
(2020) 08 SHI CK 0389
In the High Court Of Himachal Pradesh
Case No : CWPOA No. 456 Of 2019

Madan Lal

APPELLANT

Vs

State Of Himachal Pradesh & Others

RESPONDENT

Date of Decision : 26-08-2020

Acts Referred:

Citation : (2020) 08 SHI CK 0389

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Karan Singh Parmar, Ashok Sharma, Sudhir Bhatnagar, Arvind Sharma

Final Decision : Disposed Of

Judgement

Sandeep Sharma, J

1. Brief facts of the case as emerged from the record are that initially the petitioner was appointed by respondent No.2 as Supervisor in DRDA on contract basis on 01.04.1997. Contract of the petitioner came to be renewed subsequently from time to time, as is evident from order dated 28th August, 2004 (Annexure P-1), perusal whereof reveals that consequent upon approval of the Chief Executive Officer, District Rural Development Agency, Solan, one year extension with effect from 01.04.2004 to 31.03.2005 came to be granted in favour of the persons engaged on contract basis under the project/ schemes and name of the petitioner stands duly mentioned at Sr. No.21 in the aforesaid communication.

2. The petitioner, who was initially appointed in the year 1997, after having completed 8 years of service as Supervisor on contract basis, prayed for regularization of his services in terms of communication dated 16th June, 2009 (Annexure P-2), whereby, Secretary (RD) to the Government of Himachal Pradesh, advised all the Deputy Commissioners-cum-CEO, DRDA in Himachal Pradesh to adopt the policy of Government of Himachal Pradesh with regard to

regularization of daily wages/contract basis qua the employees recruited by them in DRDA. Since no action pursuant to the repeated requests having been made by the petitioner for regularization came to be taken by the respondents, he was compelled to approach this Court by way of the instant proceedings praying therein for the following:-

- (i) "That the respondents may kindly be directed to regularize services of the petitioner as Supervisor w.e.f. 1.4.2008 with all consequential benefits.
- (ii) That the difference of salary vis-à-vis wages paid to him as contract employee be paid to the petitioner alongwith interest.
- (iii) That the cost of writ petition may kindly be ordered to be paid.
- (iv) That the entire record of the case may kindly be summoned."

3. Having heard learned counsel representing the parties and perused the material available on record, especially, affidavit of Deputy Commissioner-cum-Executive Officer, DRDA Solan, filed in terms of order dated 30.04.2012, whereby, this Court called upon the aforesaid Officer to file fresh affidavit stating therein (a) the date of the appointment of the petitioner and his posting; (b) whether he is an employee of DRDA or any other undertaking/organization and (c) the disciplinary authority of the petitioner, this Court finds that the petitioner was engaged in January, 1997 by Assistant Director (Animal Husbandry), Solan, on daily wages basis in Central Nursery Kotla under centrally sponsored Innovative Integrated Diary Development Project. It also emerges from the aforesaid affidavit that w.e.f. February, 1998 to 2006, the petitioner continued to work in the same nursery under another centrally sponsored project namely, Integrated Wasteland Development Project under overall supervision of DRDA, Solan. Though, project in question was closed in 2006, but Chairman of Milch Livestock Improvement Society, Solan, which is an NGO, vide letter dated 18th March, 2006 addressed to Project Director, DRDA Solan, requested and assured that the society would manage the affairs of nursery at its own level and pay the wages of the staff/labour in the coming months (Annexure A-2), annexed with the affidavit), as such, nursery was transferred to aforesaid society alongwith assets and liabilities and manpower.

4. The case of the respondents is that petitioner is an employee of Milch Livestock Improvement Society, Solan, and he is being paid from the income of the society and, as such, there is no merit in his claim. Besides above, the respondents have also stated that since the petitioner is an employee of an NGO, policy of Government with regard of regularization of his contractual services is not applicable in the case. However, having carefully perused the pleadings of the respective parties as well as documents annexed therewith, this Court is unable to accept the aforesaid contention put-forth on behalf of the respondents that petitioner is an employee of the society through NGO because as per own affidavit filed by the Deputy Commissioner-cum-Chief Executive Officer, DRDA Solan, petitioner was initially appointed as Supervisor in January, 1997 by the

Assistant Director (Animal Husbandry), Solan, on daily wages basis and in this capacity, he continued to work till 2006 when alleged nursery wherein the petitioner was working, came to be transferred to Milch Livestock Improvement Society, Solan. Even if it is presumed that after 2006, petitioner started working with the aforesaid society, case of the petitioner is required to be considered for regularization in terms of Government policy on his completing 8 years regular service on daily wages.

5. It is not in dispute that for more than 9 years, petitioner was in direct employment of respondents as has been taken note hereinabove, as such, his claim for regularization cannot be allowed to be defeated on the pretext that in the year 2006, his services were taken over by Milch Livestock Improvement Society, Solan, to whom nursery in question was transferred. Otherwise also, there is no material worth credence available on record suggestive of the fact that in the year 2006 services of petitioner were disengaged or terminated and, as such, he is deemed to be in service of respondents. Perusal of Annexure P-1 clearly reveals that consequent upon approval of Chief Executive Officer, DRDA Solan, contract of the petitioner came to be extended repeatedly, since he remained in regular service of respondents till 2006, his case is otherwise required to be considered for regularization in terms of communication dated 16th June, 2009 (Annexure P-2), whereby all the Deputy Commissioners-cum-CEOs, DRDA, Himachal Pradesh were called upon to adopt the policy of Government of Himachal Pradesh.

6. It is not the case of the respondents that initial appointment of the petitioner was not in accordance with law, rather it stands duly admitted by the respondents in their affidavit that the petitioner was engaged in January, 1997 by the Assistant Director (Animal Husbandry), Solan under centrally sponsored Innovative Integrated Dairy Development Project, where he continued to work till 2006.

7. During proceedings of the case, learned counsel representing the petitioner invited attention of this Court to judgment dated 09.10.2012, passed by a Coordinate Bench in CWP No.5890 of 2010-F, titled as Anita Parihar and others versus State of Himachal Pradesh and others, to demonstrate that similarly situated persons, who were initially appointed in the centrally sponsored projects and thereafter their services were placed at the disposal of Milch Livestock Improvement Society, Solan, were held to be the employees of DRDA. A perusal of aforesaid judgement, which has otherwise attained finality, clearly suggests that the Court in that case having taken note of the documents annexed with the petition, arrived at conclusion that services of the employees were placed at the disposal of Milch Livestock Improvement Society, Solan on 17.03.2005 and, prima facie, they cannot be said to be the employees of such society keeping in view the initial appointment made by the Deputy Commissioner-cum-CEO, DRDA. Though in the aforesaid case, while arriving at the aforesaid conclusion, Court reserved liberty to the petitioner to file representation with the direction to

respondent No.2, to decide the same in accordance with law, but since in the case at hand, it stands established on record that the petitioner was initially appointed by the Deputy Commissioner-cum-CEO, DRDA, Solan and he had successfully completed 8 years' service prior to his transfer to the nursery in question, i.e. Milch Livestock Improvement Society, Solan, this Court sees no impediment in accepting the prayer made in the petition for his regularization.

8. In view of the discussions made hereinabove, the present petition is allowed and the respondents are directed to regularize the services of the petitioner from the date he completed 8 years' service in terms of the policy framed by the Government of Himachal Pradesh. However, it is made clear that the petitioner on account of his regularization shall not be entitled for consequential benefits beyond three years prior to filing of the present petition as per law laid down in Jai Dev Gupta's case. Pending miscellaneous application(s), if any, shall also stand disposed of.