

अति आवश्यक  
तत्काल  
समय-सीमा

कार्यालय प्रमुख अभियंता  
लोक स्वास्थ्य यांत्रिकी विभाग  
जल भवन, बाणगंगा, भोपाल

क्रमांक 15961/विधि/प्र.अ./लोस्वायांवि./2023

भोपाल, दिनांक 22/12/2023

प्रति,

- (1) समस्त मुख्य अभियंता  
लोक स्वास्थ्य यांत्रिकी विभाग  
परिक्षेत्र \_\_\_\_\_  
वि./यां. परिक्षेत्र \_\_\_\_\_
- (2) समस्त अधीक्षण यंत्री  
लोक स्वास्थ्य यांत्रिकी विभाग  
मंडल/परियोजना मंडल \_\_\_\_\_
- (3) समस्त कार्यपालन यंत्री  
लोक स्वास्थ्य यांत्रिकी विभाग  
खंड \_\_\_\_\_

विषय :- दैनिक वेतन भोगी सेवा में नियोजित किये गये ऐसे कर्मचारी जिनका नियोजन सक्षम प्राधिकारी द्वारा जारी किये गये नियुक्ति आदेश के बिना एवं स्पष्ट रिक्त पद के बिना हुआ है, को, कार्यभारित/नियमित सेवा में नियमितीकरण के लाभ की पात्रता नहीं होने विषयक।

संदर्भ :- माननीय उच्चतम न्यायालय द्वारा एस.एल.पी.(सिविल) क्रमांक 10519/2020 में पारित निर्णय दिनांक 08.02.2023 एवं माननीय उच्च न्यायालय जबलपुर द्वारा रिट अपील क्रमांक 20/2020 में पारित निर्णय दिनांक 13.02.2020 (प्रतिलिपि संलग्न)।

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कृपया माननीय उच्चतम न्यायालय एवं माननीय उच्च न्यायालय द्वारा संदर्भित प्रकरणों में पारित आदेशों का अवलोकन करने का कष्ट करें, जिसके माध्यम से माननीय न्यायालयों द्वारा यह अभिनिर्धारित किया गया है कि दैनिक वेतन भोगी सेवा में नियोजित किये गये ऐसे कर्मचारी जिनका नियोजन सक्षम प्राधिकारी द्वारा जारी किये गये नियुक्ति आदेश के बिना एवं स्पष्ट रिक्त पद के बिना हुआ है, कार्यभारित/नियमित सेवा में नियमितीकरण का लाभ प्राप्त करने के पात्र नहीं हैं।

उपरोक्त निर्णय विभाग के लिये अत्याधिक महत्वपूर्ण है तथा यह विभाग के विभिन्न परिक्षेत्रों के अंतर्गत वर्तमान में विचाराधीन न्यायालयीन प्रकरणों में अथवा विभाग की ओर दायर होने वाली रिट अपील अथवा एस.एल.पी.में से शासन की ओर से प्रभावी प्रतिरक्षण में उपयोगी साबित हो सकता है।

इस कार्यालय में परीक्षण के उपरांत प्रथम दृष्टया यह पाया गया है कि कुछ प्रकरणों में यह निर्णय उपयोगी साबित हो सकता है तथा इन प्रकरणों में अनिवार्य रूप से उक्त निर्णय शासकीय अधिवक्ता के माध्यम से माननीय न्यायालयों के समक्ष प्रस्तुत करने के निर्देश दिये जाते हैं :-

(1) ग्वालियर परिक्षेत्र ग्वालियर

(अ) माननीय उच्च न्यायालय खंडपीठ ग्वालियर के समक्ष विचाराधीन "आरती सक्सेना" प्रकरण ( रिट पिटीशन क्रमांक 2387/2023 ) जिसमें त्रुटिपूर्ण वेतनवृद्धि के लाभ के आधार पर कर्मचारी द्वारा संपूर्ण नियमितीकरण की मांग की है।

22/12/23

(ब) माननीय उच्चतम न्यायालय के समक्ष विचाराधीन एस.एल.पी. (सिविल) क्रमांक 12629/2019 (शंकर सिंह सेंगर एवं अन्य बनाम श्री प्रमोद अग्रवाल एवं अन्य) जिसमें स्थायी वर्गीकरण के लाभ स्वरूप न्यूनतम वेतन का लाभ लेने के उपरांत वेतनवृद्धि और नियमितीकरण के अन्य लाभ चाहे गये हैं।

**(2) मैकेनिकल परिक्षेत्र भोपाल**

“अजब सिंह” प्रकरण ( रिट अपील क्रमांक 1098/2023 ) जिसमें माननीय न्यायालय ने स्थायी वर्गीकरण के फलस्वरूप जारी किये गये न्यूनतम वेतन के आदेश को नियमितीकरण का आदेश मानते हुये कर्मचारी को पेंशन का लाभ देने के लिये आदेशित किया है।

**(3) जबलपुर परिक्षेत्र जबलपुर**

रीवा जिले के “इन्द्र नारायण सिंह” प्रकरण ( रिट पिटीशन क्रमांक 2556/2022 के विरुद्ध दायर होने वाली अपील) समेत 03 अन्य दैनिक वेतन भोगी कर्मचारियों के विचाराधीन न्यायालयीन प्रकरण क्रमशः राममिलन पांडे रिट पिटीशन क्रमांक 7624/2022, सुरेन्द्र प्रसाद शर्मा रिट पिटीशन क्रमांक 9485/2022 एवं कामता प्रसाद मिश्रा रिट पिटीशन क्रमांक 21027/2019, जिनमें माननीय न्यायालय ने दैनिक वेतन भोगी कर्मचारियों को, पूर्व न्यायालयीन निर्णयों के अनुपालन में दिये गये नियमित वेतनमान के लाभ को कर्मचारियों का नियमितीकरण मानते हुये उन्हें पेंशन देने के लिये आदेशित किया है।

**(4) इंदौर परिक्षेत्र इंदौर**

“देवेन्द्र ओव्हाल” प्रकरण (रिट पिटीशन क्रमांक 2484/2020) एवं राजेश भावसार प्रकरण ( रिट पिटीशन क्रमांक 8921/2023) जिनमें विभाग द्वारा त्रुटिपूर्ण रूप से दिये गये नियमितीकरण के लाभ को बरकरार रखने के लिये कर्मचारियों द्वारा याचिकायें दायर की गई हैं। “देवेन्द्र ओव्हाल” प्रकरण में नियमितीकरण आदेश के निरस्तीकरण उपरांत माननीय उच्च न्यायालय को सूचना देने के लिये दायर होने वाले प्रकरण के ड्राफ्ट में भी इन निर्णयों का उल्लेख आवश्यक है।

इसके अतिरिक्त आपको निदेशित किया जाता है कि आप अपने परिक्षेत्र/मंडल/खंड के अधीनस्थ विचाराधीन एवं भविष्य में दायर करने वाले न्यायालयीन प्रकरणों की व्यक्तिगत रूप से समीक्षा करें एवं जहाँ भी आप यह पायें कि उक्त निर्णय शासन हित में उपयोग किया जा सकता है तो इसे शासकीय अधिवक्ता के संज्ञान में आवश्यक रूप से लाकर इनका इस्तेमाल प्रतिरक्षण में करने का कष्ट करें।

**संलग्न :- उपरोक्तानुसार न्यायालयीन निर्णय**

  
प्रमुख अभियंता

पृ.क्रमांक 1596/विधि/प्र.अ./लोस्वायांवि./2023  
प्रतिलिपि :-

भोपाल, दिनांक 22/12/2023

प्रमुख सचिव महोदय, लोक स्वास्थ्य यांत्रिकी विभाग मंत्रालय भोपाल की ओर सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित।

  
प्रमुख अभियंता

ITEM NO.1501

COURT NO.11

SECTION IV-C

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 10519/2020

(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)

VIBHUTI SHANKAR PANDEY

Petitioner(s)

VERSUS

THE STATE OF MADHYA PRADESH & ORS.

Respondent(s)

Date : 08-02-2023 This petition was called on for pronouncement of judgment today.

For Petitioner(s)

Mr. Ajay Choudhary, AOR

For Respondent(s)

Mr. Sunny Choudhary, AOR

Hon'ble Mr. Justice Sudhanshu Dhulia pronounced the judgment of the Bench comprising Hon'ble Mr. Justice S. Ravindra Bhat and His Lordship.

Leave granted.

The appeal is dismissed in terms of the signed judgment, which is placed on the file.

Pending application(s), if any, stand disposed of.

(NIRMALA NEGI)  
COURT MASTER (SH)

(KAMLESH RAWAT)  
COURT MASTER (NSH)



2023 INSC 105

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**IN THE SUPREME COURT OF INDIA**  
**CIVIL APPELLATE JURISDICTION**  
**CIVIL APPEAL NO. \_\_\_\_\_ OF 2023**  
**(ARISING OUT OF SLP (C) NO. 10519 OF 2020)**

**VIBHUTI SHANKAR PANDEY**

**...APPELLANT**

**VERSUS**

**THE STATE OF MADHYA PRADESH & ORS.**

**...RESPONDENTS**

**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.**<sup>1</sup>, 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.

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<sup>1</sup> (2006) 4 SCC 1

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.

.....  
J.

[S. RAVINDRA BHAT]

.....J.  
[SUDHANSHU DHULIA]

New Delhi,  
February 8, 2023

**THE HIGH COURT OF MADHYA PRADESH**

**WRIT APPEAL NO. 20/2020**

*State of Madhya Pradesh V. Vibhuti Shankar Pandey*

**Jabalpur, Dated : 13.02.2020**

Shri J.K. Pillai, learned Govt. Advocate for the appellants/State.

Shri K.N. Pethia, learned counsel for the respondent.

With the consent of learned counsel for the parties, the matter is finally heard.

There is a delay of 102 days in filing the present writ appeal. Condonation whereof is being sought vide Interlocutory Application No. 80/2020. For the reasons which find mention in the application and which prevented the appellant from filing the appeal within the period of limitation, sufficient cause is made out. Consequently, delay is condoned. Interlocutory Application No. 80/2020 stands disposed of.

2. This intra-court appeal under Section 2 (1) of Madhya Pradesh Uchcha Nyayalya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005 is directed against the order dated 27.6.2019 passed in Writ Petition No. 17517/2018.

3. The Writ Petition was directed against the order dated 18.6.2018; whereby the claim of the petitioner for regularization was rejected. The order was passed in furtherance to direction in Writ Petition No. 13997/2000 decided on 2.11.2017. In the said Writ petition the petitioner had confined his claim for consideration in terms of G.A.D circular dated 31.12.2010. Evidently, earlier the claim of the petitioner for regularization as Time Keeper was turned down because his not passing matriculation with Mathematics and Science as subjects. These

conditions were relaxed vide circular dated 31.12.2010. The committee which considered the case of the petitioner, rejected it for the reasons that there was no permanent cadre in Narmada Valley Development Authority where the postings were on deputation, and that when engaged on daily wages in the office of Sub-Divisional Officer, Katanga there was no vacant post and was not found possessing requisite qualification and the appointment was not by the Competent Authority.

4. It is urged on behalf of the appellants that learned Single Judge glossed over these vital aspects and the law laid down by the **Supreme Court in Secretary, State of Karnataka and others v. Uma Devi and others {(2006) 4 SCC 1}** that the earlier regularization order were denuded of its precedence and overreached the relief by the petitioner by directing regularization from 1990.
5. Respondent/petitioner has, however, supported the order.
6. Considered rival submissions and perused the cogent material on record.
7. Admittedly in Writ Petition No. 13997/2010 the petitioner had confined his claim in context to circular dated 31.12.2010 and from retrospective date. Thus, the decision by learned Single Judge in granting regularization from the date on which his juniors were regularized was beyond the claim of the petitioner. Even the petitioner was estopped from claiming the regularization from a date prior to 31.12.2010. Furthermore, learned Single Judge while directing regularization from 1990 took into consideration the orders in favour of certain persons employed in the year 1990, when the petitioner admittedly was not eligible, glossed over the principle of law laid down in Uma Devi (supra) wherein it has been held:

"54. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents."

7. When earlier regularization order having been denuded of its precedence, the direction for regularization on the basis of such order cannot be upheld.

8. In view whereof the impugned order dated 27.6.2019 in Writ Petition No. 17517/2018 (S) is set aside. The petition filed by the petitioner is dismissed.

9. The appeal is allowed to the extent above. No costs.

(SANJAY YADAV)  
JUDGE

(ATUL SREEDHARAN)  
JUDGE

vivek

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**HIGH COURT OF MADHYA PRADESH: JABALPUR**

(SB : Hon'ble Shri Justice Subodh Abhyankar)

**W.P. No. 17517/2018 (S)**

Vibhuti Shankar Pandey

.....Petitioner

Versus

State of Madhya Pradesh &amp; others

.....Respondents

**Present:**

For the Petitioner : Shri K.N. Pethia &amp; Shri Brajesh Mishra, Advocates

For the Respondents : Ku. Aditi Varma, Panel Lawyer for the State.

**Whether Approved for Reporting: No****ORDER (Oral)**

(27.06.2019)

This writ petition has been filed under Article 226 of the Constitution of India by the petitioner, who has been working as Supervisor in Rani Avanti Bai Lodhi Sagar Pariyojna, against the order dated 18.06.2018 (Annexure P/11) passed by the respondent No.3 – Chief Engineer, Rani Avanti Bai Lodhi Sagar Pariyojna, Bargi Hills, Jabalpur whereby the representation submitted by the petitioner for his regularization has been rejected. The aforesaid representation was submitted by the petitioner pursuant to an order dated 02.11.2017 passed by this Court in W.P. No.13997/2010.

2. In brief, the facts of the case are that the petitioner entered into the services of the Water Resource Department in the year 1980 and has been

working continuously since then in the said department. The grievance of the petitioner is that despite working continuously for such a long time and despite the fact that juniors to the petitioner, namely, Shri Aadesh Jain and Shri Vishwamitra Choubey were subsequently regularized in the services on the post of Time Keeper vide order dated 08.01.1988 (Annexure P/8 to rejoinder filed in W.P. No.13997/2010) and similarly, one Shri Ajit Singh Gour, was also got regularized despite the fact that he joined the services of Narmada Valley Development Authority (hereinafter referred to in short as "NVDA") in the year 1990 i.e., after the petitioner, the petitioner is left out from the process of regularization.

3. The contention of the petitioner is that on 09.01.1990 a circular (Annexure P/1) has been issued by the State Government for regularization of the services of daily wagers working on Class-III and IV posts prior to 31.12.1988 and it is provided that those employees who are working on such posts which are not sanctioned, posts be sanctioned and they be regularized. It is the further case of the petitioner that the Deputy Collector, Jabalpur vide letter dated 18.01.1990 (Annexure P/3) written to the Chief Engineer has recommended for regularization of the petitioner. However, in the year 2004, the petitioner was informed that his case cannot be considered as he has not passed the Matriculation with Science subject. Hence, a writ petition being W.P. No.2148/2004 was filed by the petitioner for his regularization and the same was disposed of by this Court vide order dated 16.04.2004 (Annexure P/5) with a direction to the respondents to regularize the services of the petitioner in view of the guidelines issued by this Court in W.P. No.9900/2003 decided on 14.11.2003. Again the representation of the

petitioner was rejected by order dated 12.05.2004, therefore, the petitioner has filed writ petition bearing W.P. No.4466/2005 (S) which has been disposed of by this Court on 04.08.2006 (Annexure P/7) in the light of an order dated 03.08.2006 passed by this Court in W.P. No.3838/2005 (S) (*Daddi Lal Yadav vs. State of M.P. and others*) on due consideration of the decisions of the Apex Court in *Secretary, State of Karnataka and others vs. Uma Devi and others* (2006) 4 SCC 1 and certain other decisions. Against the order dated 04.08.2006 (Annexure P/7), the respondents preferred Writ Appeal No.1260/2007 and the same was also disposed of by a Division Bench of this Court vide order dated 18.11.2008 (Annexure P/8) with a direction to consider the case of the petitioner in view of the circular issued in this behalf on 16.05.2007 and 06.09.2008. Subsequently, another circular has also been issued by the State Government on 31.12.2010 (Annexure P/9) in which it is provided that the daily wagers, who are working for more than 10 years on the post of Time Keeper, shall be regularized by relaxing the condition of having passed Higher Secondary or 12<sup>th</sup> class examination with Mathematics subject. Since no orders were passed in the case of the petitioner, again a writ petition being W.P. No.13997/2010 was filed by the petitioner, which came to be disposed of on 02.11.2017 (Annexure P/10) directing the respondents to decide the petitioner's representation in terms of the aforesaid GAD circular dated 31.12.2010 and thus, the final order has been passed by the respondents on 18.06.2018 (Annexure P/11), which is under challenge before this Court.

4. Learned counsel for the petitioner has submitted that the impugned order has been passed *inter alia* on the ground that there are no recruitment

rules or the service rules in NVDA and that the petitioner's qualification does not meet the necessary requirement as provided by the Rules made in this behalf. Learned counsel has further submitted that the impugned order is liable to be set aside only on the ground that in the circular dated 31.12.2010, which clearly provides that those employees, who are posted as Time Keeper since last 10 years and who have not passed the Matriculation with Mathematics as subject, relaxation in qualification be given to them. It is further submitted that there is a rider in the aforesaid circular that the said facility will be given to only those daily wagers, who have completed 10 years service as on 10.04.2006 whereas in the present case, the petitioner is employed since 1980 as Time Keeper, which fact has not been denied by the respondents also, hence, Shri Pethia, learned counsel has further submitted that the case of the petitioner is on a better footing than the other similarly situated employees, namely, Shri Aadesh Jain, Shri Vishwamitra Choubey and Shri Ajit Singh Gour, who were admittedly appointed subsequent to the petitioner, as they were junior to the petitioner but despite this fact, their services were regularized. Thus, it is submitted that the impugned order be set aside and the respondents be directed to regularize the services of the petitioner.

5. Learned counsel for the petitioner has also placed reliance upon a Full Bench decision of this Court in the case of *Superintending Engineer, Public Works Department, Circle Gwalior and another vs. Dev Prakash Shrivastava, Gwalior and others* reported in 1999 (1) MPLJ 466 to submit that the M.P. Industrial Employment (Standing Orders) Act, 1961 (hereinafter referred to as "the Act of 1961"), Rules and Orders issued thereunder would

also be applicable to the Government Departments and as the petitioner has admittedly completed more than 180 days' services, his rights are also secured under the aforesaid Act of 1961.

6. *Per contra*, learned counsel for the respondents/State has vehemently opposed the prayer and submitted that no case for interference is made out in the present petition as there is no provision under which the petitioner's services could be regularized in NVDA. Apart from that, it is submitted that the petitioner's qualification is also not sufficient which would allow the respondents to regularize his services. Learned counsel has tried to distinguish the case of the petitioner with that of other similarly situated persons, namely, Shri Aadesh Jain, Shri Vishwamitra Choubey and Shri Ajit Singh Gour on the ground that all these persons met the requisite qualification of Matriculation with Mathematics and as such the petitioner cannot claim parity on the basis of their regularization.

7. In rebuttal, Shri Pethia has submitted that so far as the regularization of Shri Aadesh Jain, Shri Vishwamitra Choubey and Shri Ajit Singh Gour is concerned, the same was done in the year 1990 whereas the aforesaid Rule regarding the educational qualification of Time Keeper has come into force in the year 2007. Thus, it is contended by Shri Pethia that when the services of the aforesaid persons were regularized in the year 1990, the petitioner was already senior to them and there was no question of any qualification or disqualification for the purposes of regularization of the said persons, hence, it is submitted that on this ground the petitioner cannot be discriminated as he has already rendered the services for around 38 years. To bolster this submission, learned counsel for the petitioner has relied upon the judgment

passed by the Apex Court in the case of *Secretary, Haryana State Electricity Board vs. Suresh and other etc. etc.* (AIR 1999 SC 1160).

8. Heard learned counsel for the parties and perused the record.

9. From the record, this Court finds that while dismissing the claim of the petitioner, the following order has been passed by the respondent:-

- “i. That, the case of the petitioner for regularization on the post of Supervisor has been considered in accordance with the circular dated 16.05.2007 and also circular dated 31.12.2010. It has been held that Narmada Valley Development Authority has been established for the development of Narmada River Scheme and the employees appointed under the authority is not governed by any Cadre or Recruitment Rules or any sanctioned and Vacant post and these authorities are parted in different zone and petitioner was not performing the duties against the sanctioned and vacant post therefore he is not coming under the purview of the policy dated 16.05.2007 therefore, his case has not been recommended for regularization.
- ii. That as per Clause 4.1 of policy dated 16.05.2007, it is mandatory condition that while considering the case of regularization of the employee their sanctioned and vacant post should be available with the answering respondents as the petitioner was engaged as per availability of work and condition and there was no regular and sanctioned post of supervisor therefore, the case of the petitioner is not found fit to recommend for regularization.
- iii. That as per the Clause 4.1 of the circular dated 16.05.2007, the petitioner has been given the benefit of circular dated 31.12.2010, petitioner has been given benefit of relaxation to pass eligibility examination as provided in the aforesaid circular.

- iv. That the answering respondents also by following the Clause 4.1 of the policy dated 16.05.2007, came to the conclusion that the petitioner was not engaged by the competent authority and his appointment is not legal therefore his case is not found fit for recommending the regularization.
- v. That the answering respondents have also come to the conclusion that in absence of any recruitment rules or cadre with the Narmada Valley Development Authority, it is not possible to follow the roaster system while regularizing the petitioner in the appropriate post and final the committee has given its conclusion that the case of the petitioner has been considered in accordance with law and according to Clause 1, 2(1), 2(2), 2(4) and 2(5), the petitioner is not entitled to consider for regularization in service of the answering respondents."

10. It is also found that the petitioner has also relied upon the circulars issued by the State Government from time to time and has also filed a circular as Annexure P/9 which clearly provides that the persons who are working as daily wagers be regularized and also that their qualification be relaxed. The said circular, in the opinion of this court, would be applicable in the case of the petitioner.

11. So far as the regularization of Shri Aadesh Jain, Shri Vishwamitra Choubey and Shri Ajit Singh Gour is concerned, the respondent's contention is that they all had the requisite qualification hence their case is distinguishable, however, according to the petitioner, their appointment orders were passed in the year 1990 when the additional qualification of Mathematics was not required whereas the Rules regarding the educational qualification of Time Keeper have come into force in the year 2007. The aforesaid contention has not been denied by the respondent, which leads this

Court to conclude that the petitioner has been discriminated inasmuch as when the appointment orders of Shri Aadesh Jain, Shri Vishwamitra Choubey and Shri Ajit Singh Gour were passed in the year 1990, there was no mandatory requirement that an incumbent must possess the matriculation with Mathematics as the Rules in this behalf came in the year 2007 only. Thus, it cannot be said that the aforesaid persons were appointed only because they had special qualification of matriculation with Mathematics. In view of the same, as the petitioner has been able to make out a case of parity that his case is at par with the other persons, namely, Shri Aadesh Jain, Shri Vishwamitra Choubey and Shri Ajit Singh Gour, whose services have already been regularized, thus, the impugned order dated 18.06.2018 (Annexure P/11) cannot be sustained and is liable to be set aside.

12. As a result, the writ petition succeeds and is hereby **allowed** and the impugned order dated 18.06.2018 (Annexure P/11) is set aside and the respondents are directed to regularize the services of the petitioner from the date on which his juniors as above, were regularized. The respondents are also directed to accord all the consequential benefits to the petitioner.

**(SUBODH ABHYANKAR)**  
**JUDGE**

S/

**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*

**JUDGMENT**

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.**<sup>1</sup>, 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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<sup>1</sup> (2006) 4 SCC 1