

(2019) 08 SHI CK 0068
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 211 Of 2018

Himachal Pradesh State Electricity Board Limited & Others	APPELLANT
Vs	
Jagat Singh	RESPONDENT

Date of Decision : 27-08-2019

Acts Referred:

Administrative Tribunals Act, 1985 — Section 20(2)(b), 21, 21(1)(a)
Electricity Supply Act, 1948 — Section 60, 60(1), 64
Constitution Of India, 1950 — Article 32

Citation : (2019) 08 SHI CK 0068

Hon'ble Judges : V. Ramasubramanian, CJ;Anoop Chitkara, J

Bench : Division Bench

Advocate : Ashok Sharma, T.S. Chauhan, T.R. Jain

Final Decision : Allowed

Judgement

V. Ramasubramanian, CJ

1. The Himachal Pradesh State Electricity Board has come up with the above writ petition challenging an order of the State Administrative Tribunal granting the relief of conferment of work charge status on the respondent in the post of Mate, upon completion of 10 years of service, with all consequential benefits.
2. Heard Mr.Ashok Sharma, learned Senior Counsel appearing for the petitioners and Mr.T.R. Jain, learned counsel appearing for the respondent.
3. The respondent herein filed an Original Application in OA No.3623 of 2015 on the file of the H.P. State Administrative Tribunal (hereinafter referred to as "the Tribunal"). The relief sought by the respondent in his Original Application before the Tribunal was to direct the Electricity Board to regularize his services as a Mate instead of Beldar, upon completion of 10 years of service, with all consequential benefits along with interest at the rate of 12% per annum and assign the appropriate place in the seniority list and further promotions to the higher posts.

4. The case of the respondent herein in his Original Application before the Tribunal was that he passed the Matriculation in March 1986; that he was engaged in the Muster Roll as a Mate during the period from 17.08.1989 to 25.02.1992 on daily wage basis in the Nathpa Jhakri Construction Division No.VI; that he was later placed under the control of Ganvi Construction Sub Division No.VI, Jeori where he worked as Mate on daily wages from 26.02.1992 to 20.09.1996; that thereafter he worked as Mate on daily wages under the control of Assistant Engineer, Investigation, Sub Division No.V, Satluj Basin from 21.09.1996 to 19.08.2002; that pursuant to a Policy followed by the Electricity Board, he was offered the post of Beldar on work charge basis, by a letter issued by the Secretary to the Electricity Board dated 09.07.2002; that he accepted the offer of appointment as Beldar on work charge basis and reported for duty on 23.08.2002; that after working as Beldar on work charge basis from 23.08.2002, his services were regularized by an order dated 19.01.2010; that though the order of regularization was not issued to him, he was informed about the same and necessary entries were also made in his service register; that after the regularization of his services in the post of Beldar, he was sent for training in Fitter Trade in ITI Jubbal; that he underwent training in Fitter Trade from 20.09.2010 to 01.08.2012; that his appointment as Beldar on work charge basis was contrary to the State Government Policy; that a few other persons whose names were reflected in the seniority list of Helpers as on 01.01.2014 were regularized upon completion of 10 years and were also promoted as Fitter Grade-III; that therefore, he made a representation on 23.09.2014, to which there was no response and that, therefore, he was constrained to file the Original Application before the Administrative Tribunal.

5. The Electricity Board filed a reply to the Original Application filed by the respondents herein, contending, inter alia, that after accepting the post of Beldar way back in the year 2002 and also after gaining promotion, it was not open to the respondent herein to come up with a prayer for appointment in a higher post with retrospective effect, after a gap of more than 13 years and that in any case, the policy relied upon by the respondent herein, was not applicable to his case.

6. By an order dated 18.03.2016, the Tribunal allowed the application filed by the respondent, solely on the ground that the Supreme Court had already approved a scheme for conferment of work charge status on daily rated employees, in its judgment in Mool Raj Upadhyaya vs. State of H.P. {1994 supp.(2) SCC 316} and that in Gauri Dutt Vs. State of Himachal Pradesh (decided on 29.12.2007 in CWP No.778 of 2006), this Court has held the said scheme to be applicable to the employees of all the Departments of the Government and that since the respondent herein (the applicant before the Tribunal) had admittedly completed 240 days of service in each calendar year for a period of 10 years from 1990 to 1999, he was entitled to the benefit of conferment of work charge status in the post of Mate upon completion of 10 years of service with all consequential benefits. Aggrieved by this order, the Electricity Board is before us.

7. It is seen from the reply filed by the Electricity Board before the Tribunal that they raised two preliminary objections to the very maintainability of the Original Application filed by the respondent herein. The first objection was that after having accepted the conferment of work charge status in the post of Beldar way back in the year 2002, it was not open to the respondent to seek a higher benefit, especially after 12 years. The second objection was that the reliefs sought by the respondent were hopelessly barred by limitation under Section 21 of the Administrative Tribunals Act, 1985. Unfortunately, as rightly pointed out by the learned Advocate General appearing for the petitioners, both these objections were not even dealt with by the Tribunal. In his original application, the respondent specifically admitted in paragraph 6(iii), that he was offered the post of Beldar on work charge basis by a letter dated 09.07.1962 issued by the Secretary to the Electricity Board and that he accepted the offer of appointment as Beldar. The relevant portion of the averments made by the respondent herein in paragraph 6(iii) of his Original Application before the Tribunal reads as follows:

"6(iii) That in pursuance to the policy of the State Government followed by the H.P. State Electricity Board, the Secretary, HPSEB, Shimla-4 vide letter No.HPSEB (SECTT.)/P.O.-1/321-25 (WCE-I) 2002-45105-106, dated 09.07.2002, the applicant was offered the post of Beldar on work charged basis, which is annexed as Annexure A-4 and was directed to report for duty to the Senior Executive Engineer, Kashang Construction Division No.II, HPSEB, Jeori. The applicant accepted the offer of appointment as Beldar on work charged basis and reported for duty to the above said authority and joined there on 23.08.2002. The applicant was further posted in Kashang, Construction Division No.VI, Jeori, which is annexed herewith as Annexure A-5."

8. In paragraph 6(iv) of his Original Application, the respondent had also admitted that his services were even regularized by the proceedings dated 19.01.2010. In paragraph 6(v) the respondent admitted that in July 2010, he was even sent for training in Fitter Trade to ITI Jubbal and that he successfully underwent training from 20.09.2010 to 01.08.2012.

9. Neither at the time of grant of work charge status in the post of Beldar in July 2002 nor at the time of regularization of services in a lower category in January 2010 nor at the time of being sent for training in Fitter Trade in July 2010, the respondent raised his little finger in protest that he should have been granted work charge status in a higher post. The cause of action for the respondent to approach the Tribunal arose on 09.07.2002, when he was allegedly offered work charge status in a lower post of Beldar. Section 21(1)(a) of the Administrative Tribunals Act, 1985 prescribes a period of limitation of one year from the date on which a final order is made. But in cases where an appeal or representation as mentioned in Section 20(2)(b) has been made, the aggrieved person is entitled to approach the Tribunal within one year from the date of expiry of a period of six months from the date of appeal or representation.

10. Even the provisions of Section 20(2)(b) will not be applicable to the case of

the respondent, in view of the fact that admittedly the earliest representation that he made relating to his grievance, was only on 23.09.2014 by which time, a period of 12 years and 2 months had already elapsed. The law is well settled that repeated representations, even if they are rejected on merits, will not provide a fresh cause of action. A useful reference may be made in this regard to the decision of the Supreme Court in *C. Jacob vs. Director of Geology and Mining*. Therefore, the Original Application filed by the respondent ought to have been thrown out by the Tribunal, even on this sole ground of limitation.

11. In any case a person who accepted a benefit, in the year 2002 without any protest and who also gained subsequent benefits in the form of regularization, promotion etc., cannot turn around and seek a larger benefit. The acceptance of the benefit of conferment of work charge status in the post of Beldar, without any murmur or protest by the respondent, sealed the fate of his claim for conferment of work charge status in any other post.

Therefore, even on the ground of estoppel, the Original Application of the respondent was liable to be rejected.

12. Unfortunately, the Tribunal did not even see whether the application of the respondent was barred by time and whether he is entitled to wake up after more than 12 years and seek a higher benefit than the one that he accepted without protest.

13. As we have pointed out earlier, the Tribunal went solely on the basis of the judgment of the Supreme Court in *Mool Raj Upadhyaya* and the judgment of this Court in *Gauri Dutt*. Since a number of applications and writ petitions appear to have been disposed of both by the Tribunal and by this Court on the basis of these two judgments, we think that it is high time that the myth around these two judgments is exploded.

14. In *Mool Raj Upadhyaya*, the Supreme Court was concerned with a batch of writ petitions filed under Article 32 of the Constitution. These petitions were by persons employed on daily wages basis in Irrigation and Public Health Wings of the Public Works Department of the State. During the pendency of these writ petitions, the State of Himachal Pradesh prepared a Scheme for Betterment (Appointment) Regularization of Muster Roll/Daily Wagers. The Supreme Court took note of the Scheme and merely approved the same with few modifications. It must be remembered that the Supreme Court did not lay down any law in *Mool Raj Upadhyaya* to the effect that for all times to come, there shall be a Scheme for regularization of all daily wagers. The Supreme Court should not be understood to have put a seal of approval in *Mool Raj Upadhyaya* to the appointment of daily wagers continuously for 10 years and for conferment of the benefit of work charge status upon completion of 10 years. The Scheme that was approved by the Supreme Court in *Mool Raj Upadhyaya* was a Scheme framed by the State to address the grievances of the petitioners before the Supreme Court. It was not a one-stop shop for recruitment. Keeping this in mind, let us

now come to the judgment of this Court in Gauri Dutt.

15. In Gauri Dutt, this Court framed four questions as arising for consideration. These four questions are as follows:-

"1. Whether the scheme of putting the workers on work charged basis as approved by the Apex Court in Mool Raj Upadhyaya's case is applicable to those daily waged employees who had not completed minimum of 240 days of service in a calendar year as on 31st December, 1993 ?

2. If the answer to the first question is in the negative, what will be the process of regularization of services of those employees who had not completed 240 days of service in a calendar year as on 31st December, 1993 or had joined service after 1st January, 1994 ?

3. Whether the scheme, as approved by the Apex Court, in Mool Raj Upadhyaya's case, is only applicable to the employees of the Irrigation and Public Health Department and Public Works Department of the State of Himachal Pradesh or is applicable to all the daily rated employees working under the Government of H.P.?

4. Where if an employee has rendered service on daily waged basis on 2 separate posts in lower and higher scales, can the employee be given benefit of the service rendered by him in the lower scale and be regularized in the higher scale by combining the two services after 10 years ?"

16. This Court pointed out at the outset that the Scheme approved by the Supreme Court dealt with (i) employees who had completed 10 years of service as on 31.12.1993; and (ii) employees who had not completed 10 years of service as on 31.12.1993 but who had at least served for one year prior to 31.12.1993. This Court also clarified in Gauri Dutt that the Scheme as approved by the Supreme Court, in Mool Raj Upadhyaya was a onetime scheme.

17. This Court referred in Gauri Dutt to a second scheme framed by the State on 06.05.2000 and held that those who are not governed by Mool Raj Upadhyaya will be governed by the Scheme of the year 2000.

18. After having answered the first two questions as aforesaid, this Court referred to paragraph-6 of the affidavit filed by one Mr. K.J.B.V. Subramanyam, Joint Secretary (Public Works Department) to the Government of Himachal Pradesh before the Supreme Court to the effect that the Scheme will be applicable to all rated employees in all Departments. Therefore, this Court answered the third question by holding that the Scheme is applicable to all the employees working in all the Departments of the Government. Hence the decision in Gauri Dutt extends only to Government servants working in all departments.

18. We do not know how the State Electricity Board can be construed as a Department of the Government of Himachal Pradesh. The Himachal Pradesh State Electricity Board was actually constituted on 01.09.1971 in terms of the

provisions of the Electricity Supply Act, 1948. After the advent of the Electricity Act, 2003, the Board was converted into a Company by name Himachal Pradesh State Electricity Board Limited under the provisions of the Companies Act, 1956. The Board is supposed to be a body corporate having an independent identity and existence. That its identity was to be independent, is borne out by the fact that under Section 60 of the Electricity Supply Act, 1948, the Board was made to assume the obligations of the State Government, in respect of matters covered by the Act. If the Board was to be construed as a Department of the Government, there was no necessity for Section 60(1), making the Board inherit the debts and obligations incurred by the Government in matters covered by the Act. In fact Section 64 of the Act enables the State Government to advance loans to the Board. If the Board was a Department of the Government, the question of advancing loans would not arise.

19. Therefore, the whole premise on which the case of the respondent was based, as though the State Electricity Board is a Department of the Government and that, therefore, the decision in Gauri Dutt would apply, is completely misconceived. But unfortunately, the Tribunal did not take note of these aspects before allowing a claim that had become stale as well as time barred. Hence, the writ petition filed by the Electricity Board deserves to be allowed.

20. The learned counsel for the respondent relied upon several orders of this Court, some of which had also been implemented by the Electricity Board and in respect of some of which, even the Special Leave Petitions filed by the Electricity Board had been dismissed. But all these cannot take the petitioner anywhere. A complete answer to this contention is to be found in the judgment of the Supreme Court in State of Uttar Pradesh. vs. Arvind Kumar Srivastava {(2015) 1 SCC 347}. In paragraph 22 of the decision, the Supreme Court pointed out that the normal rule is that when a particular set of employees is given relief by the Court, all other identically placed persons need to be treated alike by extending the benefit. But the Supreme Court also held that the said rule is subject to certain exceptions including the one relating to delay, laches and acquiescence. In the case on hand, the respondent's claim would fall under both the categories, namely, (i) delay and laches and; (ii) acquiescence. Therefore, the fact that some orders have attained finality and some have been implemented, would not advance the cause of the respondent.

21. In none of the cases so far decided, this Court has ever addressed the question whether the Electricity Board is a Department of the Government or not, so as to be covered by the decision in Gauri Dutt. Therefore, those orders cannot even be cited as precedents to be followed.

22. We are conscious of the fact that consistency of opinion is often hailed as a judicial virtue. But as pointed out by a Division Bench of the Madras High Court to which one of us was a party (V. Ramasubramanian, J) in Director of Sericulture vs. K. Kumar {2015 (4) CTC 241}, justice is more precious than discipline and the greatness of the system lies in its courage and ability to correct its mistakes.

As pointed out by the Supreme Court in A.R. Antulay vs. R.S. Nayak {AIR 1988 SC 1531}, no personal inhibitions should debar the Court in rectifying an error. Therefore, the fact that a few employees of the Electricity Board have reaped the benefit of certain orders and that the Special Leave Petitions arising out of such orders were dismissed at the admission stage, would not help a person whose case is hopelessly barred by limitation and who is also guilty of acquiescence.

23. Hence the writ petition is allowed and the impugned order of the Tribunal is set aside. The Original Application filed by the respondent herein shall stand dismissed. No order as to costs.

24. Pending application(s), if any, also stand(s), disposed of.