
(2011) 08 SHI CK 0282

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 4649 of 2009

Kanwar Singh

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 26-08-2011

Acts Referred:

Citation : (2011) 3 ShimLC 324

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Petitioner was engaged as Beldar with effect from 1.2.1979 to 30.6.1985. Thereafter, his designation was changed with effect from 1.7.1985 to 1.9.1985 as mason. He was designated as Painter with effect from 1.10.1985 to 6.12.1994. However, he was conferred work charge status as Beldar with effect from 1.1.1994. He assailed this decision by filing O.A. No. 27/1996 before the erstwhile Himachal Pradesh Administrative Tribunal. Petitioner has made a specific averment that one Ramesh Chand, who was junior to him, has been designated as Painter. Respondent-State on the basis of averment contained in this petition had withdrawn order dated 7.12.1994 whereby Ramesh Chand was regularized as Painter. This order was passed by the respondent-State on 20.4.1996. Ramesh Chand assailed this decision by way of O.A. No. 573 of 1996 before the Tribunal. The same was allowed by the Tribunal vide judgment dated 21.10.2003. Thereafter, the State Government has not sought judicial review of the judgment dated 21.10.2003. In other words, judgment dated 21.10.2003 has attained the finality. The original application preferred by the petitioner was transferred to this Court and was assigned CWP (T) 2960/2008. The same was disposed of by this Court vide judgment dated 23.12.2008 on the basis of judgment passed in O.A. No. 573/1996. Petitioner was permitted to make a representation. He made a representation to the Secretary (PW) on 2.4.2009, but till date the same has not been decided. Mr. Tarlok Chauhan has strenuously

argued that the petitioner was senior to Ramesh Chand as Painter. According to him, once Ramesh Chand has been conferred with work charge status as Painter, the same status was required to be conferred upon the petitioner with effect from 1.1.1994.

2. Mr. R.P. Singh has vehemently argued that since the petitioner had already accepted the work charge status as Beldar, he is estopped from seeking work charge status with effect from 1.1.1994 in the category of Painter.

3. I have heard the learned Counsel for the parties and have perused the pleadings carefully.

4. What emerges from the facts enumerated hereinabove is that the petitioner started working as Painter with effect from 1.1.1985 to 6.12.1994. However, the fact of the matter is that he has been conferred the work charge status as Beldar. Ramesh Chand, who had only worked as Painter with effect from 1.1.1987 to 1.1.1994, has been conferred work charge status as Painter. It is admitted that Ramesh Chand was junior to the petitioner as far as seniority of the Painter is concerned. The original application, preferred by Ramesh Chand against the order dated 20.4.1996 whereby earlier order dated 7.12.1994 was withdrawn, was allowed on 21.10.2003. The same has been permitted to attain finality by the respondent-State. It is, thus, evident that person junior to the petitioner till date is working as painter. Respondent-State in its reply admitted that Ramesh Chand was junior to the petitioner and he was given work charge status by mistake. Respondent-State has not chosen to file any appeal against the judgment dated 21.10.2003 rendered by the Tribunal in O.A. No. 573/1996. Respondent-State has undertaken in O.A. No. 27/1996 preferred by the petitioner that he will be conferred work charge status immediately after the completion of ten years as is evident from Annexure P-2. The representation made by the petitioner pursuant to judgment dated 23.12.2008 has not been decided by the Secretary (PW). It was incumbent upon the Secretary (PW) to decide the same in view of the averments contained in representation made by the petitioner. Petitioner has specifically brought to the notice of the Secretary (PW) that he was senior to Ramesh Chand.

5. There is no merit in the contention of Mr. R.P. Singh, learned Assistant Advocate General that the petitioner is estopped from seeking work charge status from 1994 after accepting the offer to be conferred work charge status as Beldar with effect from 1.1.1994. There cannot be any estoppel against the fundamental rights and legal rights. The petitioner belongs to lower strata of society and is oblivious to intricacies of law. It is the duty cast upon senior officer to make aware the workmen about their legal rights. In the instant case, neither acquiescence nor estoppel will apply since the incumbent, who was junior to the petitioner, admittedly has been conferred work charge status, that too, with effect from 1.1.1994 as a Painter.

6. Their Lordships of the Hon'ble Supreme Court in Nar Singh Pal Vs. Union of

India and Others, have held that fundamental rights under the Constitution cannot be bartered away. Their Lordships have further held that the fundamental rights cannot be compromised nor can there be any estoppel against the exercise of fundamental rights available under the Constitution. Their Lordships have held as under: 13. The Tribunal as also the High Court, both appear to have been moved by the fact that the appellant had encashed the cheque through which retrenchment compensation was paid to him. They intended to say that once retrenchment compensation was accepted by the appellant, the chapter stands closed and it is no longer open to the appellant to challenge his retrenchment. Thus, we are constrained to observe, was wholly erroneous and was not the correct approach. The appellant was a casual labour who had attained the "temporary" status after having put in ten years" of service. Like any other employee, he had to sustain himself, or may be, his family members on the wages he got. On the termination of his services, there was no hope left for payment of salary in future. The retrenchment compensation paid to him, which was only a meagre amount of Rs. 6,350/- . was utilised by him to sustain himself. This does not mean that he had surrendered all his constitutional rights in favour of the respondents. Fundamental Rights under the Constitution cannot be bartered away. They cannot be compromised nor can there be any estoppel against the exercise of Fundamental Rights available under the Constitution. As pointed out earlier, the termination of the appellant from service was punitive in nature and was in violation of the principles of natural justice and his constitutional rights. Such an order cannot be sustained.

Accordingly, in view of the observations and discussions made hereinabove, the petition is allowed. Respondents are directed to confer the work charge status upon the petitioner as Painter with effect from 1.1.1994 with all the consequential benefits within a period of eight weeks after the production of certified copy of this judgment by the petitioner. There shall, however, be no order as to costs.