

1
**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL**

ON THE 21st OF FEBRUARY, 2023

WRIT PETITION No. 10365 of 2013

BETWEEN:-

**RAMESHWAR PRASAD PYASI S/O SHRI NARAYAN
PRASAD PYASI, AGED ABOUT 48 YEARS, VILLAGE
HATHANA (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI SANJAY VERMA - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH THROUGH ITS
SECRETARY PUBLIC WORKS DEPT. BHOPAL
(MADHYA PRADESH)**
- 2. CHIEF ENGINEER PUBLIC WORKS DEPARTMENT
BHOPAL (MADHYA PRADESH)**
- 3. EXECUTIVE ENGINEER PUBLIC WORKS
DEPARTMENT DIVISION DAMOH (MADHYA
PRADESH)**
- 4. PRAVEEN KUMAR NAMDEO S/O SHRI RAJARAM
NAMDEO PUBLIC WORKS DEPTT. DIV. NO.2
(MADHYA PRADESH)**
- 5. SANJAY SHARMA S/O SHRI AWADH NARAYAN
SHARMA PUBLIC WORKS DEPTT. (MADHYA
PRADESH)**
- 6. JITENDRA CHOUHAN OCCUPATION: SUB
ENGINEER PUBLIC WORKS DEPTT.
OBEDULLGANJ VIDHYANNAGAR (MADHYA
PRADESH)**
- 7. PRAVEEN KUMAR TIWARI S/O SHRRI K.P. TIWARI
PUBLIC WORKS DEPTT. DIV.REWA (MADHYA
PRADESH)**

8. VIJAY KUMAR KESHARWANI S/O SHRI R.D. KESHARWANI PUBLIC WORKS DEPTT. DIV JHABUA (MADHYA PRADESH)

.....RESPONDENTS

(SHRI MANAS MANI VERMA - GOVERNMENT ADVOCATE FOR RESPONDENT NOS. 1 TO 3/STATE)

(SHRI AJEET KUMAR SINGH - ADVOCATE FOR RESPONDENT NO. 7)

WRIT PETITION No. 10370 of 2013

BETWEEN:-

NARENDRA KUMAR VISHWAKARMA S/O SHRI BAIJNATH PRASAD VISHWAKARMA, AGED ABOUT 49 YEARS, SUB ENGINEER E & M PUBLIC WORKS DEPT. DAMOH (MADHYA PRADESH)

.....PETITIONER

(BY SHRI SANJAY VERMA - ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH THROUGH ITS SECRETARY PUBLIC WORKS DEPT. BHOPAL (MADHYA PRADESH)
2. CHIEF ENGINEER PUBLIC WORKS DEPTT. BHOPAL (MADHYA PRADESH)
3. EXECUTIVE ENGINEER PUBLIC WORKS DEPARTMENT IV. DAMOH (MADHYA PRADESH)
4. SANJAY SHARMA S/O SHRI AWADH NARAYAN SHARMA PUBLIC WORKS DEPTT. DIV. (MADHYA PRADESH)
5. JITENDRA CHOUHAN OCCUPATION: SUB ENGINEER PUBLIC WORKS DEPTT. OBEDULLGANJ VIDHYANNAGAR (MADHYA PRADESH)
6. PRAVEEN KUMAR TIWARI S/O SHRI K.P. TIWARI PUBLIC WORKS DEPTT. (MADHYA PRADESH)
7. VIJAY KUMAR KESHARWANI S/O SHRI R.D. KESHARWANI OCCUPATION: SUB ENGINEER PUBLIC WORKS DEPTT. DIV. JHABUA (MADHYA PRADESH)

....RESPONDENTS

*(SHRI MANAS MANI VERMA - GOVERNMENT ADVOCATE FOR
RESPONDENT NOS. 1 TO 3/STATE)*

(SHRI AJEET KUMAR SINGH - ADVOCATE FOR RESPONDENT NO. 6)

WRIT PETITION No. 25517 of 2021

BETWEEN:-

**PRAVEEN KUMAR TIWARI S/O LATE SHRI K.P. TIWARI,
AGED ABOUT 53 YEARS, OCCUPATION: SUB ENGINEER
PUBLIC WORKS DEPARTMENT NATIONAL HIGHWAY
DIVISION BESIDES COMMISSIONER BUNGLOW REWA
DISTT. REWA M.P. (MADHYA PRADESH)**

....PETITIONER

(BY SHRI AJEET KUMAR SINGH - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THR. CHIEF
SECRETARY VALLABH BHAWAN BHOPAL
(MADHYA PRADESH)**
2. **PRINCIPAL SECRETARY THE STATE OF MADHYA
PRADESH VALLABH BHAWAN BHOPAL (MADHYA
PRADESH)**
3. **CHIEF ENGINEER THE STATE OF MADHYA
PRADESH NIRMAN BHAWAN, ARERA HILLS
BHOPAL (MADHYA PRADESH)**
4. **EXECUTIVE ENGINEER THE STATE OF MADHYA
PRADESH NATIONAL HIGHWAY DIVISION , NEAR
COMMISSIONER BUNGLOW, REWA, DISTT-
REWA(MP) (MADHYA PRADESH)**

....RESPONDENTS

(BY SHRI MANAS MANI VERMA - GOVERNMENT ADVOCATE)

.....
*These petitions coming on for hearing this day, the court passed the
following:*

ORDER

These petitions are filed being aggrieved of inaction on the part of the respondents in not giving benefit of regular pay scale to the petitioners from the

date of their initial appointment despite the fact that petitioners who are appointed as daily wage Diploma Engineers were appointed on various dates whereby petitioners were respectively regularized vide order dated 3/10/2009 in which name of petitioner Rameshwar Pyasi appears at serial no. 5 whereas petitioner Narendra Vishwakarma was regularized vide order dated 4/10/2008 in which his name appears at serial no. 3 and third petitioner Shri Praveen Kumar Tiwari was regularized w.e.f. 7/01/2009 as diploma holder Sub Engineer (Civil).

In all the three writ petitions, petitioners are claiming benefit of regularization from the date of initial appointment with a further direction to pay, arrears of difference of regular pay scale of Sub Engineer to the petitioners with all consequential benefits and also to place the petitioner above respondent nos. 4 to 8 in the seniority list and also grant consequential seniority.

It is submitted that permanent classification/order of regularization has given them cause of action to file these petitions.

The State Government has filed its return and has categorically stated that petition is misconceived. Petitioners were appointed as daily wage Sub Engineers on various dates. Petitioner Rameshwar Prasad Pyasi had filed Original Application before the State Administrative Tribunal bearing no. 82/1995 which was transferred to the High Court on abolition of the State Administrative Tribunal and was registered as W.P. No. 9451/2003.

This petition was disposed of vide order dated 29/04/2004 directing the respondents to consider the case of the petitioner for regularization and, thereafter, case was considered for regularization in terms of the law laid down by the Supreme Court in **Secretary, State of Karnataka Vs. Uma Devi (2006) 4 SCC 1** and, therefore, dismissal of the writ petition is sought.

Similarly, in case of Narendra Kumar Vishwakarma, it is submitted that

petitioner who was appointed as daily wage Sub Engineer in 1990, his services were dispensed with. Petitioner had approached the Labour Court which vide order dated 13/11/1999 directed for reinstatement of the petitioner with a further direction to take action in regard to regularization etc. in accordance with law.

Admittedly, the appeal filed by the State before the Industrial Court was dismissed and, thereafter, case of petitioner Shri Narendra Kumar Vishwakarma was considered for regularization in the light of the law laid down by the Supreme Court in the case of **Uma Devi** (supra).

In the case of Praveen Kumar Tiwari also, facts are that petitioner had filed W.P. No. 2747/2000 which was disposed of along with other writ petitions filed by other persons vide order dated 9/10/2003 directing the State to continue them on daily wage basis and then constitute a screening committee to adjudicate the suitability and whenever vacancies arise, they should be absorbed subject to mandate of the rules pertaining to concept of reservation and quota system and till then, petitioners were directed to continue as daily wagers.

Thus, in all the three writ petitions, the issue is common namely whether there can be any seniority for the service rendered by the petitioners in their capacity as a daily wager and secondly, without regularization, are they entitled to claim benefit of difference of salary of regular post and that of daily wage employee ?

Pay is defined in Fundamental Rule 22-A which reads as under :-

F.R.22.-A.: The initial substantive pay of a Government servant who is appointed substantively to a post on a time-scale of pay is regulated as follows:-

(a) If he holds a lien on a permanent post, other than a tenure

post, or would hold a lien on such a post had his lien not been suspended -

(i) When appointment to the new post involves the assumption of duties and responsibilities of greater importance (as interpreted for the purposes of Fundamental Rule 30) than those attaching to such permanent post, he will draw as initial pay the stage of the time-scale next above his substantive pay in respect of the old post.

(ii) When appointment to the new post does not involve such assumption, he will draw as initial pay the stage of the time-scale which is equal to his substantive pay in respect of the old post, or, if there is no such stage, the stage next below that pay, plus personal pay equal to the difference, and in either case will continue to draw that pay until such time as he would have received an increment in the time-scale of the old post, or for the period after which an increment is earned in the time-scale of the new post, whichever is less. But if the minimum pay of the time-scale of the new post is higher than his substantive pay in respect of the old post, he will draw that minimum as initial pay.

(iii) When appointment to the new post is made on his own request under Fundamental Rule 15 (a) and the maximum pay in the time-scale of the post is less than his substantive pay in respect of the old post, he will draw that maximum as initial pay.

(b) If the conditions prescribed in clause (a) are not fulfilled he will draw as initial pay the minimum of the time-scale :

Provided both in cases covered by clause (a) and in cases, other than cases of re-employment after resignation or removal or

dismissal from the public service, covered by clause (b), that if he either-

(1) has previously held substantively or officiated in-

(i) the same post, or

(ii) a permanent or temporary post on the same time-scale, or

(iii) a permanent post, other than a tenure post, on an identical time-scale, or a temporary post on an identical time-scale, such post being on the same time-scale as a permanent post; or

(2) is appointed substantively to a tenure post on a time-scale identical with that of another tenure post which he has previously held substantively or in which he has previously officiated, then the initial pay shall not be less than the pay, other than special pay, personal pay or emoluments classed as pay by the Governor-General in Council under Fundamental Rule 9 (21) (a) (iii), which he drew on the last such occasion, and he shall count for increments the period during which he drew that pay on such last and any previous occasions.

If, however, the pay last drawn by the Government servant in a temporary post has been inflated by the grant of premature increments the pay which he would have drawn but for the grant of those increments shall, unless otherwise ordered by the authority competent to create the new post, be taken for the purposes of this proviso to be the pay which he last drew in the temporary post.

Exception.-The condition in paragraph (iii) of the first proviso that the temporary post should be on the same time-scale as a

permanent post shall not be enforced when a temporary post is (i) created by one Government or Department for the purpose of work of the nature as the ordinary work for which permanent posts exist in a cadre under a different Government or Department and (ii) sanctioned on a time-scale identical with the time-scale applicable to the permanent posts in the cadre under the different Government or Department.

(c) Provided further that no cases dealt with before the date of issue of the notification publishing this rule under the rules as they stood on the 26th May 1930 shall be reviewed in the light of this rule.

NOTE (1) If the Government servant is entitled to overseas pay in the new post but was not drawing overseas pay in the old post, the overseas pay in the new post shall not be taken into account in determining the stage in the time scale of the new post to which he is entitled under clause (a).

(2). For the purposes of this rules sterling overseas pay shall be converted into rupees at such rate of exchange as the Secretary of State in Council may by order prescribe.

Thus, it is evident that Pay as defined in Fundamental Rule 22-A is to be paid to a person holding a post substantively or in an officiating capacity or to which he is entitled by reason of his position in a cadre. The cadre is defined in the Fundamental Rule to mean the strength of a service or a part of service sanctioned as a separate unit.

Thus, it is evident that till regularization, petitioner was not a member of

cadre of Junior/Sub Engineer. Therefore, he was not entitled to pay as defined in Fundamental Rule 22-A. Thus, before regularization, petitioner was not entitled to any pay in the regular pay scale. Even otherwise, claiming benefit of arrears of pay starting from their initial appointment till the date of regularization which is of the year 2008/09 is barred by limitation in the light of the law laid down by the Supreme Court in ***M.R. Gupta Versus Union of India and Others, (1995) 5 SCC 628.***

As far as issue of seniority is concerned, which is assigned amongst employees similarly situated, the Supreme Court in ***State of Punjab Vs. Joginder Singh AIR 1963 SC 913*** at page 921 has held that seniority is comparative or relative concept. The comparison has to be between employees who are equally circumstanced if the employees belong to two distinct classes, the question of interse seniority between the members of such distinct classes cannot arise.

In the present case, petitioners as daily wagers were distinct class from the regular Engineers, even otherwise, the object of assigning seniority is to provide an opportunity of advancement to the State employee as held in ***Council of Scientific and Industrial Research and another Vs. K.G.S. Bhatt and another AIR 1989 SC 1972.***

Thus, when daily wagers are not entitled to any promotional opportunity, claiming seniority from the date of their initial appointment will vitiate the object of assigning seniority and, therefore, on that ground also, no indulgence can be shown to grant seniority to the petitioners from the date of their initial appointment as a daily wager.

Thus, petitioners have failed to prove any of the grounds either to claim arrears or seniority. Infact, the Supreme Court in the case of ***Ram Naresh***

Rawat Vs. Ashwini Ray and others (2017) 3 SCC 436 has sufficiently clarified the difference between the grant of permanent status and regularization and has held that daily wagers appointed without following the due selection procedure and their appointments made were not against regular vacancies but they were classified as permanent employees pursuant to orders passed by the Labour Court are only entitled to pay scale from the date specified in award but not to any increments.

They were only entitled to receive minimum pay scale with no increments. Only regularization in service would entail grant of increment. The permanent classification is not akin to regularization.

Thus, in the light of the said judgment of the Supreme Court, since there cannot be any claim for seniority admissible to a daily wagger who had yet not become member of the cadre, claim of the petitioners for arrears of pay and seniority deserves to be rejected and is hereby rejected.

Accordingly, the petitions fail and are **dismissed**.

(VIVEK AGARWAL)
JUDGE