
(2014) 07 SHI CK 0092
In the High Court Of Himachal Pradesh
Case No : CWP No. 3720/2014

Dhani Ram

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 18-07-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2014) 07 SHI CK 0092

Hon'ble Judges : Sureshwar Thakur, J;Rajiv Sharma, J

Bench : Division Bench

Advocate : C.N. Singh, Advocate for the Appellant; Anup Rattan, Additional Advocate General and Vivek Singh Attri, Deputy Advocate General, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—Petitioner was appointed as Beldar on daily wage basis in the year 1981. He was retrenched from the service on 16.9.1995. He assailed his retrenchment by way of filing CWP No. 2083/1995. Petitioner was ordered to be re-engaged by interim order dated 30.10.1995 passed by this Court in CMP No. 3883/1995. CWP No. 2083/1995 was disposed of by this Court on 21.12.1995 with a direction that the petitioner would continue to discharge his duties, unless his services were dispensed with in accordance with law and the break period was ordered to be counted for continuity and regularization of service, but no monetary benefits were ordered to be given to him. Petitioner again approached this Court by way of filing CWP No. 4095/2010 seeking direction to the respondents to consider his case as per Mool Raj Upadhayaya's case. CWP No. 4095/2010 was disposed of on 27.7.2010 by directing the respondents to decide the representation of the petitioner within a period of ten weeks from the date of production of the copy of the writ petition by the petitioner. The competent authority was directed to take into consideration the law laid down in Mool Raj Upadhayaya's case. The representation of the petitioner was rejected by the

Principal Chief Conservator of Forest on 11.5.2011. Petitioner assailed office order dated 11.5.2011 by filing CWP No. 4071/2012. In the mean time, the case of the petitioner was considered. Since the petitioner has already completed 10 years continuous service on 31.12.2005, he was granted work charge status w.e.f. 1.1.2006 vide office order dated 4.1.2013. He was regularized as Mali w.e.f. 10.4.2007. CWP No. 4071/2012 was permitted to be withdrawn with liberty to the petitioner to file fresh petition on 14.5.2010. Since the petitioner was regularized as Mali on 10.4.2007 after amendment carried out in Rule 56 of the Fundamental Rules, he was due to retire on 30.6.2014.

2 Mr. C.N. Singh learned Advocate has vehemently argued that the respondent-State has not duly implemented the judgment dated 21.12.1995 rendered in CWP No. 2083/1995 by counting the entire service. He also contended that in case the period had been counted, he would have been regularized from the earlier date and was to superannuate at the age of 60 years instead of 58 years.

3 Mr. Anup Rattan, learned Additional Advocate General has vehemently argued that the petitioner was reengaged on 16.11.1995 and the period between retrenchment and re-engagement of the petitioner has been taken into consideration towards continuity in service. The petitioner was re-engaged on 16.11.1995. He had not completed 240 days in 1995. He had completed only 217 days. However, the court came to the conclusion that since the petitioner had not completed 240 days, there was violation of Section 25F of the Industrial Disputes Act, and the retrenchment of the petitioner was declared illegal. He was re-engaged on 16.11.1995 on the basis of the interim order dated 30.10.1995. The Division Bench while disposing of CWP No. 2083/1995 on 21.12.1995 only ordered the counting of the break period for the purpose of continuity and regularization after the retrenchment of the petitioner till his re-engagement. The petitioner was terminated, as noticed above, on 16.9.1995 and was re-engaged on 16.11.1995 and the period between retrenchment and re-engagement has been counted towards continuity in service, as per reply filed by the State. The period of ten years for the purpose of granting benefit as per Mool Raj Upadhyaya's case was to be counted w.e.f. 1995. Petitioner has completed ten years continuous service as per Annexure P-6 dated 4.1.2013 on 31.12.2005. He has rightly been conferred with work charge status w.e.f. 1.1.2006. He was regularized as Mali on 10.4.2007. The period before 1995 was never condoned by this Court in CWP No. 2083 of 1995. The petitioner has only worked for 232 days in 1992, 133 days in 1993 and 151 days in 1994. Since the petitioner has been regularized after amendment carried out in the Rule 56 of the Fundamental Rules dated 10.5.2001, he was to superannuate at the age of 58 years and not 60 years. However, it has come in the reply that as per notification dated 28.5.2014, an amendment has been carried out in the Rule 56 of the Fundamental Rules, whereby one year extension, whosoever applies for it, is provided on attaining the age of superannuation.

4 In view of analysis and observations made hereinabove, there is no merit in

the writ petition and the same is dismissed. However, by way of an abundant precaution, it is made clear that since the petitioner has attained the age of superannuation on 30.6.2014, he is at liberty to apply to the respondent to seek one year extension in service and in that eventuality, the same shall be considered by the respondent strictly in accordance with Rule 56 of the Fundamental Rules amended on 28.5.2014. Pending application(s), if any, also stands dismissed. No order as to costs.