

(2011) 05 SHI CK 0105
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 16536 of 2008

Bansi Ram

APPELLANT

Vs

H.P. S.E.B. and Another

RESPONDENT

Date of Decision : 11-05-2011

Acts Referred:

Himachal Pradesh State Electricity Board (Revised Pay) Regulations, 1998 —
Regulation 1, 2

Citation : (2011) 05 SHI CK 0105

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Judgement

V.K. Sharma, J.—All these petitions, which have been filed on identical facts and raise common questions of law, are being taken up for disposal by a common judgment.

2. The petitions have been filed on the following identical prayer:

That the Respondents may be directed to grant the proficiency increments to the applicant from the due date with all benefits incidental thereof such as arrears, fixation of pay etc.

3. In identical replies, the Respondents have taken the following stand vide para 6 (II) & (III): :

In reply to these paras, it is submitted that so far as the proficiency step up to the employees of the Board is concerned, it is further submitted that the Respondent-Board vide Office Order No. 138/HPSEB (SECTT)/89-dated 5.12.89 has launched a scheme namely proficiency step up in the revised pay regulation-1989 which comes into force w.e.f. 1.1.86 Annexure RA-1.

Main feature of this scheme was that the employees who have completed 8/18 years service in a post were entitled for one additional increment in this scheme, it was further ordered/decided by the Board vide O/O No. 54/HPSEB/SECTT/91

dated 4.7.91, Annexure RA-II that the service rendered in the work charged capacity by an employee will count towards the grant of proficiency step up after deducting three years service in work charged capacity. The date so worked out shall be treated as deemed date of appointment for grant of proficiency step up after the period of 8 and 18 years.

But this scheme was launched in the revised pay scale of 1986 which has further been revised by the Board w.e.f. 1.1.1996 (Annexure RA-III) and pre-revised pay scale of 1986 has been ceased w.e.f. 31.12.1995. It is very much clear in the foot note No. I of the revised pay regulation 1996 (Annexure RA-IV that such type of matters will be considered later on by the Board.

The Office Order No. 12 dated 31.1.91 attached by the applicant with O.A. as Annexure P-I is just a procedure to grant time bound promotional scale.

Now, the Respondent-Board has introduced 1st and 2nd time bound promotional scale to different category of employees on completion of 9/16 years w.e.f. 1.1.96. One of that category is also T/Mate.

This is a time bound promotional scale and not a proficiency step up for which this OA has been filled by the applicant and as per Office Order No. 12 dated 31.1.91, it is clear that this is only for regular employee and not for work charge category.

As the service of the applicant was regularized w.e.f. 1.9.2001, thereby the official is entitled for 1st time bound promotional scale w.e.f. 1.9.2009 on completion of 9 years regular service.

4. The Petitioners had initially joined the employment of the Respondent-Board as T-Mate on daily wages. Later on they were vested with the status of work charged T-Mate. They were ultimately regularized as such.

5. Shorn of details the case set up by the Petitioners is that the service rendered by them as work charged T-Mate is liable to be counted towards grant of proficiency step up increment on completion of 9/16 years of service. However, the claim is disputed on behalf of the Respondent on the ground that in terms of Regulation (1) of the Himachal Pradesh State Electricity Board (Revised Pay Regulations), 1998, Annexure RA-IV, this benefit is available only to "the persons appointed to the services and posts in connection with affairs of the Himachal Pradesh State Electricity Board" and "work charged employees" have been specifically excluded from the ambit thereof vide regulation (2)(e).

6. Mr. A.K. Gupta, Advocate learned Counsel for the Petitioners submits that there can be no tangible difference between work charged and regular employment as in both the cases the incumbents are entitled for a pay scale including revised pay scales and annual increments. According to the learned Counsel, there is a lot of difference between "regular employment" and "regularization". To be explicit, according to Mr. Gupta, service rendered by the Petitioners as work charged T-Mate was regular service during which they were

getting a regular pay scale along with annual increments. Their regularization as T-Mate was a mere formality and just change of nomenclature and in essence the service rendered by them as work charged T-Mate was a regular service. In this regard, a reference is made by Mr. Gupta to rule (22) of the Fundamental Rules, which is as under:

Permanent post means a post carrying a definite rate of pay sanctioned without limit of time.

7. On a plain reading of rule (22) of the Fundamental Rules (supra), it is more than clear that the same defines a "permanent post" and the definition on the face of it is in comparison to a temporary post and the same has no bearing, whatsoever, vis-?-vis regular appointment. It is in this backdrop that daily rated, worked charged and regular employment is required to be understood and interpreted. Daily rated, work charged and regular employments have different connotations and the same are not inter-changeable. Work charged employment gives limited guarantee of security of service to the extent that in a work charged establishment the work is of perennial nature and definite number of workers is required to undertake the same. However, unless work charged employees are regularized, they cannot be said to be "the persons appointed to the services and posts in connection with affairs of the Himachal Pradesh State Electricity Board" in terms of Regulation (1) of the Regulations *ibid*. Further more "work charged employees" have been specifically excluded from the ambit of aforesaid Regulations vide Regulation (2)(e) thereof.

8. It is not in dispute that the Petitioners had acquired the status of work charged T-Mate after 1.1.1996 from which date aforesaid regulations (Annexure RA-IV) had come in force. They were regularized thereafter and are thus entitled for grant of benefit under Regulations, Annexure RA-IV, only with effect from the date(s) they were regularized as T-Mate and the services rendered by them as work charged T-Mate cannot be reckoned to this effect.

9. In view of the above, Petitioners are not entitled for the relief claimed for. Accordingly, the petitions are dismissed. Let a duly authenticated copy of this judgment be placed in each case.

10. The petitions stand disposed of in the above terms, so also pending application(s), if any.