

(2021) 11 SHI CK 0047

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition (Original Application) No.7493 Of 2019

Door Singh

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 17-11-2021

Acts Referred:

Citation : (2021) 11 SHI CK 0047

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : Bhim Raj Sharma, Ashwani K. Sharma, Vikrant Chandel, Kunal Thakur

Final Decision : Disposed Of

Judgement

Jyotsna Rewal Dua, J

1. This writ petition has been filed for following substantive reliefs:-

"(i) That the applicant be considered for pension.

(ii) That the seniority with effect from the actual benefit 8 years be granted to the applicant.

(iii) That the arrears of pension be paid to the applicant along with interest."

The petitioner is still in service. Grievance of the petitioner highlighted during hearing of the case is that the respondents are not considering him eligible for pension and, therefore, are not taking appropriate steps in that regard. Learned counsel for the petitioner has restricted and confined his prayer only for petitioner's entitlement towards pension.

2. Heard learned counsel for the parties.

3. The case as it comes out from the pleadings is that:-

3(i). The petitioner on completion of his eight years of continuous daily wage

service w.e.f. the year 1994 as on 31.12.2001, was regularized by the respondent-Public Works Department vide order dated 22.01.2007.

3(ii). Considering that the petitioner was in continuous daily wage engagement as Beldar (Class-IV) w.e.f. the year 1994, the respondents passed an office order on 23.02.2016 and granted the benefit of work charge status to him retrospectively w.e.f. 01.01.2002 upon completion of eight years of continuous daily wage service. Consequential benefits were allowed to the petitioner for the preceding three years from the date of issuance of instructions dated 15.06.2015.

3(iii). The petitioner instituted writ petition, bearing CWP No.7563 of 2011. The writ petition was decided on 12.09.2011 with the following directions:-

"1. The petitioners claim work charge status on completion of eight years of continuous service as daily waged worker. According to the petitioners, the issue is covered in their favour by the judgment of this court rendered in CWP No.2735 of 2010 titled Rakesh Kumar versus State of H.P. and others. It is for the respondents to examine the matter. We are informed that the State has filed an appeal against the above mentioned decision. Therefore, it is made clear that the implementation of the judgment referred to above would depend on the outcome of the decision of the Apex Court. The needful action after verifying the facts will be taken within a period of two months from the date of the judgment of the Apex Court. The petitioners will produce a copy of this judgment along with a copy of the writ petition before the 3rd respondent/competent authority.

2. The Writ Petitions are disposed of, so also the pending application(s), if any."

In compliance to the above directions, the respondents passed an order on 17.09.2016, whereby the earlier order dated 23.02.2016 was modified and petitioner's pay as work charge Beldar was re-fixed w.e.f. 01.01.2002 to 19.08.2005 on notional basis and on actual basis w.e.f. 10.04.2008, i.e. preceding three years from the date of filing of CWP No.7563 of 2011.

4. As already noticed above, the petitioner has restricted the claim in the instant petition only towards his eligibility for grant of pension. In this regard, the stand of the respondents in their reply is that "as such, the applicant is entitled to be considered for pension benefits. The copy of order dated 23.2.2016 and 01.10.2016 are annexed herewith as Annexure R-2. The respondent No.2 vide his office letter dated 9.6.2016 has released pension benefits who have completed 8 years continuous service with more than 240 days in each calendar year as on 15.5.2003 and the present applicant has regularized retrospectively w.e.f.

1. 1.2002 is covered with the pension scheme of Govt. Copy of letter dated 1.6.2016, 9.6.2016 & 16.09.2016 (colly) and copy of bill no.61 annexed as Annexure R-3 & R-4." The respondents have also stated in the reply that "Consequently the service rendered on daily waged basis by the employees before their regularization/grant of work charged status cannot be taken into

consideration for counting their qualifying service for grant of pension under the Central Civil Services (Pension) Rules, 1972". Respondents have also stated in the reply that vide order dated 23.02.2016, the petitioner was retrospectively regularized by the department w.e.f. 01.01.2002.

In the instant case, admittedly, the petitioner was granted work charge status/regularization w.e.f. 01.01.2002. Since petitioner's regularization/grant of work charge status is prior to the cut-off date of 15.05.2003 for the applicability of Contributory Pension Scheme (New Pension Scheme) and he is still stated to be in service of respondent department, therefore, he falls under the Old Pension Scheme, i.e. CCS (Pension) Rules, 1972. Instructions issued by the State on 01.06.2016 placed on record alongwith reply of the respondents are also to the effect that "All Class-III & Class-IV employees of PWD and IPH Departments who had been given the work charged status prior to 15.5.2003 shall be entitled to pensionary benefits as per the CCS (Pension) Rules, 1972 and they shall also be eligible to subscribe towards GPF under the GPF Rules, 1960. However, those employees who had been given the work charged status after 15.5.2003 shall be covered under the CPS or New Pension System because Central Civil Services (Pension) Rules, 1972 and GPF Rules, 1960 ceased to operate w.e.f. 15.5.2003".

In view of above, there shall be a direction to the respondents to treat the petitioner eligible for grant of pension under the Central Civil Services (Pension) Rules, 1972 and to take all required steps in that regard within a period of four weeks from today.

The petition stands disposed of in the above terms, so also the pending miscellaneous application(s), if any.