
(2011) 03 SHI CK 0336
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 12109 of 2008

Ishwar Dass

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 18-03-2011

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2011) 03 SHI CK 0336

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Judgement

V.K. Sharma, J.—The petition has been filed on the following prayers vide para 7 (i) to (iii):

- i) The impugned order dated 30.4.2005 contained in Annexure A-2 may kindly be set aside and quashed.
- ii) That Respondent department may kindly be directed to allow the present applicant to work in the Respondent department upto the age of 60 years.
- iii) That the Respondent department may kindly be directed to pay the salary to which the present applicant is entitled from 30.4.2005 upto the date of his re-engagement.

2. In reply, the Respondents have taken the following stand vide para 1 of the preliminary submissions:

That the present original application is not maintainable in the eyes of law, hence the same is liable to be set aside. It is further submitted that the Govt. of H.P. vide its notification from the office of Finance Commissioner-cum-Secretary (Finance) No. FIN(C)A(3)/98 dated 10.5.2001 has notified the age of superannuation from sixty years to fifty eight years for the employees of Class-IV. It is further submitted that this notification is made applicable to the Class-IV employees who are appointed on or after the publication of the aforesaid

notification in the Rajpatra Himachal Pradesh. But it is further stated that the appointment of the applicant as work charged beldar was made by the office of Executive Engineer vide its Office Order No. PW-SKT-WCE-7/03-11304-10 dated 31.3.2003. Hence the applicant has been retired as per the provision of notification under reference that No. Fin(C)A(3)-3/98 in exercise of the powers conferred by proviso to Article 309 of the constitution of India, the Governor, Himachal Pradesh is pleased to make the following rules further to amend the Fundamental rules in their application to the State of Himachal Pradesh, namely:

1. Short title and commencement- (1). These rules may be called Fundamental (in their application to the State of Himachal Pradesh) Amendment Rules, 2001.

2. These shall come into force from the date of publication in the Rajpatra, Himachal Pradesh.

3. Amendment of Rule-56 of the Fundamental Rules:

(A) After Clause (B) the following proviso shall be inserted, namely:

Provided that a workman appointed on or after the date of publication of this notification in the Rajpatra, Himachal Pradesh shall retire from service on the afternoon of the last day of the month in which he attains the age of 58 years.

(b) After proviso to Clause (e) the following second proviso shall be inserted, namely:

Provided further that Class-IV Government servant appointed on or after the date of publication of this notification in Rajpatra Himachal Pradesh shall retire from service on the afternoon of the last day of the month in which he attains the age of 58 years.

The photo copy of the aforesaid notification and the order dated 31.3.2003 are annexed herewith as Annexure R-I and R-II.

3. The learned Counsel for the Petitioner submits at the very outset that the case of the Petitioner is covered by a Division Bench judgment dated 25.10.2010 of this Court in CWP No. 5749 of 2010, Lachhi Ram v. State of H.P. and Ors., text whereof is as under:

The writ petition is filed with the following prayer:

(i) That the Respondents may very kindly be restrained from retiring the Petitioner from services on 30.9.2010 on his attaining 58 years of age and they may further be directed to continue the Petitioner in service till his attaining the age of 60 years i.e. 30.9.2012.

(ii) That the Respondents may also be directed to grant work-charge status to the Petitioner as beldar w.e.f. completion of 10 years of daily waged services with all consequential benefits.

2. As far as the first prayer is concerned, it is clear from the rules that in case of

those workmen appointed on or before 10th May 2001, they are entitled to continue upto 60 years and only those workmen appointed on or after 10th May 2001 the age of superannuation is 58 years. No distinction whatsoever is made as to whether the appointment is on regular basis or otherwise. In fact, the rules and the circular Issued thereafter clearly indicate that beldars enrolled prior to 10th May 2001 are entitled to continue upto 60 years. Therefore, prayer No. 1 is granted. In case the Petitioner has been retired on 30th September 2010 on attainment the age of 58 years, he shall be reengaged forthwith and allowed to continue till he attains the age of 60 years. As far as the conferment of work-charge status is concerned, the matter will be considered in the light of judgment rendered in Mool Raj Upadhyaya v. State of H.P. and Ors. 1994 Supp (2) SCC 313. The matter shall be considered as above by the second Respondent within a period of four months from the date of production of a copy of this judgment alongwith a copy of the writ petition by the Petitioner. The period between 30.9.2010 and the date of reengagement as per the direction in this judgment shall be treated as service for all purposes except for actual wages. In other words, the period as above shall be treated as service but the Petitioner shall not be entitled to back wages in terms of judgment referred to above. However, we make it clear that in case the Petitioner is not reengaged within a period of two weeks from the date of production of copy of this judgment before the third Respondent, the Petitioner shall be entitled to salary for the said period also and the officer concerned shall be held liable for the same.

4. In view of the above, if on facts, the case of the Petitioner is covered under the judgment in CWP No. 5749 of 2010 and the same has attained finality and has been implemented and the Petitioner is a similarly situate person, he shall also be treated similarly without any discrimination and the benefit of the said judgment shall be extended to him within three months from the date of production of copy of this judgment by the Petitioner to Respondents/competent authority.

5. The petition stands disposed of, so also pending CMP(s), if any.