
(2020) 08 SHI CK 0263
In the High Court Of Himachal Pradesh
Case No : CWPOA No. 421 Of 2019

Daulat Ram

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 06-08-2020

Acts Referred:

Citation : (2020) 08 SHI CK 0263

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : Devender Sharma, C.N. Singh, Somesh Raj, Dinesh Thakur

Final Decision : Disposed Of

Judgement

Ajay Mohan Goel, J

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

â??i) Issue a writ of mandamus directing the respondent department to count the fixational break/period given to the petitioner of 22 days in the year

1995 (218), and 20 days in 1996(220 days), 12 days in 1997 (228 days), 10 days in the year 1998(230 days), and 15 years in the year 1999 (225 days)

in his daily wage service towards his continuity in service for all intents and purposes.

ii) If Relief No. 1 is given in that eventuality, issue a writ of mandamus for direction to the respondent-department to grant the work charge status to

petitioner after completion of eight years of service i.e. 1.1.2003.

iii) Issue a writ of mandamus directing the respondent department to regularize the service of petitioner on his completion of eight years of daily wage

service as per the police of State Government.â??

2. The case of the petitioner is that he was initially engaged on daily wage basis as a Beldar by the respondent-Department in IPH Section Chhaila, Sub Division Sainj, District Shimla, H.P. in the year 1995. According to the petitioner, since the initial date of his engagement in the year 1995, he was purposely not permitted to complete 240 days in each calendar year up to the year 1999. In the year 1995, he was permitted to work for 218 days, in the year 1996, he was permitted to work for 220 days, in the year 1997, he was permitted to work for 228 days, in the year 1998, he was permitted to work for 230 days and in the year 1999, he was permitted to work for 225 days. As from the year 2000, he was being permitted to complete 240 days in each calendar year. His contention is that despite the work being available, the only reason as to why he was not allowed to work for more than 240 days between the years 1995 to 1999 was to ensure that he could not claim regularization of his services in terms of the policy of the Government from the year 1995 onwards. According to him, he was always willing to perform his duties, yet, the department did not allow him to work for the days more than what stand mentioned above. It is further his case that one Shri Keshav Ram, who was similarly situated like him, had filed an, original application, i.e. O.A. No. 1023 of 1999, before the erstwhile learned Tribunal, which thereafter stood transferred to this Court and was registered as CWP(T) No. 5752 of 2008. Said petition was allowed by this Court vide judgment dated 09.07.2010 (Annexure P-1) by directing the respondent to ignore the fictional breaks given to the petitioner therein from the year 1994. On the strength of the said judgment passed by the Court, the petitioner has prayed for issuance of a direction to the respondent for regularization of his services by taking him to be in job from the year 1995 by condoning the fictional breaks.

3. The petition is resisted by the respondents-State inter alia on the ground that though the petitioner was engaged on daily wage basis in the year 1995, however, he used to work intermittently as per his will, which is duly reflected from the manâ??s days chart from the year 1995 to 1999, which demonstrated that he himself did not complete 240 days in each calendar year between these years. Respondent - State has denied giving any fictional breaks to the petitioner, and as per the State, the petitioner was trying to derive benefit of his own wrong as he himself chose not to work for 240 days

in the said calendar years.

4. I have heard learned Counsel for the parties and gone through the pleadings as well as the documents appended with the petition.

5. It is not in dispute that as from the year 2000 onwards, the petitioner had completed more than 240 days in each calendar year till the filing of the

petition. During the course of arguments, learned Counsel for the petitioner submitted that as per his instructions, services of the petitioner thereafter

have been regularized somewhere in the year 2012, though the services of the petitioner should have been regularized upon completion of 8 years

from the year 1995 by condoning the fictional breaks given to him. Though, the stand of the State is that the petitioner in between the years 1995 to

1999, worked intermittently and it was he who did not work for 240 days, however, it is difficult to believe this stand. Department has not been able to

substantiate that despite the petitioner being offered work in excess of the days for which he was issued muster-roll, he refused to do so. Incidentally,

in CWP(T) No. 5752 of 2008, titled as Keshav Ram Vs. The Secretary IPH and others, the facts involved were akin to the present case. Therein

also, the grievance of the petitioner was that in between the year 1994 to 1998, he was not permitted to complete more than 240 days on account of

artificial breaks given to him which plea of his was accepted by the Court by holding that a person who has been working continuously will not

abandon his job as was projected by the respondents therein and endeavour of such person would be to complete 240 days in each calendar year to

earn him the benefit of regularization. The relevant portion of the judgment is quoted herein below:-

â??2. The case of the petitioner is that he was engaged as daily wager (beldar) by respondents in the year 1994 and thereafter he had been

continuously working with the respondents department. The mandays chart according to the petitioner is Annexure P-1. It is the case of the petitioner

that he department had given artificial breaks to petitioner so that he petitioner was not in a position to complete 240 days in each calendar year and to

deprive him the benefits of salary and leave of Sunday etc.

3. The respondents have contested the petition by filing reply and have submitted that petitioner had not completed 240 days since 1994 and in every

year he remained willfully absent and reported for duty casually. The

respondents have relied on mandays chart Annexure R-1 filed with reply.

4. I have heard learned Counsel for the parties. As per Annexure R-1, the petitioner had worked for 210 days from April, 1994 to December 1994. In the years 1995, 1996, 1997, 1998, the petitioner had worked for 227, 230, 229 and 227 days respectively. In the year 1999 from January, 1999 to April, 1999 he had worked for 76 days. In CWP(T) 8145 of 2008 decided on 2.6.2009 the issue of fictional breaks was considered by a co-ordinate Bench.

The learned single Judge rejected the contention of the respondents in that petition that petitioner in that case himself did not report for duty. The

petitioner therein himself had absented from job. It was held that a person who has been working continuously will not abandon his job as projected by

the State. The endeavour of such person would be to complete 240 days to earn him the benefit of regularization. In the present case also the

respondents have taken the defence that petitioner remained willfully absent and reported for duty casually. It has come on record that in the year

1994 to 1998 the petitioner was not responsible for not completing 240 days every year from 1994 to 1998. There is substance in the submissions of

learned counsel for the petitioner that only due to artificial breaks given by respondents, the petitioner was not allowed to complete 240 days in every

year from 1994 to 1998. The petitioner upto April 1999 had worked for 76 days. It was not contended on behalf of the respondents that after April,

1999 the petitioner had not worked or he had not completed 240 days in every year including the year 1999.â??

6. Coming to the facts of this case, herein it is difficult to believe that the petitioner would have had purposely not completed 240 days in each calendar

years from 1995 to 1999 because it is not the case of the State that as in the year 1995, relevance of completion of 240 days in a calendar year was

not there. When the petitioner has continuously worked with the respondent-department from the year 1995 onwards, then it is difficult to believe that

for some years, he would purposely work for a few days less than 240 days in a calendar year which would have acted to his deterrence as same was

to become an impediment in his seeking regularization because for that requirement is that workman should have completed 240 days in each calendar

year for the minimum number of years envisaged in the policy of the State Government in vogue for regularization.

7. Therefore, as this Court is satisfied that between the years 1995 to 1999, fictional breaks were given to the petitioner by the respondent-State so that he may not be able to complete 240 days in said years, this writ petition is allowed by directing the respondents to ignore the fictional breaks given to him from the year 1995 to 1999 and with further direction that the petitioner shall be deemed to have completed 240 days in each calendar year from the date of his initial engagement on daily wage basis with all consequential benefits, including the right of regularization upon completion of requisite number of years by taking him to be in continuous job from the year 1995 in terms of the policy of the State Government for regularization upon completion of 8 years or 10 years, whichever was earlier, keeping in view the policy of regularization of the State which was in vogue at the time when petitioner completed 8 or 10 years as a daily wage worker from the year 1995 onwards. The benefit of regularization shall entail monetary benefits also as admittedly petitioner has performed the duties of Beldar throughout. In the event of implementation of this judgment within the period of 90 days from today, the State shall not be liable to pay any interest on the monetary benefits to which the petitioner is entitled to. However, if the judgment is not implemented within 90 days, then the State shall pay simple interest at the rate of 6% per annum as from the date of judgment on the said amount till its actual realization.

The petition stands disposed of in above terms. Pending miscellaneous application(s), if any, also stand disposed of. There is no order as to costs.