

**IN THE HIGH COURT OF MADHYA PRADESH, PRINCIPAL
SEAT AT JABALPUR(MP)**

WRIT PETITION NO. OF 2022

PETITIONER : M.P.Karmchari Manch
Through State President,
Ashok Pandey
S/0- Shri G.P.Pandey,
Aged about 54 Yrs.
Add: H-1/3, 228 quarter,
South T.T.Nagar,
District-Bhopal(MP)

-Versus -

RESPONDENTS: 1. State of Madhya Pradesh
Through the Secretary,
Department of General
Administration Mantralaya,
Vallabh Bhawan,
Bhopal(MP)

**WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA**

**1. Particulars of the cause/order against which the petition
is made:**

- (a) Order dated : 16.11.2022
(b) Passed in : Sr/728/797188/2022/GAD/RC
(c) Passed by : Respondent No.1

Subject in brief:-

By way of instant Writ Petition, the petitioner is challenging the notification dated 16.11.2022, whereby the state government has directed to fill up at least one lac vacancies through direct recruitment, which is being conducted for various posts through direct recruitment, however, as per the provisions made under the fundamental rules of service, certain(20% posts) should be filled up through

regularization amongst the daily wagers. However, this particular provisions have not been followed, while issuing the impugned advertisement. Apart from it, the Hon'ble Apex Court in case of State of Karnataka Vs Uma Devi has already held that the daily wagers, who have completed ten years, should be considered for regularization, thereafter various circulars/notifications have been issued by the state government but no steps have been taken to implement the same. Apart from it, the state government has made statement before the court that due to paucity of vacancies, the employees could not be regularized, however, all of sudden these vacancies have been advertised.

The state government has also not taken in to consideration the observation made by the Hon'ble Apex Court, pertaining to the regularization process. No any kind of relaxation has been provided to the daily wager though they are working for long period on meager salary amount and having no pension facility etc. therefore, the state government is under obligation to consider their claim for regularization first and thereafter the selection process should be proceeded with. Hence, instant writ petition on the following facts and grounds.

2. **A declaration that no proceeding on the same subject matter has been previously instituted in any court, authority or tribunal. If instituted, the status or result thereof, along with copy of the order:**

That, the Petitioner declares that no petition relating to the subject matter in the instant petition is filed nor is pending before any Court of Law, authority or Tribunal.

3. **Details of remedies exhausted:**

Petitioner declares that he has availed all statutory and other remedies and in the fact and circumstances of the matter, he has no alternative remedy except to approach this Court.

4. **Delay, if any, in filing the petition and explanation therefore:**

That there is no delay in filing the instant petition and the subject matter of the petition is also within the writ jurisdiction of this Hon'ble Court.

5. **Facts of the case:**

5.1 That the petitioners are citizen of India and therefore they are entitled for fundamental rights flowing from part III Constitution of India.

5.2 The petitioner no.1, is registered employees union, registered under the relevant rules, which use to raise the voice of the employees, particularly daily wager/Sthayi karmi. The copy of registration document is filed as **Annexure P-1.**

5.3 That, the various employees are registered members of the union, copy of list indicating their membership is filed as **Annexure P-2.**

5.4 That, union in its resolution has taken decision to file a writ petition for challenging the validity of the impugned notification issued by the state government to fill up the vacancies through direct recruitment, instead of regularization. The copy of resolution is filed as **Annexure P-3.**

5.5 It would be relevant to mention that the members of union are working as daily wagers/ sthayi karmi for long period in the different departments having minimum qualifications for different posts(Class-III and Class-IV) and sufficient experience to their respective posts. Copy of certain documents indicating their status is cumulatively filed here with as **annexure P-4.**

5.6 It is submitted that from the aforesaid facts and circumstances, it is clear that they are working as daily wagers/sthayi karmi but they have not been regularized in services though there are ample vacancies are available, against which the petitioners/employees, can be regularized. However, despite clear direction, when no steps were taken, the Hon'ble Apex Court taking in to consideration the unfair

practice, had pleased to direct all the state government to take initiative for regularization the daily wagers, copy of relevant extract indicating observation made by the Hon'ble Apex Court, is filed as **Annexure P-5.**

- 5.7 It would be relevant to mention that as per the observation made by the Hon'ble Apex Court, the state government was required to take effective steps for proper compliance of the observations made by the Hon'ble Court, however, the state government issued some circulars and notification to implements the orders but no concrete steps were taken, copy of some relevant circulars/notifications are cumulatively filed as **Annexure P-6.**
- 5.8 As mentioned above, the daily wagers are not only working for long period but they have minimum qualifications and experience therefore, they are entitled to be regularized in services with all consequential benefits but no proper implementation was made, hence, many petitions were filed, which were disposed of with direction to consider the case for regularizations, some relevant extract of the orders are cumulatively filed as **Annexure P-7.**
- 5.9 That, as per the directions, the employees were required to be regularized but the department, made statement before the court that due to paucity of posts, the regularization could not be made, copy of certain documents, indicating the statement given by the State Government, is filed as **Annexure P-8.**
- 5.10 Apart from it, under the fundamental rules, it has been provided that at least 20% vacancies must be filled up through regularization amongst the daily wagers but the said rules have also not been complied with, apart from it, various circulars have been issued to regularize the service of daily wagers, which clearly indicates that the daily wagers should be given some relaxations and reservations, copy of such circulars/notifications are cumulatively filed as **Annexure P-9.**

5.11 It is submitted that even after rendering long period of service, no steps were taken to regularize the services of the petitioner and they were compelled to work on meager amount on daily wages and there was no service conditions to govern their services and account of continuous demand made by union members, the state government enacted the rules namely MP Dainik Vetan Bhogi Karmchari (Seva ki sharte) Niyam, 2013, which was notified in the gazette also. The copy of such notification dated 30/5/2013, is filed as **Annexure P/10.**

5.12 It would be relevant to mention that after making such statement, the state government introduced the new policy for daily wagers, which is known as " Sthayi Karmiyo ko vinimiyit Karne ki yozna", which provides that employees would be classified in three categories i.e. Unskilled, Semi-skilled and Skilled, which carries pay-scale and was applicable for those employees, who were on role, as on 16/5/2007 and 01/09/2016. That, the petitioner has been also classified as "Sthayai Karmi". However, it is relevant to mention that the by aforesaid circular/order, the old rules namely MP Dainik Vetan Bhogi Karmchari(Seva Ki sharte) Niyam, 2013, has been withdrawn/repealed, the copy of such order dated 7/10/2016, is filed as **Annexure P/11.**

5.13 In the aforesaid policy, it has been provided that the sthayi karmi would be regularized in class-IV posts, certain circulars have also been issued in this regard but no proper action was taken to implement the same, copy of such circulars are cumulatively filed as **Annexure P/12.**

5.14 As mentioned above, there is clear guidelines have been given to implement the order passed in case of State of Karnataka Vs Uma Devi but despite repeated directions, when no positive response was given, the Hon'ble Apex Court in case of State of Bihar, has deprecated the practice of the state government and asked all the government to furnish the details of daily wagers, copy of relevant extract of judgment is filed as **Annexure P/13.**

5.15 As mention above, the state government was required to consider the case of the daily wager/Sthayi karmi for regularization but instead of doing so, the state government vide its notification dated 16.11.2022 has directed to fill up at least one lac vacancies through direct recruitment, which are lying vacant in all the department of state government, copy of impugned notification dated 16.11.2022; is filed as **Annexure P/14.**

5.16 The aforesaid action of the respondent government, is clear violation of their own policy made by the state government and not considering the case for regularization, is ex-facie illegal the union has preferred representation, copy of which is filed as **Annexure P/15** but despite this fact, by ignoring the claim of the daily wagers/sthayi karmi, the impugned notification, has been issued. Hence instant writ petition on the grounds.

6. Grounds urged:

6.1 Because the petitioners are daily wager/Sthayi karmi, who are rendering their service for long period and having minimum qualification, experience to the post, on they are working, therefore, they deserve to be regularized in service, against the post with all consequential benefits.

6.2 Because, the petitioners have rendered more than ten years of service and deserve to be regularized in service, as per the guidelines/observations made by the Hon'ble Apex Court in case of State of Karnataka Vs Uma Devi, however, despite clear direction, no steps have been taken, which is ex-facie illegal and contrary to the order passed by the Hon'ble Apex Court.

6.3 Because, the state government itself has issued various circular and directions, to fill up the vacant posting by regularizing the daily wager/sthayi karmi but as per their own directions, no positive response has been given, which is in violation of their own policy thus on this score alone, the impugned advertisement/notification deserves to be quashed.

- 6.4 Because, the respondent government itself had provided under the Sthayi Karmi Yozna that the class-IV post would be filled up through regularization amongst the Sthayi Karmi but the same has not been implemented, which is violation of the Sthayi Karmi Yozna, hence on this ground also, the impugned advertisement itself is liable to be quashed.
- 6.5 Because, the petitioners are working on very low pay, without having any facility of regular pension thus the action of the respondents, amounts to forced labor, which is flagrant violation of labour laws and article 21 of the Constitution of India.
- 6.6 Because, in the fundamental rules, it has been provided that the at least 20% posts should be filled up through regularization, however, while issuing the advertisement/notification, no reservation has been provided, which is violation of the fundamental rules.
- 6.7 Because, the Hon'ble Apex Court in catena of judgment have held that the all the state government should take initiative to regularize the service of daily wager but the same has also not been implemented. This is violation of the order passed by the Hon'ble Apex Court.
- 6.8 Because, the Hon'ble Apex Court in one Case of State of Bihar has categorically observed that the state government are forcing the employees to work at lowest pay and have shown their displeasure and directed all the state government to regularize the daily wager, hence on this ground also, the impugned advertisement is bad and not legally sustainable.
- 6.9 Because, most of the departments have made statement that on account of paucity of posts, they are unable to regularize the petitioners/daily wagers, which is incorrect and false statement, which is reflected from the impugned advertisement, by which various posts have been directed to be filled up through direct recruitment.
- 6.10 The action of the respondent is in violation of their own guidelines, as the notification has been issued to conduct the

selection procedure in hurried manner, no relaxation/reservation of any kind has been provided to the daily wager/Sthayi Karmi though they are working on the post for long period having sufficient work experience.

7. Relief Prayed for:

It is, therefore, prayed that:-

- i. That this Hon'ble Court may kindly be pleased to call relevant record pertaining to the impugned selection procedure/order from respondent department for its kind perusal.
- ii. That, this Hon'ble Court may kindly be pleased to quash the impugned notification dated 16.11.2022(P/14) and further selection process and directed the respondents to consider the claim of all daily wagers/Sthayi Karmi for regularization, as observed by the Hon'ble Apex Court in case of State of Karnataka Vs Uma Devi and other circulars/notifications, issued time to time by the state government.
- iii. That, this Hon'ble Court may kindly be pleased to direct the respondent to
- iv. Any other relief/order or direction, as this Hon'ble Court deems fit looking to the facts and circumstance of the case may kindly also be awarded in the interest of justice along with the cost of the proceedings.

8. Interim Order/writ, if prayed for :

In view of the aforesaid facts and circumstances, the effect and operation of the impugned notification dated 16.11.2022(P/14) may kindly be stayed and respondents be directed not to conduct the further selection process pertaining to the notification issued by the state government government for filling up various posts through direct recruitment, till during the pendency of the matter and in the interest of justice.

9. Documents relied on but not in possession of the Petitioner:

Documents relied upon by the petitioner in the petition are filed herewith as per the list of documents annexed.

10. Caveat:

That, no notice of lodging a caveat by the opposite party is received.

PLACE : Jabalpur
DATED : 18/12/2022.

Anil Kumar Tiwari
COUNSEL FOR PETITIONER