

(2023) 04 SHI CK 0020

In the High Court Of Himachal Pradesh

Case No : Latter Patent Appeals No. 34 Of 2023

Municipal Corporation, Shimla

APPELLANT

Vs

Kamaljeet

RESPONDENT

Date of Decision : 04-04-2023

Acts Referred:

Citation : (2023) 04 SHI CK 0020

Hon'ble Judges : Sabina, J; Satyen Vaidya, J

Bench : Division Bench

Advocate : Reeta Thakur, Kunal Verma

Final Decision : Dismissed

Judgement

Sabina, J

1. The appellant-corporation has filed the instant Letters Patent Appeal challenging order dated 8th December, 2022, passed by the learned Single Judge in Civil Writ Petition (Original Application) No.2823 of 2020, whereby the writ petition filed by the respondent was allowed.

2. Ms. Reeta Thakur, learned counsel for the appellant-corporation has submitted that the order passed by learned Single Judge is liable to be set aside as the respondent could not be regularized against the post of Clerk as he had been appointed as Peon.

3. On the other hand, learned counsel for the respondent has opposed the appeal and has submitted that from Annexures A-2 and A-6 (attached to the writ petition), it was evident that the respondent had been performing duties of a Clerk, although he was appointed as Peon. Hence, the respondent is liable to be regularized as a Clerk.

4. Para-8 of the impugned order dated 8th December, 2022 reads as under:-

"8. Incidentally, in a similar case, i.e., CWP No. 7988 of 2013, titled as Roshan

Lal Vs. Municipal Corporation and another, wherein also, the petitioner who was engaged by the respondent-Corporation as a Peon, was found to have been discharging the duties of Munshi/Clerk, this Court while allowing the petition, directed the Corporation to consider the case of the petitioner for regularization against the post of Clerk upon completion of seven years service in terms of regularization Policy of the State Government. A copy of the judgment is also appended with the present petition as Annexure A-1. This Court has been informed that this judgment has been duly implemented by the respondent-Corporation. As this Court has already held the act of the respondent-Corporation of extracting work of the post of Clerk from the petitioner, who was engaged on contract basis as Peon and not regularizing his services later on as a Clerk to be bad in law, therefore, this writ petition is allowed by holding that the act of the respondent-Corporation of not regularizing the services of the petitioner against the post of Clerk and regularizing him against the post of Peon is not sustainable in law. Further, a writ of mandamus is issued to the respondent-Corporation to regularize the service of the petitioner as a Clerk, in terms of the regularization Policy of the State Government, which is being followed by the respondent-Corporation, upon completion of seven years of service as from the date of his initial engagement as a Peon on contract basis. This regularization will also entail consequential benefits. However, the monetary benefits are restricted to three years as from the date of filing of the present petition."

5. Thus, it has been noticed by the learned Single Judge that in similar circumstances Roshan Lal had also filed a petition in this Court and the same was allowed vide Annexure A-1 (attached to the petition). Admittedly, the said order had been duly implemented by the appellant- corporation.

6. It has been also noticed by the learned Single Judge that from the information received by the respondent under Right to Information Act vide Annexure A-6 (attached to the writ petition), dated 20.07.2017 and Annexure A-2, communication dated 15.12.2010 (attached to the writ petition) it was evident that, although, the respondent was appointed as a Peon but had been performing the duties of a Clerk. In the above factual background, the learned Single Judge has rightly held that as the respondent was performing duties of a Clerk, he was entitled for regularization of his services as a Clerk in view of the Policy of the State Government, which was being followed by the respondent-corporation. Learned Single Judge has already allowed the monetary benefits to the respondent for three years from the date of filing of the writ petition. Hence, we are of the opinion that the order passed by the learned Single Judge is just and fair and does not suffer from any vice of illegality and calls for no interference.

7. Dismissed.

8. Pending application(s), if any, shall also stand disposed of.