

(2010) 09 SHI CK 0175
In the High Court Of Himachal Pradesh
Case No : CWP No. 5649 of 2010

Keshwa Ram

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 10-09-2010

Acts Referred:

Citation : (2010) 09 SHI CK 0175

Hon'ble Judges : Kurian Joseph, C.J.;Rajiv Sharma, J

Bench : Division Bench

Judgement

Kurian Joseph, C.J.—The issue raised in these petitions has been dealt with in detail in our judgment dated 12.7.2010 in CWP No. 3873 of 2010 titled Chuhara Ram v. State of Himachal Pradesh and Ors. and connected cases.

2. Text of the judgment reads as follows:

The petitioners have approached this Court aggrieved by the Show Cause Notice issued to them. Short facts. The petitioners had been working as daily waged workers for over eight years with minimum of 240 days in each calendar year. In such circumstances, in terms of the letter dated 9th September, 2008, wherein the Government proposed to regularize those workers, against available vacancies, all the petitioners have been offered the post of Beldar in Class IV category. They have accepted the offer and they have been appointed as such, as can be seen from Annexure P-2 in each case. While so, it was noticed that the petitioners did not possess the requisite qualification for regularization in the post and hence they were issued notices. The petitioners have been informed that they did not possess the qualification as prescribed under Rule 14 of the R&P Rules.

2. Learned Senior Additional Advocate General points out that it is a clerical mistake and actually what is intended is Rule 8 of the Himachal Pradesh Department of Irrigation and Public Health Workcharged Beldar (Class-IV, Non-Gazetted) Recruitment and Promotion Rules, 1996. Rule 8 prescribes that the

incumbent "should have passed the primary examination from a recognized School and general suitability for unskilled job."

3. According to the petitioners, the prescription is only for direct recruitment. But the question is when a daily waged worker is offered a post of Beldar, should he possess the qualification? According to the petitioners, so long as the R&P Rules do not prescribe the qualification of passing the Primary Examination, on regularization of daily waged worker in the post of Beldar, the Department is not justified in insisting that such daily waged worker should pass the Primary Examination.

4. The Scheme for regularization of daily waged workers who have completed eight years of continuous service is dealt with in the letter dated 9th September, 2008. It is prescribed, as to norms/principles regarding regularization of daily waged worker that "the daily waged workers being considered for such regularization shall possess minimum educational qualification as prescribed in the Recruitment and Promotion Rules of such post." In other words the daily waged workers, if to be regularized in a particular post under Class IV category, they should satisfy two requirements (1) eight years of continuous service as daily waged worker with a minimum of 240 days in each calendar year as on 31.3.2008 and (2) the minimum educational qualification of passing Primary Examination from a recognized School and of course, general suitability for unskilled job.

5. According to the learned Counsel for the petitioners, having offered the post of Beldar, in consideration of the required completion of continuous service as daily waged worker with 240 days per year, it is highly unreasonable and unjust to insist for educational qualification. So long as the Rules prescribe such qualification for regularization in a particular post and the Rules being not under challenge, it is not for this Court at this stage to examine that question. Since the petitioners are only issued a show cause notice, it will be certainly open to them to apprise the Government that for a daily waged worker to be regularized as Beldar and in the nature of the duties they have been performing and they are to perform, educational qualification of even passing Primary is totally an irrelevant factor. Inviting Reference to Rule 16 of the rules, wherein it is prescribed that "where the State Government is of the opinion that it is necessary or expedient to do so, it may, by order for reason to be recorded in writing relax any of the provisions of these rules with respect to any class or category of persons or post", it is submitted that it is well within the power of the Government to relax the qualification in view of the nature of the duties being performed by the petitioners. We make it clear that it will be open to the petitioners to apprise this aspect also before the Government. If such an approach is made by the petitioners before the Government in reply to the show cause notice issued to them, the matter will be duly considered by the Government and only after the Government passing orders, any further action shall be taken in the matter. The petitioners are given a month's time to file the

reply.

6. With these observations, the writ petitions are disposed of, so also the pending applications, if any.

3. Since the petitioners herein are also similarly situate, these writ petitions are also disposed of in terms of the judgment extracted above. Pending application(s), if any, also stands disposed of. No costs.