
(2022) 08 SHI CK 0023

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition (Original Application) No. 7401 Of 2019

Kailash Chand

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 05-08-2022

Acts Referred:

Citation : (2022) 08 SHI CK 0023

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : Onkar Jairath, P.K. Bhatti, Bharat Bhushan, Kunal Thakur

Final Decision : Disposed Of

Judgement

Satyen Vaidya, J

1. Heard.

2. Brief facts necessary for adjudication of the petition are that on 10.06.2005, petitioner was appointed as Pharmacist on contract basis. His services were regularized w.e.f. 6. 08.2015, whereas the claim of the petitioner is that he should have been regularized w.e.f. 01.04.2012 on completion of eight years of contract employment in terms of Regularization Policy dated 31.08.2012.

3. In response, the case of the respondents is that the petitioner was initially appointed against available vacancy on contract basis for a period of 89 days, on fixed monthly remuneration. His contract continued to be extended from time to time for a period of 89 days. This arrangement continued till March, 2008 and thereafter the contract of the petitioner was renewed on yearly basis. Thus, according to the respondents, the contract period of the petitioner till March, 2008, could not be considered for the purposes of regularization. The regularization of petitioner w.e.f. 06.08.2015, has been justified on aforesaid grounds.

4. The issue that arises for consideration is whether the contractual service

rendered by the petitioner w.e.f. 10.06.2005 till March, 2008, was liable to be considered by the respondents towards regularization of his services?

5. An identical issue was subject matter of CWPOA No. 7370 of 2019, decided by Co-ordinate Bench of this Court, vide judgment dated 17.06.2022. The facts in the said case were *pari materia* the same, with facts of present case, save and except, the date of initial appointment in both the cases differed. In CWPOA No. 7370 of 2019, petitioner therein was appointed on 19.09.2005, whereas petitioner in the instant case was appointed on 10.06.2005. Petitioner in both the cases had the same employer. Their contracts were renewed only for 89 days till March, 2008 and their services were regularized w.e.f. 06.08.2015 by a single Office Order.

6. The Coordinate Bench of this Court while deciding CWPOA No. 7370 of 2019, has held as under:-.

"There is no difference between the contractual appointment of the petitioner after March, 2008 and prior to March, 2008. The terms & conditions of the contractual service of the petitioner for both the periods have remained the same. The petitioner has not undergone any fresh selection process after March, 2008. His post also did not undergo any change. He was appointed on an available vacancy in regular establishment pursuant to a selection process. Therefore, just because the contractual appointment of the petitioner prior to March, 2008 was initially for 89 days, which period was renewed from time to time thereafter, will not mean that the said contractual service is liable to be ignored for the purpose of regularization of his services. The break admitted by the respondents to have been given in the contractual service of the petitioner after 89 days before renewing his contract for further period of 89 days, has to be deemed to be a fictional/notional break in the facts and circumstances of the case. The respondents have themselves taken into consideration the contractual services rendered by the petitioner on year to year basis after March, 2008. There is no stipulation in the policy dated 31.08.2012 framed by the respondents-State for regularization of such contractual service, which is rendered by an employee only on year to year basis. In the facts of the case, the contractual services rendered by the petitioner w.e.f. 19.09.2005 to March, 2008 cannot be ignored by the respondents for the purpose of regularization of his services.

Reliance placed by the learned Senior Additional Advocate General upon the judgment of the Hon'ble Apex Court in R.J. Pathan's case, *supra*, is misplaced. The facts of that case were entirely different. In the said case, the writ petitioners were initially appointed for a period of 11 months on a fixed salary in a particular project. The project came to an end. The unit, where the writ petitioners were appointed, was required to be closed, being a temporary unit. Instead of putting an end to the services of the writ petitioners, the State Government thought it fit to transfer and place the writ petitioners with the Indian Red Cross Society. Pursuant to the interim orders passed by the High Court, the writ petitioners continued to serve on contract basis. In the letters

patent appeal filed by them, the High Court directed the State Government to consider their cases for absorption/regularization sympathetically and if required by creating supernumerary posts. In the civil appeal filed by the State, the Hon'ble Apex Court held that no such direction could be issued by the High Court for absorption/regularization of the employees appointed in a temporary unit, which was created for a particular project and that too by creating supernumerary posts. The facts of the instant case, as noticed earlier, are entirely different as noticed earlier, are entirely different."

7. Nothing has been brought on record on behalf of the respondents to persuade this Court to take a different view, therefore, the case of the petitioner in the instant case is fully covered by the judgment passed in CWPOA No. 7370 of 2019 and reasoning provided therein shall apply mutatis mutandis to the facts of the present case.

8. For the aforesaid reasons, the present petition is allowed. Respondents are directed to take into consideration the contractual services rendered by the petitioner with the respondents w.e.f. 10.06.2005 till March, 2008, for the purpose of regularization of his services and to regularize him from the due date in terms of policy dated 31.08.2012, with all consequential benefits.

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