

(2020) 10 SHI CK 0441
In the High Court Of Himachal Pradesh
Case No : CWPOA No. 2323 Of 2020

Munish Kumar And Others

APPELLANT

Vs

Himachal Pradesh State Electricity Board Limited And Another

RESPONDENT

Date of Decision : 13-10-2020

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2020) 10 SHI CK 0441

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Sanjeev Bhushan, Rakesh Chauhan, Anil Kumar God

Final Decision : Disposed Of

Judgement

Sandeep Sharma, J

1. Petitioners Nos. 1 to 3 have been regularly working as Computer Operators with the respondents since 13.3.2009 and 28.5.2013, respectively

whereas, petitioner No.2 has been rendering his services as Chowkidar with the respondents since 2002. Though the petitioners have claimed that

they were appointed against posts as referred to above, on contract basis , but respondents, while acknowledging factum with regard to their

engagement in their Department, have claimed that they were appointed on work order. As per respondents, petitioners were awarded typing work of

Electrical Sub Division, Parwanoo, after inviting limited quotations, as such, they have no claim for regularisation. Since the petitioners had been

rendering services with the respondents continuously without there being any interruption for more than ten years, as such, they are seeking

regularisation, as has been done in the case of other similarly situate persons. Petitioners have categorically stated in their petition that pursuant to

judgment dated 4.1.2013, passed by this Court in CWP No. 6690 of 2010 (Smt. Veena Kumarki vs. Himachal Pradesh State Electricity Board and

another) and other connected matters, similarly situate persons have been granted benefit of regularisation. Aforesaid factum has not been disputed by the respondents, rather, in their reply, they have admitted the same.

2. Having taken note of the aforesaid claim of the petitioner, which stands admitted in the reply filed by the respondents in so many words, this Court,

with a view to ascertain as to whether judgment dated 4.1.2013 (supra) has attained finality or not, directed learned Counsel appearing for the

respondents to have instructions. Learned counsel for the respondents, while fairly admitting before this Court that the judgment passed in the

aforesaid case has attained finality, contended that the same cannot be made applicable to the case of the petitioners being a judgment in personam.

3. During proceedings of the case, learned Counsel appearing for the petitioners invited attention of this Court to the information received by the

petitioners under Right to Information Act, perusal whereof reveals that similarly situate persons, who were working on work order basis, stand

regularized in the respondent Board, as such, called upon learned counsel for the respondents to have instruction.

4. Today, during proceedings of the case, learned counsel for the respondent has placed on record communication dated 12.10.2020, issued under

signatures of Executive Director (Personnel), HPSEBL, Shimla, perusal whereof clearly reveals that the judgment dated 4.1.2013 (supra), has attained

finality and pursuant to directions contained in the aforesaid judgment, services of persons, similarly situate to that of the petitioners have been

regularized. Though in the aforesaid communication, respondents have stated that the services of the petitioners in the aforesaid case have been

regularized in terms of direction issued by this Court, who at the relevant time had completed more than 17 years of work order but, such plea of the

respondents would not make any difference, especially when it stands duly admitted on record that the persons given appointment on work order have

been regularized.

5. Leaving everything aside, it has been categorically stated in the aforesaid communication, which is taken on record, that claim of the petitioners

shall be considered at an appropriate stage in case their engagement is

continued by the Board subject to availability of the work.

6. Having taken note of the judgment dated 4.1.2013 (supra), this Court finds that persons working on work order had approached this Court for

issuance of direction to the respondents for their regularisation. In those proceedings also, respondents took defence that since petitioners have been

engaged on work order their services cannot be regularized but such plea of respondents was not accepted by this court and they were directed to

regularize the services of the persons as per policy of regularisation. Since no challenge, if any, to aforesaid judgment has been laid in the superior

court of law, same has attained finality and the petitioners, being similarly situate persons are also entitled for same and similar treatment, especially

when it stands duly proved on record that they are similarly situate to that of petitioners in Smt. Veena Kumari (supra).

7. In the case at hand, respondents have claimed that judgment rendered by Hon'ble Division Bench in Veena Kumari's case cannot be made

applicable to the case of present petitioner because the judgment is in personam. However, having taken note of the fact that in Veena Kumari's

case, Hon'ble Division Bench of this Court has held that the persons working on work order are entitled for regularisation, all the persons

working/appointed on work order are liable to be treated similarly.

8. By now, it is well settled that all similarly situate persons should be treated similarly. Only because one person approached the Court, would not

mean that other persons who did not approach the court, should be meted different treatment. Reliance is placed upon decision dated 31.1.2006

passed by Hon'ble Supreme Court in State of Karnataka and Ors vs. C. Lalitha, (2006) 2 SCC 747, wherein Hon'ble Apex Court has held as under:

“29. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only

because one person has approached the court that would not mean that persons similarly situated should be treated differently. It is furthermore well-

settled that the question of seniority should be governed by the rules. It may be true that this Court took notice of the subsequent events, namely, that

in the meantime she had also been promoted as Assistant Commissioner which was a Category I Post but the direction to create a supernumerary

post to adjust her must be held to have been issued only with a view to

accommodate her therein as otherwise she might have been reverted and not for the purpose of conferring a benefit to which she was not otherwise entitled to.â??

9. Reliance is also placed on decision dated 17.10.2014 rendered by Hon'ble Apex Court in State of Uttar Pradesh and Ors vs. Arvind Kumar

Srivastav and Ors. (2015) 1 SCC 347, wherein, it has been held as under:

â??22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

22.1. Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike

by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle

needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all

similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not

approach the Court earlier, they are not to be treated differently.

22.2 However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did

not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their

counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the

judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or

the acquiescence, would be a valid ground to dismiss their claim. (3) However, this exception may not apply in those cases where the judgment

pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not.

With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a

situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C.

Sharma & Ors. v. Union of India (supra). On the other hand, if the judgment of

the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.

10. It is quite apparent from the aforesaid exposition of law laid down by Hon'ble Apex Court that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Otherwise, it would amount to discrimination and such action would be violative of Article 14 of the Constitution of India. Hon'ble Apex Court in the aforesaid judgment has categorically held that this principle needs to be applied in service matters more emphatically because the service jurisprudence evolved by the court from time to time postulates that all similarly situate persons should be treated alike. It stands clearly ruled in the aforesaid judgment that normal rule would be that merely because other similarly situate persons did not approach the Court earlier, they are not to be treated differently.

11. Consequently, in view of above, present petition is allowed. Respondents are directed to regularize the services of the petitioners, on completion of requisite years of service, in terms of prevailing policy of regularization in the Board and in terms of principles enunciated in judgment dated 4.1.2013 (supra), expeditiously, without any unnecessary delay.

12. Petition stands disposed of in the aforesaid terms alongwith all pending applications.