
(2011) 08 SHI CK 0001
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 9268 of 2008

Karam Singh

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 09-08-2011

Acts Referred:

Citation : (2011) 08 SHI CK 0001

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

Bench : Single Bench

Judgement

V.K. Sharma, J.—The petition has been filed on the following prayer:

That the Respondents may be directed to regularize the services of the applicant from the date of his completion of 8 years of service with all consequential benefits including seniority and arrears with interest at the rate of 18% per annum.

2. In reply, the Respondents have taken the following stand vide paras 5(a) and (b):

(a) The contents of this para are wrong and denied. The applicant was engaged for carrying out the Farm operation works at Potato Development Station at Shilaroo since 13-12-1985 on daily wages as casual labourers on M/Roll by the Regional Potato Development Officer Shilaroo. The applicant never disclosed the facts of his qualification as well as date of birth being the need of work he was accommodated and engaged as casual labourer while the applicant intimated his age as 22 years in M/Roll in order to get full rate of labourer whereas the applicant completed the age of 16 years three months only as such he was only entitled to the rate of adolescent child. The applicant obtained full rate of labourer fraudulently. The applicant had also filed OA 950/92 whereby he had claimed the wages of Clerk which was ultimately dismissed as withdrawn vide order dated 17.5.99 with liberty to file fresh application on the same cause of action was not allowed as is evident from the order passed on 17-5-99 copy

there is annexed as Annexure R-2. The applicant left the job at his own interest since 11/92 for period of 7 years and 5 months thereafter the applicant again approach for work in the month of May, 1999 when he worked as daily paid labourer. The applicant again left the job for seven months. The reasons for the absence is best known to applicant. The question of performing the duties with sincerity and to the satisfaction of the superiors can be adjudged itself.

(b) The contents of this para are wrong and denied. The applicant has been engaged to perform the duties to carry out the weeding, hoeing harvesting of the seed potato etc and to maintain the office lawns and flowers beds which is entirely the work of a casual labourer which was continuously performed by the applicant from 18-12-1985 to December 1986 though from January 1987 to July 1988 the applicant had performed the duty of class-IV from May, 89 onwards for the period he remained present on duty the applicant was performing the duties of casual labourer which consists of maintenance of lawns and flowers beds etc. The detail of work performed by the applicant in different spells is given as per Annexure Rule 1. However, the certificate of experience given by the Regional Potato Dev. Officer Shilaroo is not meant for typing work or his engagement as such. The main contents of the certificates was to exhibit that the applicant has knowledge which was issued on the request of applicant in order to facilitate him in getting some suitable job elsewhere. Besides the claim of the applicant has became unjust with the dismissal of the OA 950/92 as well as on score of limitation.

3. The learned Counsel for the Petitioner submits at the very outset that the case of the Petitioner is covered under a Division Bench judgment of this Court dated 28th July, 2010, in CWP No. 2735 of 2010, Rakesh Kumar v. State of H.P. and Ors., and connected matters, text whereof is as under:

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:

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 work charged status of the establishment.

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

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4. In view of the above, if on facts, the case of the Petitioner is covered under the aforesaid judgment dated 28.07.2010, in CWP No. 2735 of 2010, Rakesh Kumar v. State of H.P. and Ors. and connected matters and the same has attained finality and has been implemented and the Petitioner is also similarly situate, he shall be treated similarly without any discrimination and 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 before the second Respondent/competent authority, after affording an opportunity of being heard to him, if so desired.

5. The petition so also pending application(s), if any, stand disposed of in the above terms.