

(2024) 09 SHI CK 0024
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 25 Of 2024

Anil Kumar Sharma

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 09-09-2024

Acts Referred:

Citation : (2024) 09 SHI CK 0024

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : Priya Sharma, Sumit Sharma

Final Decision : Disposed Of

Judgement

Ajay Mohan Goel, J

1. By way of this writ petition, the petitioner has, inter alia, prayed for the following reliefs:-

"i) That a writ in the nature of certiorari may kindly be issued for quashing the impugned Annexure P-4 whereby the petitioner is proposed to be retired from service on 31.12.2023.

ii) That a writ in the nature of mandamus may kindly be issued directing the respondents to allow the petitioner to perform his duties in respondent organization upto the age of 60 years i.e. up to 31.12.2025, in the interest of justice."

2. Reply to the petition stands filed.

3. The case of the petitioner is that he was appointed on daily wage basis in the office of DIET Nahan under DPEP on 05.11.1997. The services of the petitioner were thereafter brought on contract basis and continued as such, in terms of Annexure P-2 and Annexure P- 3, appended with the petition. The services of the petitioner were regularized in the year 2011.

4. The petitioner has come to the Court feeling aggrieved by the fact that in terms of Annexure P-4, communication dated 27.12.2023, he was intimated by the Department that he would be retired on attaining the age of 58 years on 31.12.2023.

5. Learned Counsel for the petitioner has submitted that in the light of the adjudication made by the Hon'ble Division Bench of this Court lately in CWP No. 2274 of 2021 a/w connected matters, titled Satya Devi Vs. State of H.P. & Ors, a/w connected matters, decided on 29.04.2024, the act of the respondents of superannuating the petitioner at the age of 58 years cannot be sustained as Hon'ble Division Bench has clearly and categorically held that a Class-IV employee, whether regularized on or after 10.05.2001, irrespective of the initial date of engagement or the date of regularization, would retire on the last day of the month in which he attained the age of superannuation of 60 years. Accordingly, she prays that the petition be allowed, Annexure P-4 be quashed and set aside and respondents be directed to allow the petitioner to continue to serve till the last day of the month till he shall attain the age of 60 years.

6. Learned Deputy Advocate General by relying upon the reply has submitted that as the petitioner was engaged on

8. 07.2003 i.e., after 10.05.2001, he was rightly retired on attaining the age of 58 years. However, the factum of the adjudication by Hon'ble Division Bench of this Court in Satya Devi Vs. State of H.P. & Ors. (supra), has not been disputed.

7. I have heard learned Counsel for the parties and also perused the pleadings and the documents appended therewith. I have also gone through the judgment of Hon'ble Division Bench of this Court in Satya Devi Vs. State of H.P. & Ors. (supra).

8. The moot issue before this Court is as to whether the Department is justified in superannuating the petitioner on attaining the age of 58 years. For completion of facts, it is necessary to mention that in terms of the order passed by this Court on 01.08.2024, the respondents were directed to reengage the petitioner, as the petitioner has not attained the age of 60 years and this order has been complied with.

9. The stand of the Department is that as the petitioner was appointed on 08.07.2003 under the Sarva Siksha Abhiyan, after DPEP project where he was initially engaged was bound up in the year 2003, the petitioner was rightly retired after attaining the age of 58 years because in terms of the notification dated 21.02.2018 issued by the State, Class-IV employees engaged prior to 10.05.2001, were to superannuate on attaining the age of 60 years, whereas, those engaged after 10. 05.2001, were to superannuate on attaining the age of 58 years. This is the only defence of the respondents.

10. Hon'ble Division Bench of this Court in Satya Devi Vs. State of H.P. & Ors. (supra), while deciding the vires of notification dated 21.02.2018, held that the

distinction sought to be made in notification dated 21.02.2018, between Class-IV employees engaged prior to 10.05.2021 and 10.05.2001, does not stand judicial scrutiny and touchstone of Article 14 of the Constitution of India Hon'ble Division Bench held that the cut of date of 10.05.2001, in the notification dated 21.02.2018 was arbitrary. Hon'ble Division Bench further held that there ought to be same age of superannuation, prescribed for all Class-IV employees i.e., 60 years. Accordingly, after striking down the words "appointed on part time/daily wage basis prior to 10.05.2001 and regularized on or after 10.05.2001", of notification dated 21.02.2018, Hon'ble Division Bench declared that all Class-IV servants irrespective of their initial date of engagement or the date of their regularization, would retire on the last day of the month in which they attained the age of their superannuation of 60 years.

11. In the light of the said adjudication, the act of the respondents of superannuating the petitioner at the age of 58 years cannot be sustained and is hereby held to be bad in law. As a consequence thereof, Annexure P-4 is quashed and set aside. As the petitioner was always willing to perform duties after attaining the age of 58 years but it was the Department which prevented him from doing so and he has been reengaged only by virtue of the interim order passed by this Court, it is further ordered that the petitioner shall be deemed to be in continuous service of the Department with all consequential benefits including monetary and seniority etc. It is further ordered that now the petitioner shall be allowed to serve and he shall be superannuated on the last day of the month in which he shall attain the age of superannuation of 60 years. With these directions, this writ petition is disposed of. Pending miscellaneous application(s), if any, also stand disposed of accordingly.