

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT  
JABALPUR**

<b>Case No.</b>	<b>W.P. No.821/2014 and W.P.3518/2014</b>
<b>Parties Name</b>	<p style="text-align: center;"><b><u>W.P.No.821/2014</u></b> <i>Arun Narayan Hiwase and others</i> vs. <i>State of M.P and others</i> and <b><u>W.P.No.3518/2014</u></b> <i>Raja Bhau Gulabrao Jagtap and others</i> vs. <i>State of M.P and others</i></p>
<b>Date of order</b>	<b>16/12/2020</b>
<b>Bench Constituted</b>	<b>Single Bench : Justice Sujoy Paul</b>
<b>Order passed by</b>	<b>Justice Sujoy Paul</b>
<b>Whether approved for reporting</b>	Yes
<b>Name of counsel for parties</b>	<p><b>For Petitioners:</b> Shri Ashish Shroti, Adv. <b>For Respondent No.1 :</b> Shri Swapnil Sohgaora, P.L. <b>For Respondents No.2 to 4 :</b> Shri Pranay Choubey, Advocate.</p>
<b>Law laid down</b>	<p><b>Cancellation of regularisation of petitioners-</b>the petitioners were regularised as per decision of the Screening Committee constituted as per executive instructions and the Regulation of 1988 on 20.7.1998. The said Regulation were nullified w.e.f. 13.7.1998 by passing the administrative order dated 9.7.1998. On the date of regularisation, previous regulation and instructions were in force and new Regulation of 1998 were not in existence. Hence, regularisation cannot be cancelled.</p> <p><b>Regulation 1998-</b>as per the <b>Repeal and Saving Clause</b> also, the previous decision to regularise the petitioners must be treated to be a decision taken as per the Regulation of 1998. Thus, the regularisation of petitioners is saved as per the Saving Clause.</p> <p><b>Practice and procedure-</b> in previous round of litigation filed by one Shri Lonare, no order was passed by this Court to set aside</p>

	<p>the regularisation orders of petitioners. Indisputably, Lonare was occupying the post on promotion whereas the petitioners were regularised on the said post. They belong to different <i>Mandis</i> and hence they were not at par. Hence, the question of discrimination does not arise. Lonare succeeded before the Single Bench, Division Bench and also before the Supreme Court and hence continued. Petitioners' regularisation is cancelled on the pretext of maintaining parity with Lonare which ground does not exist.</p> <p><b>Administrative order - retrospectivity</b> - executive order of government/department cannot be made operative to the detriment of petitioners with retrospective effect.</p>
<b>Significant paragraph numbers</b>	-

**(O R D E R)**  
**16.12.2020**

These petitions take exception to the similar impugned order dated 29.11.2013 (Annx.P/8) whereby regularization order of petitioners dated 20.7.98 was cancelled and they were de-regularized.

2. The facts are taken from W.P.No.821/2014. The petitioners were working as daily rated employees from the dates prior to 31.12.1988. The Commissioner Mandi Board issued instructions dated 30.5.1988 (Annx.P/1) and 15.4.1993 (Annx.P/2) for the purpose of regularization of workers who were engaged prior to 31.12.1988. In furtherance of said instructions, Screening Committee was constituted which considered the cases of petitioners for regularization on 16.7.1998. It resulted with issuance of order dated 20.7.1998 (Annx.P/6) whereby petitioners were regularized on the post of Nakerdar (Redesignated as Asst. Sub Inspector later on).

3. It is pointed out that one Shankar Lonare was promoted as Assistant Sub Inspector (ASI) at Mandi Samiti Sounsar (Chindwara) by order dated 27.7.98. Later on, he was reverted from the post of ASI which order was assailed by him by filing W.P.No.5670/2020. The present petitioners were also impleaded by him as party respondents. The aforesaid petition was allowed by this court by order dated 14.10.2020 (Annx.P/7) and order of reversion was quashed. The said order of learned Single Judge was unsuccessfully challenged by the employer in W.A.No.52/2012 and before the Supreme Court.

4. Shri Ashish Shroti, learned counsel for the petitioner submits that impugned order dated 29.11.2013 (Annx.P/8) came as bolt from the blue to the petitioners whereby their regularization orders were cancelled unilaterally without following the principles of natural justice. This order is assailed by contending that petitioners were regularized as per the Regulation of 1988 and instructions which were *in vogue* when petitioners' claim for regularization was considered and subsequent regulation of 1998, namely, Rajya Mandi Board Sewa Viniyam, 1998 cannot have adverse effect on the regularization of petitioners. In Lonare's case, this court did not set aside the order of regularization of present petitioners. The case of present petitioners cannot be compared with Lonare's because Lonare was admittedly promoted on the post of ASI whereas present petitioners were regularized. Both belong to different Mandis and their cases were incomparable.

5. The next contention of Shri Shroti is that Shri Lonare continued on the post of ASI whereas petitioners regularization was cancelled thereby discrimination is caused by respondents. Section 26 of Krishi Upaj Mandi Adhiniyam and the administrative order dated 29.7.1998 (Annx.R/2) did not empower the employer to annul/ cancel the regularization order which was taken pursuant to decision dated 20.7.1998, the date when the previous regulation of 1988 was in force.

The Regulation of 1998 (Repeal and Saving clause) also saved the previous action of regulation. It is further argued that the validity of the order impugned needs to be examined on the grounds mentioned therein and cannot be supported by furnishing new grounds by way of counter affidavit. Reliance is placed on *AIR 1978 SC 851 (Mohinder Singh Gill and another Vs. The Chief Election Commissioner and others)* and *(2002) 1 SCC 520 (Pavanendra Narayan Verma Vs. Sanjay Gandhi PGI of Medical Science & Anr.)*. Lastly, it is submitted that the impugned order is arbitrary and contrary to the principles of natural justice.

6. Countering the aforesaid arguments, Shri Pranay Choubey, learned counsel for the employer supported the impugned order on the basis of return filed. Shri Choubey urged that Section 26 of Krishi Upaj Mandi Adhiniyam was amended by notification dated 30.5.1997. As per amended section, the employer was required to constitute the service of employees of Board and the Marketing Committee. In furtherance thereof, two notifications were issued whereby Sanshodhan Adhiniyam was brought into force from 09.06.1998.

7. Shri Pranay Choubey placed reliance on administrative order dated 29.7.1998 whereby the new regulation namely Rajya Mandi Board Seva Viniyam, 1998 were made applicable w.e.f. 13.7.1998 and from that date, the erstwhile regulation of 1988 were made ineffective. It is submitted that the amended provision namely Section 26 read with the administrative order dated 29.7.1998 shows that consequent upon enforcement of these provisions, the post of Assistant Sub-Inspector became a post under Mandi Board Services. The Mandi Board alone had jurisdiction and competence to undertake the exercise of selection for filling the post of *Nakedar*/ASI after 15.6.97. In the present case, indisputably, the petitioners' regularisation order was not passed by the Mandi Board and therefore, their regularisation order was void *ab initio*. In view of *(2018) 15 SCC 463 [Union of India & Another Vs. Raghuwar Pal Singh]*, the petitioners were not entitled to be

heard before cancellation of regularisation order. Since their order of regularisation were passed by an incompetent authority, the principle of natural justice is not applicable. Lastly, it is argued that in view of the order of single bench in Lonare (supra), the petitioners' regularisation order were rightly cancelled.

8. Next submission is that the judgment of Supreme Court in **Mohinder Singh** (supra), has no application to the present case because the impugned order is an internal communication between the departmental authorities and no consequential order was passed by the authority on the basis of this internal communication dated 29.11.2013.

9. Parties confined their arguments to the extent indicated above.

10. I have heard counsel for the parties at length and perused the record.

11. Indisputably, the petitioners and Shri Lonare belong to the different *Mandi Samities*. Petitioners belong to Pandhurna whereas Shri Lonaray belong to the Mandi Samiti Saunsar. Similarly, the petitioners were regularised on the post of Nakedar/Assistant Sub Inspector whereas Shri Lonaray occupied that post on promotion.

12. This Court in W.P.No.5670/2000 gave an observation that the respondents acted in a discriminatory manner in not cancelling the promotions of proposed respondents (present petitioners). The respondents unsuccessfully assailed this order in W.A.No.52/2012. After becoming unsuccessful, they realised that question of discrimination may be a hurdle for them in arguing the SLP, therefore, the impugned order/communication dated 29.11.2013 was passed. This was passed on the basis of opinion of government advocate. The decision was taken to cancel the regularisation order so that the question/ground of discrimination in favour of Shri Lonare does not survive. For this singular reason, the petitioners' regularisation order was cancelled by treating them to be illegal appointees.

13. The dates in the instant case are important and makes the present matter very interesting. The petitioners were admittedly regularised on 20.7.1998. On that date, admittedly, the regulation of 1998 was not applicable because of administrative order dated 29.7.1998 and the regulation of 1988 were

applicable. The ancillary question arises whether this administrative order can take away the right of consideration of regularisation which accrued in favour of the petitioners as on 20.7.1998.

14. In my opinion, for three reasons, the fruits of regularisation of petitioners ripened on 20.7.1998 cannot be taken away. **Firstly**; the Regulation of 1998, (Repeal & Saving Clause) protects such regulation/action which was taken pursuant to erstwhile regulation and instructions. **Secondly**; the administrative order dated 29.7.1998 cannot take away the vested right in view of the *(1972) 4 SCC 765 [Ex-Major N.C. Singhal Vs. Director General, Armed Forces Medical Services, New Delhi & Another]*. The Apex Court held that the conditions of services of an employee cannot be altered or modified to his prejudice by a subsequent administrative order having retrospective effect. The same view is followed by the Supreme Court in the case of *(1994) 1 SCC 437 [Govind Prasad Vs. R.G. Prasad & Ors.]*. It was poignantly held that an executive order of government cannot be made operative with retrospective effect. **Thirdly**, the singular reason to cancel the regularisation was to maintain the parity with Shri Lonare. Interestingly and admittedly, Shri Lonare continued in employment because of dismissal of writ appeal and SLP of the employer. Thus, if Lonare can be permitted to continue, the reversion on the ground of discrimination does not arise. Moreso, when admittedly the petitioners and Lonare are not similarly situated. Shri Lonare was a promotee of a different mandi whereas the petitioners occupied the post of Sub Inspector because of regularisation. The Constitution bench in *(2006) 4 SCC 1 [Secretary, State of Karnataka & Ors. Vs. Umadevi (3) & Ors.]* opined that as a one time measure, the regularisation is permissible and on the basis of subsequent instructions, the previous regularisation order need not to be disturbed.

15. As noticed above, I am unable to hold that when the petitioners were regularised, the action was void *ab initio* and contrary to regulation. For this reason, the judgment cited by Shri Choubey cannot be pressed into service.

16. For the reasons stated above, the impugned order dated 29.11.2013 cannot sustain judicial scrutiny and is accordingly set aside. It is pointed out that petitioner no.1, Arun Narayan Hiwase (in W.P.No.821/2014) died during

the pendency of the case. Similarly, petitioner no.2 Ambadas Mahadeo retired on attaining the age of superannuation. Consequent upon setting aside of the impugned order, the legal representative of petitioner no.1 shall get the retiral dues of petitioner no.1 in accordance with the rules whereas the petitioner no.2 shall get his own retiral dues as if he was never de-regularised.

17. The entire exercise be completed within 90 days from the date of production of this order.

18. The petitions are allowed.

**(Sujoy Paul)**  
**Judge**