

(2010) 12 SHI CK 0085
In the High Court Of Himachal Pradesh
Case No : CWP No. 8197 of 2010

Gopal Sharma and Others

APPELLANT

Vs

The State of H.P. and Others

RESPONDENT

Date of Decision : 28-12-2010

Acts Referred:

Citation : (2010) 12 SHI CK 0085

Hon'ble Judges : Kurian Joseph, C.J;V.K. Ahuja, J

Bench : Division Bench

Judgement

Kurian Joseph, C.J.—According to the Petitioners their case is covered by the decision of this Court in CWP No. 2735 of 2010, titled Rakesh Kumar v. State of H.P. and Ors., decided on 28.7.2010, text of which reads as follows:

1. The Petitioners herein are workers who have been regularized in service under the Irrigation and Public Health Department. All of them have been regularized in service as per the various schemes announced by the State from time to time. Their only grievance is that before regularization, they should have been granted the work-charged status.

2. The only reference to be made for analyzing the grievance of the Petitioners is two orders of the Government. One order is dated 3.4.2000 and other is dated 6.5.2000. Order dated 3.4.2000, reads as follows:

1. In partial modification of this Department letter of even number dated 8th July, 1999 on the above subject, I am directed to say that the Government has now decided that the Daily Waged/Contingent Paid workers in all the Departments including Public Works and Irrigation and Public Health Departments (other than work-charged categories)/Boards/Corporations/Universities, etc. who have completed 8 years of continuous service (with a minimum of 240 days in a calendar year) as on 31-03-2000 will be eligible for regularization. It has further been decided that completion of required years of service makes such daily wager/contingent paid worker eligible for consideration

to be regularized and regularization in all cases will be from prospective effect i.e. from the date the order of regularization is issued after completion of codal formalities.

2. In view of the above decision and in order to avoid any litigation and also any hardship to daily wagers departments shall do the regularization based on seniority and they will ensure that senior persons are regularized first rather than regularizing junior persons first.

3. Other terms and conditions like fulfillment of essential qualification as prescribed in R&P Rules, etc. etc. as laid down in this department letter of 8th July, 1999, as referred to above, shall continue to be operative.

4. These instructions may kindly be brought to the notice of all concerned for strict compliance.

5. These instructions have been issued with the prior approval of the Finance Department obtained vide their Dy. No. 852 dated 23-03-2000.

3. Order dated 6.5.2000, to the extent relevant, reads as follows:

2. During the process of regularization of daily wagers, various issues and problems relating to these workers concerning their regularization have been brought to the notice of the Government. The Government in order to avoid such confusion or problems has decided to streamline the existing procedure/instructions in order to bring uniformity of procedure in various Departments of the Government. It has, therefore, been decided that henceforth:

(i) Daily Waged/Contingent Paid Workers who have completed required years of continuous service (with a minimum of 240 days in a calendar year except where specified other wise for the tribal areas) which as per latest instructions issued vide this Department letter of even number dated 3-4-2000 is 8 years as on 31-03-2000 shall be eligible for regularization. However, in Departments/Corporations/Boards, where the system of the work charge categories also exists, eligible daily wagers will be considered first for bringing them on the work charge category instead of regularization. Such eligible daily waged workers/contingent paid workers will be considered for regularization against vacant posts or by creation of fresh posts and in both these events prior approval of Finance Department will be required as per their letter No. Fin-1-C(7)-1/99 dated 24-12-1999. The terms and conditions for such regularization shall be governed as per Annexure -"A".

4. This scheme was in force till a new scheme introduced on 9th June, 2006. The contention of the Petitioners is that on completion of 8 years service, as per the scheme extracted above, they are liable to be granted the work-charged status being on a work charged establishment.

5. Learned Senior Additional Advocate General submits that as per the schemes, they have been regularized and since the scheme permits only regularization

w.e.f. the date of the regularization, the Petitioners are not entitled to any further relief. It is also contended that in any case, since the Petitioners are claiming for a relief which they ought to have claimed in the year 2004, this Court will not be justified in granting any relief since the Petitioners have not offered any satisfactory explanation for the in-ordinate delay.

6. The simple question is whether the delay defeats justice? In analyzing the above issue, it has to be borne in mind that the Petitioners are only class-IV workers (Beldars). The schemes announced by the Government clearly provided that the department concerned should consider the workmen concerned for bringing them on the work-charged category. So, there is an obligation cast on the department to consider the cases of the daily waged workmen for conferment of the work-charged status, being on a work-charged establishment, on completion of the required number of years in terms of the policy. At the best, the Petitioners can only be denied the interest on the eligible benefits and not the benefits as such, which accrued on them as per the policy and under which policy, the department was bound to confer the status, subject to the workmen satisfying the required conditions.

7. In the above circumstances, these Writ Petitions are disposed of directing the Respondents to consider the case(s) of the Petitioners herein for conferment of work-charged status, subject to their eligibility in terms of the policy dated 3.4.2000 and as explained in 6.5.2000 policy, as extracted above. Needful in this regard shall be done within a period of three months from the date of production of the copy of this judgment by the respective Petitioners. Needless to say that the question of conferment of work-charged status does not arise in case the establishment ceases to be a work charged establishment and hence, the conferment of the status will not arise after the abolition of the workcharged status of the establishment.

8. With these observations, the Writ Petitions are disposed of, so also the pending application(s), if any.

2. Since the Petitioners, herein, claim that they are also similarly situated persons, therefore, there will be a direction to second Respondent to examine the case of the Petitioners in light of the judgment extracted above and take appropriate action in accordance with law within four months from the date of production of a copy of this judgment along with a copy of the writ petition.

3. With these observations, the writ petition stands disposed of, so also the pending application(s) if any.