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WA-97-2024

IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&amp;

HON'BLE SHRI JUSTICE PRADEEP MITTAL

ON THE 21<sup>st</sup> OF JANUARY, 2026WRIT APPEAL No. 97 of 2024*GOVIND DAS NAPIT**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Shri Vishal Pateriya - Advocate for the appellant.

Dr. S.S. Chouhan Ga appeared for respondent.

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ORDER

*Per. Justice Vivek Rusia*

The present appeal is filed by the appellant/writ petitioner challenging the order dated 08.11.2023 passed by the learned Single Judge in W.P. No. 28498 of 2023, whereby the writ petition filed by the appellant/writ petitioner has been dismissed.

2. The case of the appellant, in short, is that vide order dated 05.08.1997, the Joint Director, Education Department, District Tikamgarh, granted permission to engage a part-time employee in a newly opened school to discharge the duties of Peon. In furtherance of the aforesaid permission, 14 part-time peons including the writ petitioner, were appointed on 09.12.1997 as part time peon on a fixed pay scale of Rs.300/- per month. The petitioner was posted in the Government Middle School, Ubaura District



Niwari (MP).

3. The petitioner joined and started discharging the duties. From time to time, he was deputed for election duties. The Finance Department came up with a circular dated 10.02.2008, enhancing the salary payable to the part-time clerk, peon and sweeper w.e.f. 01.04.2008 to Rs.1500/-, Rs.1200/- and Rs.500/- respectively. The appellant submitted a representation that he had completed 24 years of service and is getting only Rs.5000/- per month, which is not sufficient to maintain the family; therefore, he should be regularised into the service. When the aforesaid representation was not considered, he filed W.P. No. 28498 of 2023 before this court. The writ petition was dismissed in limine without notice to the respondents, as the appointment of the writ petitioner was illegal in the light of judgments passed by the Apex Court in the case of Secretary, State of Karnataka Vs. Uma Devi (2006) 4 SCC, State of MP Vs. Lalit Kumar Verma (2007) 1 SCC 575, Siraj Ahmed Vs. State of U.P. (Civil Appeal No. 9412 of 2019) and State of Karnataka and others Vs. M.L. Kesari and others (2010) 9 SCC 247, hence this writ appeal before this court.

4. Vide order dated 13.02.2025, notices were issued, and the respondents were directed to file a reply. The respondents have filed a reply to support the impugned order passed by the writ court.

5. Learned counsel for the appellant submits that in similar facts and circumstances, the Apex Court in its recent judgment, **Rakesh Kumar Charmakar and others Vs. State of M.P. and others** reported as 2025 INSC 136 has upheld the order passed by the writ court and set aside the order



passed by the Division Bench of this court by holding that part-time employees are entitled to get the salaries of the regular pay scale. The Apex Court has also held that the Division Bench of this Court erred in distinguishing the case of **Ram Naresh Prajapati and others Vs. State of M.P. and others**, in which Ram Naresh Prajapati's, Writ Petition No. 9827 of 2012 was allowed by the writ court, against which W.A. No. 197 of 2015 was filed, which was dismissed on 21.03.2017. Thereafter, the State approached the Apex Court by filing SLP (C) No.915 of 2018. which was dismissed vide order dated 10.01.2018. Relying on the aforesaid judgment, Rakesh Kumar Charmakar and others approached this court by way of W.P. No. 10434 of 2018. Vide order dated 12.07.2019, the writ petition was allowed by giving a direction to extend the benefit of the circular dated 10.05.1984. The operative part is reproduced herein below as under:-

"The Single Judge of the High court allowed the Writ petition by order dated 12.07.2019. It concluded that petitioners were recruited pursuant to Special Recruitment Drive, against the vacant posts. Drawing similarity with the facts in Ram Naresh Prajapati, the Single Judge denied the claim of the State that appellants are differently situated than that of the petitioners in Ram Naresh Prajapati. It denied the State's argument that Appellants are not entitled to benefit because they were appointed on temporary/contractual basis. This argument was made by the State in Ram Naresh Prajapati as well and the High Court had rejected it. Additionally, it noted that State has extended the benefit of regular pay-scale to daily rated employees by order dated 07.10.2016. It concluded that appellants have successfully established that they are not part time sweepers and they were appointed through selection procedure against vacant posts. Therefore the Single Judge directed the State to grant the benefit of regular pay-scale along with arrears after completion of three years as per circular dated 10.05.1984, holding that the present appellants are similarly situated qua Ram Naresh Prajapati and



hence entitled to get similar benefits.

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6. The State Government challenged the aforesaid order by way of W.A. No. 1486 of 2019. Vide order dated 02.12.2019, the order of the writ court was set aside, distinguishing the case of **Ram Naresh Prajapati** (supra) and circular dated 10.05.1984. Operative part is reproduced below:-

"The State preferred a Writ Appeal registered as W.A.No.1486/2019. The Division Bench by the Impugned order dated 02.12.2019 allowed the appeal, overturning the judgement of Single Judge. It rejected the claim of appellants to get regular pay- scale as per circular dated 10.05.1984. According to it the present case is distinguishable from the facts of Ram Naresh Prajapati, because in the case of Ram Naresh Prajapati. The petitioners were initially appointed on part time and then upgraded as attendant, bull attendant, cattle attendant, watchman and sweeper between 2003 to 2005 and thereafter on completion of three years of such regular service they were given the benefit whereas the same is not the case with present appellants who have continued as part time Swachhkar. Further, it stated that Appellants do not fulfil the criteria laid down in the circular dated 10.05.1984, hence they are not entitled for regular pay-scale. This judgement of the Division Bench is assailed in the present appeal. Further, the Appellants filed a review petition against this order of the Division Bench. The Review petition was also dismissed by the High court by order dated 17.01.2020. This order has also been assailed in the present appeals."

7. The aforesaid order was assailed by the writ petitioners before the Apex Court, and vide order judgment dated 31.01.2025, the order passed by the writ court has been upheld. Para 12 to 19 of the judgment passed by the Apex Court in the case of **Rakesh Kumar Charmakar** (supra) are reproduced as under:-

"12. We have heard learned counsel from both sides and perused the record.



13. It is clear that all the nine appellants were appointed under an order issued by Deputy Director of Veterinary Sciences in compliance with direction and order of Collector, on the ground of recommendation of the Selection Committee constituted by Collector, against the vacant posts as part time sweepers at Collector's prescribed rates. The appointment orders make it clear that appellants were appointed on sanctioned and vacant posts although on temporary basis. Further, the appellants were appointed for posts reserved for Scheduled 'Castes, Scheduled Tribes and Other Backward Classes under Special Recruitment Drive. This 'contradicts the argument of the State that appellants were appointed on non-sanctioned posts, only for necessity of work.

14. On the issue of whether present Appellants are similarity situated as the petitioners in Ram Naresh Prajapati, we agree with the finding of Single Judge in its order dated 12.07.2019. The petitioners in Ram Naresh Prajapati were also appointed under Special Recruitment Drive, against the vacant posts, on temporary basis. The only factual distinction pointed out by the State and upheld by the Division Bench in the impugned order, is the subsequent appointment of those petitioners on sanctioned posts of Attendant, Bull-Attendant, Servant, etc. after the scrutiny by the Committee. The State in its Reply to the Writ Petition before High Court has itself stated that no such Screening Committee has been constituted to - scrutinise the eligibility and qualification of the present appellants. The appellants however state that they are ready for such scrutiny if the State directs so. In our considered opinion, this factual difference is not enough to conclude that Appellants are differently situated from Ram Naresh Prajapati, because the appellants have sufficiently proven that they were employed on regular and sanctioned posts by their initial appointment orders. They are thus covered under Clause 6 of the Circular dated 10.05.1984 since they have completed three years after being employed as 'temporary' employees on Collector's wages, with recommendation of the District Level Recruitment Committee. It is thus clear that they fulfil all the conditions stipulated in the Circular to grant revised pay-scale. Their designation as 'part-time' sweepers does not affect the validity of their appointment since they were appointed against sanctioned posts nevertheless. Appellants were thus appointed on regular posts even though they were temporary. The provisions of the 1979 Rules and Circular dated 10.05.1984 are both fulfilled by the appellants and thus they are entitled for regular pay- scale. The Division Bench of High Court erred in distinguishing the case of Ram Naresh Prajapati from the present appeals.

15. Additionally, the Circular dated 07.10.2016 extended the benefit of regular pay-scale to daily wagers. It would be unjust, unfair and arbitrary if such benefit is not extended to the appellants who were appointed as temporary employees against vacant and sanctioned posts. Even if the State denies the benefit of regular pay-scale after completing three years, the appellants shall be



benefitted from this Circular dated 07.10.2016 as they were appointed initially as daily wagers at Collector's rate.

16. The Appellants herein have been fighting this battle for regular pay-scale since 2016. They have extended their service to the State for substantial years. But more importantly they have proven that their situation is covered under the State issued Circular and Rules. Thus, it confers upon them a legal right to avail regular pay-scale.

17. After considering the facts and circumstances of the case, we are of the opinion that Division Bench erred in setting aside the judgement of the Single Judge of High Court dated 12.07.2019. The Single Judge rightly granted the benefit of regular pay-scale to the appellants.

18. We thus set aside the impugned order of Division Bench dated 02.12.2019 and uphold the order of Single Judge, allowing the writ petition extending the benefit of regular pay-scale to the Appellants.

19. The appeals stand allowed as above."

8. Therefore, in view of the aforesaid, learned counsel submits that the judgment passed by the Apex Court and the case of the appellant being similar to the case of Ram Naresh Prajapati and Rakesh Kumar Charmakar and others (supra), the appellant/writ petitioner is also entitled to the same relief. The learned Government Advocate opposes the aforesaid prayer by submitting that the petitioner was not appointed against a vacant sanctioned post by following due process of selection, hence the writ court has rightly dismissed the writ petition.

9. In this case, also vide order dated 25.11.1997, the Deputy Director of the Education Department had sanctioned 14 posts of peon in newly established 13 schools in various gram panchayats, and thereafter selection was made on these posts. The appellant was appointed to one of the posts and posted in Government Middle School, Ubaura District, Niwari (MP). For the last 40 years, he has been working on a monthly pay at collectorate rate as part time employee. When he has been working for so many years along



with all the regular employees without any break in the entire working hours of the school, then how could he be treated as Part time peon? Therefore, the appellant/writ petitioner was appointed against the post created and sanctioned by the competent authority.

10. Accordingly, the writ appeal is allowed, and the order dated 08.11.2023 passed by the writ court in W.P. No. 28498 of 2023 is quashed. The appellant/ petitioner be given the benefits as have been given by the Hon'ble Apex court in the case of **Rakesh Kumar Charmakar and others Vs. State of M.P. and others** within 90 days from the date of production of a copy of this order.

(VIVEK RUSIA)  
JUDGE

(PRADEEP MITTAL)  
JUDGE

MSP