

(2013) 04 SHI CK 0061
In the High Court Of Himachal Pradesh
Case No : LPA No. 210 of 2010

Balak Ram	Vs	APPELLANT
Dr. Y.S. Parmar University		RESPONDENT

Date of Decision : 09-04-2013

Acts Referred:

Citation : (2013) 04 SHI CK 0061

Hon'ble Judges : Kuldip Singh, J;Dev Darshan Sud, J

Bench : Division Bench

Advocate : C.N. Singh, for the Appellant; Onkar Jairath, for the Respondent

Final Decision : Allowed

Judgement

Dev Darshan Sud, J.—The petitioner has preferred this Letters Patents Appeal against the judgment of the Hon"ble Single Judge. The grievance of the petitioner is that the relief of regularization of his service against the post of Steno-typist/Computer operator w.e.f. September, 1996, on which post the appellant has completed his ten years of regular service be granted to him. It is undisputed before us that the appellant has approached this Court twice. In CWP(T) No. 4812 of 2008 decided on 10th August, 2010, which is the subject matter of this appeal, this Court held:-

7. Since there is sufficient material on record to show that the petitioner had worked as Computer Operator from 1993 onwards, it is directed that he be paid daily wages, which were payable at the relevant time in the case of Computer Operator, w.e.f. 1st July, 1993 till the date of his regularization. The date of 1st July, 1993 has been fixed because the original petition was filed in the year 1996. The arrears of wages be worked out and paid to the petitioner, alongwith interest at the rate of 6% per annum, on or before 15th December, 2010. Needless to say if any amount has been paid to the petitioner for his typing work over and above the daily wages, the same may be adjusted. In case the amount of arrears is not paid on or before 15th December, 2010, the respondent-

University shall be liable to pay interest at the rate of 12% per annum

We also note that the Hon''ble Single Judge records that vide certificate dated 10th August, 1994, it was stated that:

TO WHOM IT MAY CONCERN

This is to certify that on the advise of the Chief Scientist, Regional Horticultural Research Station, Mashobra, the written, shorthand and typing test for the post of Steno-cum-typist was conducted in September, 1986 as there was no regular steno posted at this station. Seven candidates appears in the test and after thorough scrutiny and examination Sh. Balak Ram s/o Sh. Nirma Ram got highest position and Miss Prem Lata Verma was at second position. Sh. Balak Ram was asked to join this office on daily wages. He has been working at this position from September, 1986.

Thereafter, the petitioner preferred CWP No. 767 of 2011 which was disposed of with a direction that the petitioner may join the university in the available post which shall be without prejudice to the contentions available to the parties. The order then directs:-

....In case, any vacancy in the post of Junior Scale Stenographer arises, the petitioner shall be preferentially considered for that post. The absence of the petitioner during the interregnum may be regularized as leave of the kind due to him.

2. The appeal is opposed by the University on a number of grounds. The primary objection of the University is that the Constitutional Bench's decision of the Supreme Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, prohibits the grant of relief to the appellant as prayed for. It was held:-

47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post." (at p. 39)

Learned counsel, Mr. Onkar Jairath, appearing for the respondent submits that selection of the appellant was not in accordance with the Rules and in that eventuality, no benefit can be extended to him.

3. We are unable to accept this contention more especially in view of the fact that the respondents themselves admit that the appellant had qualified the written/shorthand and typing test for the post of Steno-typist which was conducted in September, 1986. At that time, there was no regular vacancy and therefore, he was posted as Chowkidar. We also cannot accept the contention that his regularization cannot be made as subsequently in State of H.P. and Others Vs. Gehar Singh, the Supreme Court considered the decision of Umadevi's case (supra) as also Mool Raj Upadhyaya Vs. State of H.P. and Others, and held the directions issued in Mool Raj Upadhyaya's case as binding on the State. It is this decision which was subsequently applied by this Court in Gauri Dutt and others vs. State of H.P. Latest HLJ 2008 (HP) 366 where the directions were issued by this Court for regularization of employees. This Court held:-

20. After considering all the pros and cons and keeping in view the fact that various anomalous situations may arise we are of the considered view that when an employee completes 10 years of continuous service combined in two scales, an option should be given to the employee to either accept work charge status in the lower scale or he may continue to work on daily rated basis in the higher scale and claim work charge status in the higher scale of completion of 10 years of continuous service in the said scale. In the examples given above employee (A) may prefer to accept work charge status w.e.f. 1.1.2001 even in the lower scale of beldar because otherwise he may have to wait for 9 years before he is granted work charge status. On the other hand, employee (B) in the second example may prefer to delay the grant of work charge status by one year so that he can get work charge status in the higher scale. We feel that in each case the choice should be left to the employee. However, if the employee on being given a change to exercise his option does not convey his option within 30 days, he shall be granted work charge status in the lower scale by combining the service rendered in both the scales. This answers the fourth question.

(at p. 376)

We dispose of this appeal with this direction that it shall abide by the decision of Gauri Dutt's case (supra) and the case of the petitioner shall be considered by the respondents in terms of these directions as issued therein. The respondents shall implement these directions in letter and spirit within a period of six months from today. Appeal allowed. No order as to costs.