
(2021) 07 SHI CK 0073
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 2104 Of 2020

Kishan Chand

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 08-07-2021

Acts Referred:

Citation : (2021) 07 SHI CK 0073

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Subhash Mohan Snehi, Sudhir Bhatnagar, Kunal Thakur

Final Decision : Dismissed

Judgement

Sandeep Sharma, J

1. Petitioner was initially engaged as a Beldar on daily wage basis in the respondent Department on 22.5.1991 and was posted at HPPWD Sub

Division Banjar, District Kullu, Himachal Pradesh. He worked in the aforesaid capacity till 30.1.2006, when his services were ordered to be

regularized on his having completed more than eight years with prospective effect. However, later on, vide office order dated 25.3.2008 (Annexure R-

III), his services came to be regularized with effect from 1.1.2002. But since no arrears for that were paid to the petitioner despite repeated requests,

he approached erstwhile Himachal Pradesh Administrative Tribunal by way of OA No. 745 of 2019, titled Kishan Chand vs. State of Himachal

Pradesh and others, seeking therein direction to the respondents to release due arrears of pay to him, for the intervening period with effect from

1.4.2000 to 31.12.2005 alongwith interest at the rate of 18 percent per annum. Aforesaid Original Application filed by the petitioner came to be

transferred to this Court on abolition of the Himachal Pradesh Administrative Tribunal and was re-registered as CWPOA No. 3 of 2019. During the pendency of the proceedings before this Court, respondents, while placing on record, letter dated 4.12.2019, informed this Court that all consequential benefits, qua which petitioner has been found entitled, stand released to the petitioner and a sum of Rs.35,237/- out of total arrears of Rs.1,35,216/- stand paid to the petitioner vide bill No. 618, dated 31.3.2008, whereas remaining amount of Rs.99,987/- has been paid to him vide bill No. 4, dated 27.7.2019. On the basis of aforesaid information placed before this Court, CWPOA No. 3 of 2019 (OA No. 745 of 2019) having been filed by the petitioner, came to be disposed of as having become infructuous.

2. After six months of passing of aforesaid order dated 5.12.2019 in CWPOA No. 3 of 2019, petitioner has again approached this Court in the instant proceedings, praying therein for the following main reliefs:

â??(i) That writ of mandamus may kindly be issued, directing the respondents to calculate the amount due to the petitioner on account of arrears of pay from the due date i.e. 31.03.2000 instead of 01.01.2002,,

(ii) That writ of mandamus may kindly be issued, directing the respondents to pay the interest as per the prevailing market rate on the due amount of arrears of pay i.e. w.e.f. 31.03.2000 to 31.12.2001 as well as amount paid w.e.f. 01.01.2002, from the due date till actual payment.â??

3. Learned Additional Advocate General, while referring to the reply filed on behalf of respondents Nos. 1 to 4, vehemently argued that the amount claimed in the instant petition already stands released to the petitioner and as such present petition deserves dismissal being devoid of merit.

4. Precisely, the grouse of the petitioner in the case at hand, is that since he was initially engaged in the year 1991 and in that year, he worked for 240 days, respondents ought to have taken into consideration that year also while granting him work charge status and he is entitled to arrears of pay from due date i.e. 31.3.2000 instead of 1.1.2002. It has been further claimed by the petitioner that since he has been regularized with effect from 31.3.2000, petitioner is entitled to actual arrears of pay for the intervening period of 1.4.2000 to 31.12.2005 alongwith upto-date interest.

5. Reply having been filed by the respondents reveals that the petitioner was initially engaged in the year 1991 as daily wage Beldar with Executive

Engineer, HPPWD Division No.1, Kullu, but since he worked only for 163 days in the year 1991, service rendered by him in that year was not taken

into consideration, while calculating period of ten years for the purpose of regularisation. As per respondents, petitioner worked for a minimum of 240

days in a calendar year from the year 1992 onwards, as such, on his having completed ten years continuous service, his services were regularized vide

communication dated 30.1.2006, as per regularisation policy. Copy of man-days chart and regularisation order of the petitioner placed on record as

Annexures R-1 and R-2, clearly reveal that in the year 1991, petitioner did not work for a minimum of 240 days, rather, he worked only for 163 days

as such, no fault, if any can be found with the action of the respondents in regularizing the services of the petitioner with effect from 1.1.2002,

counting the period of ten years from the year 1992 as per the judgment rendered by Hon'ble Apex Court in celebrated case of Mool Raj

Upadhyay's case.

6. Moreover, this Court finds from the record that the prayer made in the instant petition was also raised by the petitioner in CWPOA No. 3 of 2019,

which was disposed of by this Court vide judgment dated 5.12.2019, on the basis of statement made by the respondents that entire arrears to the tune

of Rs.1,35,216/- stand released to the petitioner. If petitioner was aggrieved of the aforesaid finding of the court, which was based upon the statement

of the respondents, he ought to have laid challenge to the aforesaid judgment in the superior court of law, but he filed a fresh petition on same cause of

action, as such, also petition is not maintainable. Leaving everything aside, it is not in dispute that the services of the petitioner have been ordered to be

regularized with effect from 1.1.2002 and consequential benefits have been calculated on the basis of the same, but since no challenge, if any, to the

aforesaid claim of regularisation with effect from 1.1.2002, has been laid by the petitioner in the competent court of law, it is not understood, how he

can claim arrears of pay from 31.3.2000, especially when as per regularisation order, he stands regularized with effect from 1.1.2002.

7. Consequently, in view of the detailed discussion made herein above, I find no merit in the present petition which is dismissed accordingly, alongwith

all pending applications.