

2023 LiveLaw (SC) 91

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

S. RAVINDRA BHAT; J., SUDHANSHU DHULIA; J.

February 8, 2023

**CIVIL APPEAL NO. OF 2023 (ARISING OUT OF SLP (C) NO. 10519 OF 2020)
VIBHUTI SHANKAR PANDEY *versus* THE STATE OF MADHYA PRADESH & ORS.**

Service Law - Regularisation - Two conditions for regularisation of daily wage employees - Firstly, initial appointment must be done by the competent authority and Secondly, there must be a sanctioned post on which the daily rated employee must be working - No claim for regularization if these conditions are not met. *Secretary, State of Karnataka and Ors. v. Umadevi and Ors. (2006) 4 SCC 1.*

(Arising out of impugned final/interim judgment and order dated 13-02-2020 in WA No. 20/2020 passed by the High Court of M.P. Principal Seat at Jabalpur)

For Petitioner(s) Mr. Ajay Choudhary, AOR

For Respondent(s) Mr. Sunny Choudhary, AOR

J U D G M E N T

Leave granted.

2. This appeal has been filed by the appellant who is aggrieved by the order dated 13.02.2020, by which a Division Bench of the Madhya Pradesh High Court has set aside the order of the learned Single Judge dated 27.06.2019, which had granted the benefit of regularization to the present appellant.

3. The case of the appellant is that he was engaged in 1980 as a Supervisor, on daily rated basis, under a project of the State Water Resources Department of Madhya Pradesh. The appellant sought regularization on the post of Supervisor/Time Keeper. Admittedly, the minimum qualification for the said post was matriculation with mathematics; a qualification which the appellant did not possess. These qualifications were relaxed by a Government Circular dated 31.12.2010 and the appellant sought his regularization on the post of Supervisor/Time Keeper, as he was qualified for the post and had been working on daily wage basis for a long period of time. In fact, in another writ petition (W.P. 13997/2010) filed by the appellant earlier, the High Court of Madhya Pradesh vide order dated 02.11.2017, had given directions to the State Government to decide the claim of the writ petitioner in accordance with law. Vide order dated 18.06.2018 issued by the Office of Chief Engineer, Rani Avanti Bai Lodhi Sagar Project, the claim of the appellant for regularization was rejected for the reasons that though the minimum qualifications of matriculation with mathematics will not come in the way for his regularization, but the fact remains that the appellant was never appointed against any post. Moreover, his appointment was never made by the competent authority and there were no posts available at the time for regularization. The appellant on the other hand, had set his claim for regularization as persons who were junior to him as daily wagers were regularized in the year 1990 or even before. The learned Single Judge while allowing the writ petition gave directions for regularization of the appellant from the date on which his juniors were regularized. This order was challenged by the State Government before a Division Bench which allowed the appeal of the State Government. The Division Bench rightly held that the learned Single Judge has not followed the principle of law as given by this Court in

Secretary, State of Karnataka and Ors. v. Umadevi and Ors.¹, as initial appointment must be done by the competent authority and there must be a sanctioned post on which the daily rated employee must be working. These two conditions were clearly missing in the case of the present appellant. The Division Bench of the High Court therefore has to our mind rightly allowed the appeal and set aside the order dated 27.06.2019.

4. In view of the law laid down by the Constitution Bench of this Court in **Uma Devi** (supra), the appellant had no case for regularization. There is no scope, hence, for our interference with the order of the Division Bench of the Madhya Pradesh High Court. Appeal is dismissed.

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¹ (2006) 4 SCC 1