

(2022) 08 SHI CK 0037

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition (Original Application) No. 6243 Of 2020

Asha Ram

APPELLANT

Vs

Municipal Corporation Shimla

RESPONDENT

Date of Decision : 17-08-2022

Acts Referred:

Citation : (2022) 08 SHI CK 0037

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : Jai Ram Sharma, Naresh Gupta

Final Decision : Partly Allowed

Judgement

Satyen Vaidya, J

1. By way of instant petition, the petitioner has prayed for following substantive reliefs:-

“(a) That the impugned order dated 17.07.2018 at Annexure A-1 may kindly be quashed and set aside and further respondent may kindly be directed to regularise the services of applicant as supervisor with all consequential benefits w.e.f. due date, in the interest of justice.

(b) that the applicant may kindly be held entitled for regularisation after completion of 8 years of daily waged services i.e. 25.10.2003, with all consequential benefits, in the interest of justice.”

2. The case as set-up by petitioner is that though he was appointed as mate on daily wage basis by Respondent No.1 w.e.f. 26.10.1995, but he always performed the duties of supervisor. The services of petitioner were regularised as mate w.e.f. 20.4.2007, whereas his services were liable to be regularised as supervisor w.e.f. 25.10.2003. Respondent had designated petitioner as supervisor in the year 2016.

3. Petitioner preferred OA 6564 of 2017 before the SAT with the prayer to regularise his services after 8 years of daily wage service. The application filed by petitioner was decided by the SAT vide order dated 27. 12.2017 in following terms:

"The original application is disposed of in terms of the aforementioned judgment in CWP No. 2415/2012, with a direction to the respondent corporation, through its Commissioner, that subject to the verification of records and on findings the applicants to be similarly situate as above, benefit of the said judgment, if the same has attained finality and implemented, shall also be extended to them along with consequential benefits, if any, as per law, within three months from the date of production of certified copy of this order along with copy of the aforesaid judgment, before the said authority by the applicants."

4. In compliance to aforesaid order, the Commissioner, Municipal Corporation, Shimla passed the impugned order dated 17.07.2018, Annexure A-1. by taking into consideration the following facts:

"That the applicant Sh. Asha Ram, s/o Sh. Kanhaiya Lal was initially engaged as a daily waged Mazdoor w.e.f. October, 1995 and he worked as Mazdoor w.e.f. October, 1995 to December, 1997. Thereafter the applicant has worked as Mate on daily wage basis w.e.f. January, 1998. Accordingly, the services of the applicant were initially regularized as Mazdoor vide order dated 19.04.2007 after completion of 8 years of services with 240 days in each year on lower pay scale post as per Govt. Instructions for regularization of services of Daily Wagers issued vide letters dated 08.07.1999 and 09.06.2006."

5. Petitioner has now assailed impugned order Annexure A- 1 on the grounds that rejection of his claim was arbitrary and the finding regarding his service as daily wage Mazdoor from October 2005 to December 2007 was incorrect. Since the petitioner has performed the job of supervisor right from the beginning of his engagement, his services were required to be regularised in said grade on completion of eight years i.e. in 2005.

The impugned order has also been described as discriminatory.

6. In response, the respondent maintained that petitioner worked as Mazdoor w.e.f. October, 1995 to December, 1997. Thereafter the petitioner worked as Mate on daily wage basis w.e.f. January, 1998. Accordingly, the services of the petitioner were initially regularized as Mazdoor vide order dated 19.04.2007 after completion of 8 years of services with 240 days in each year on lower pay scale post as per Govt. Instructions for regularization of services of Daily Wagers issued vide letters dated 08.07.1999 and 09.06.2006. The services of petitioner were regularised as mate vide order dated 5. 4.2012 retrospectively w.e.f. 20.4.2007. It has specifically been denied that petitioner worked as supervisor.

7. I have heard learned counsel for parties and have also gone through the documents available on file.

8. In the first instance the petitioner had approached the SAT by filing OA 6564 of 2017 and had remained satisfied with the order dated 27.12.2017, therefore, now the petitioner cannot be allowed to claim any relief which may be beyond the scope of aforesaid order passed by SAT. As per said order respondent was under direction to afford benefits of judgment in CWP 2415 of 2015 (Mathu Ram Vs Municipal Corporation) to the petitioner in case petitioner was found similarly placed. In CWP 2415 of 2012, right of regularisation of daily waged worker after completion of eight years' continuous service was upheld on the basis of judgment passed by a Division Bench of this Court in CWP 2735 of 2010 titled Rakesh Kumar Vs State of H.P. and others.

9. As per the respondent-corporation, petitioner was engaged as daily waged Mazdoor w.e.f. October, 1995 and he worked in the same capacity till December, 1997. Petitioner worked as Mate on daily wage basis w.e.f. January, 1998 and his services were regularized as Mazdoor on completion of 8 years w.e.f. 19.4.2007. The respondent has contended that since the petitioner had completed 8 years' daily wage service as Mate on 31.03.2007, therefore, his services were rightly regularized as Mate w.e.f. 19.04.2007, as per the policy of the Government. Reference has also been made to Government instructions dated 8.7.1999 and 9.6.2006. As per said instructions services of daily wagers, who had worked for less than 8 years on higher wages or a higher pay scale post, was to be considered for regularisation by combining the service both in lower scale post and higher scale post and was liable to be regularised on lower scale post as the incumbent would not have completed requisite 8 years daily wage service on higher scale post.

10. Petitioner has not made any endeavour to rebut the fact situation as provided by respondent. Save and except for the bald assertion made in the petition, petitioner has not placed on record any tangible material to prove his claim of having worked as supervisor or the mate, as the case may be, from the date of initial engagement. Even after specific findings recorded to this effect in the impugned order Annexure A-1, petitioner has failed to seriously contest such findings. It is also the case of respondent that vide order 5.4.2012 petitioner was regularised as mate from retrospective date i.e. 20.4.2007. This order has also not been assailed by the petitioner. Thus, there is no escape from concluding that petitioner worked as daily wage Mazdoor from October, 1995 till December 1997 and thereafter worked as Mate from January 1998 onwards. Further, nothing has been said on behalf of petitioner regarding applicability or interpretation of instructions dated 8.7.1999 and 9.6.2006 relied upon by the respondent.

11. In above view of matter, the only issue that needs adjudication is whether the impugned order Annexure A-1 was compliant with the judgment passed in CWP 2415 of 2012 (Mathu Ram Vs Municipal Corporation, Shimla) in terms of directions issued by SAT vide its order dated 27.12.2017?

12. Petitioner had worked as Mate on daily wage since January, 1998 as already concluded above. That being so, petitioner would have completed 8 years

continuous daily wage service on 31.12.2005 and thus would have become entitled for regularization w.e.f. 1. 01.2006. However, vide impugned order the regularisation of petitioner w.e.f. 19.04.2007 has been justified, which cannot be held to be compliant with the judgment passed by this Court in CWP No. 2415 of 2012, titled Mathu Ram vs. M.C. Shimla and others.

13. Lastly Petitioner placed reliance on the judgment passed by a Division Bench of this Court on 12. 08.2021 in CWPOA No. 4952 of 2020, titled as Amolak Ram & others vs. Municipal Corporation, Shimla & another in support of his claim for regularisation as Supervisor. The contention so raised on behalf of the petitioner deserves to be rejected simply on the ground that the petitioner cannot be allowed to claim relief beyond the scope of directions passed by H.P. State Administrative Tribunal in O.A. No. 6564 of 2017, as earlier held above. In Amolak Ram the petitioners therein were conferred the status of supervisors and the only dispute was in respect of date of such conferment, whereas in the instant case conferment of status of supervisor on petitioner, during relevant period, has neither been admitted by the respondent nor otherwise proved by the petitioner.

14. In view of the above discussion, the petition is partly allowed and the order dated 17.07.2018, Annexure A-1 is held to have incorrectly upheld 20.4.2007 as the date of regularisation of petitioner on the post of mate. The impugned order Annexure A-I is quashed and set aside to the extent as held above. Accordingly, respondent is directed to regularized the petitioner immediately from the date he completed of 8 years' daily wage service as mate commencing from January, 1998, in terms of the observations made hereinabove, with all consequential benefits. Needful be positively done within four weeks from the date of production of copy of this order before respondent. The petition is accordingly disposed of, so also, the pending applications, if any.