/3/1986 and, therefore, he is not entitled to be regularized in pursuance of the circular Annexure-P/1. They have further stated that the post of Sub Engineer to be filled through Mini Public Service Commission and, therefore, relaxation for filling up 484 posts of Sub Engineer only for one time were granted by order dated 4/6/1991. Pursuant thereto by order dated 3/7/1991 sanction was granted by the Public Works Department for regularization of degree/diploma holder Sub Engineers as on 31/5/1987. Consequent to this sanction, by order dated 12/7/1991, the services of the petitioner has been regularized on the post of Sub Engineer.

4. The petitioner has filed rejoinder to the reply filed by the respondents and has submitted that respondent No.2 has contended that the petitioner was not regularized from 1988 as there was no sanction post available with the department and the approval has not obtained from Mini Public Service Commission. He further submits that as per circular dated 24/11/1987 the name of those daily wager degree holder engineers should be considered for regularization who are working on 30/3/1986 or before the said date. It is further submitted that the Executive Engineer vide Annexure-P/2 dated 27/5/1987 had certified that the petitioner was working as daily wager employee since 27/7/1985. He further submits that the respondents have regularized the services

of one similarly placed person namely Shri Sunil Kumar Awashti.

5. The respondents have filed additional return refuting the allegations made by the petitioner in the rejoinder.

6. The contention of learned counsel for the petitioner is that as per Annexure-P/2 i.e. certificate issued by the Executive Engineer, it is clear that the petitioner has worked in the department from 27/7/1985 to 29/9/1985 and thereafter from 28/4/1986 to October, 1986 and as per the clause-1 of the circular, cases of those degree holders are to be considered for regularization who are worked as daily wages employees on 30/3/1986 or before that. As the petitioner is working w.e.f. 1985, therefore, he certainly entitles to get the benefit of circular dated 24/11/1987. He further submits that the representation is rejected by an order dated 15/4/2008 on the ground that the State Government has not given sanction for filling of the vacant post and, therefore, the services of the petitioner could not have been regularized. However, he submits that the respondents have taken a different stand in their return that as the petitioner was not working on 30/3/1986 or prior to it, therefore, he is not entitled to get benefit of circular dated 24/11/1987. He further submits that the respondents cannot supplement the reasons by way of additional affidavit or return which are not in the impugned order and for the said purpose, learned counsel for the petitioner relied upon the judgment passed by the Apex Court in the case of **Hindustan Petroleum Corpn.Ltd. Vs. Darius Shapur Chenai and others, (2005) 7 SCC 627**. He, therefore, prays that the impugned order may be set aside and the respondents be directed to regularize the services of the petitioner with effect from the year 1988.

7. Learned counsel for the respondents argued that as the petitioner was not in employment on or before 30/4/1987 and, therefore, he is not entitled to get the benefit of the said circular.

8. I have heard learned counsel for the parties and perused the record. From perusal of the impugned order dated 15/4/2008, it is clear that the said order is passed on the ground that the State Government has not given sanction for filling of the vacant post and, therefore, the services of the petitioner could not have been regularized. However, by way of filing the return, they have stated that as the petitioner was not in the employment on or before 30/4/1986 and, therefore, his services have not been regularized. Hon'ble the Supreme Court in the case of **Hindustan**

Petroleum Corpn.Ltd. (supra) in para-26 has held as under :

â¶26. Yet again in *Mohinder Singh Gill*, this Court observed :

â¶8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Gordhandas Bhanji*.â¶

9. Thus, in the light of the aforesaid judgment of the Supreme Court, the respondents supplement fresh reason by filing the return. It is also clear from the record that the respondents have regularized the services of one Sunil Kumar Awasthi who is similarly situated employee and, therefore, the petitioner cannot be discriminated in the matter of regularization. It is further observed from the certificate Annexure-P/2 issued by the Executive Engineer that the petitioner was working since 1985 and the circular states that those employees who are working on 30/3/1986 or before that, are entitled to be regularized. As in the present case, the petitioner is working since 1985, therefore, he is certainly entitled for regularization with effect from the year 1988 as has been done in the case of one Sunil Kumar Awasthi.

10. Consequently, the writ petition is allowed. The impugned order dated 15/4/2008 is hereby quashed. The respondents are directed to consider the case of the petitioner for regularization with effect from the year 1988 and if he is found eligible otherwise, then his services be regularized with effect from the year 1986 along with one Sunil Kumar Awasthi. The aforesaid exercise be done within a period of four months from the date of passing of the order. There shall be no order as to cost.

(VANDANA KASREKAR)
JUDGE