

**GOVERNMENT OF RAJASTHAN
FINANCE DEPARTMENT
(RULES DIVISION)**

F.1 (2)FD/Rules/2007

Jaipur, dated: 17 JUN 2015

**All Addl. Chief Secretaries /Principal Secretaries /
Secretaries to the Government, All Heads of Department**

CIRCULAR

Sub.: Absorption, regularization etc, of temporary, contractual, casual, daily wages or ad-hoc employees- held unconstitutional by the Supreme Court in Civil Appeal No. 486 of 2011 (Arising out of SLP (c) No. 1927/2005) State of Rajasthan & others Vs. Daya Lal & others judgement dated 13.1.2011 - reportable.

Ref.: Finance Department's even number Circular dated 23-6-2007 and 15-4-2011.

Important points of Hon'ble Supreme Court's judgment dated 10.4.2006 passed in Secretary, State of Karnataka & Ors. Vs. Uma Devi and others reported in (2006) 4 S.S.C. Page 1, and principles laid down in judgment dated 09-02-2011 passed by Apex Court in Civil Appeal No. 1272 of 2011 State of Orissa and Anr. V/s Mamata Mohanti were circulated vide above referred circulars.

In the same context, Hon'ble Apex Court, in judgment dated 13-01-2011 passed in Civil Appeal No. 486 of 2011 (Arising out of SLP (C) No. 1927/2005) State of Rajasthan & Others Vs. Daya Lal & Others, has observed that :

- (i) High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and courts should not issue a direction for regularization of services of an employee which would be violative of constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.
- (ii) Mere continuation of service by an temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be 'litigious employment'. Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right.
- (iii) Even where a scheme is formulated for regularization with a cut off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut off date), it is not possible to others who were appointed subsequent to the cut off date, to claim or contend that the scheme should be applied to them by extending the cut off date or seek a direction for framing of fresh schemes providing for successive cut off dates.

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- (iv) *Part-time employees are not entitled to seek regularization as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularization or permanent continuance of part time temporary employees.*
- (v) *Part time temporary employees in government run institutions cannot claim parity in salary with regular employees of the government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.*

After the judgment of Apex court, following actions also need to be taken :

- (a) A number of cases are pending in various Courts, including Labour Courts, seeking regularization of employment made either on contract or daily wages or otherwise irregularly. ACS / Principal Secretaries / Secretaries to Government / Heads of Departments must ensure that in all such matters, a reply, or amended plea, opposing the request of regularization must be filed, based on these judgments of the Supreme Court. Wherever Courts have issued directions debarring Government of Rajasthan from regular recruitment on the petitions filed by temporary, contractual, casual, daily wage or ad-hoc employees, assistance of these judgments must be taken to request the Court to allow the State of Rajasthan to go ahead with the regular recruitments.
- (b) Whenever any Court issues a direction which is in contravention of these judgments of the Supreme Court, an appeal must be filed immediately in the next higher court, based primarily on these rulings.

While enclosing a copy of the above judgment dated 13.1.2011 and earlier circulars of even number dated 23.6.2007 and 15.4.2011, it is enjoined upon all Additional Chief Secretaries/Principal Secretaries/Special Secretaries to the Government and all Heads of Departments to ensure that constitutional scheme of public employment, based on the principle of equality of opportunity and equality for all, and provisions of relevant service rules, are adhered to in their right perspective. Any violation of these guidelines/service rules shall be viewed seriously and stern action shall be taken against the defaulting officials.



(C. S. Rajan)
Chief Secretary

(RSR-24/2015].