

(2021) 09 SHI CK 0088

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition (Original Application) No. 6116 Of 2019

Nain Dei

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 28-09-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2021) 09 SHI CK 0088

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Anoop Chitkara, J

1. Challenging the non-conferment of work charge status by the respondent-department, the petitioner had filed the Original Application before the erstwhile H.P. Administrative Tribunal.

2. After abolition of H.P. Administrative Tribunal, the case file was transferred to this Court and registered as CWPOA No.6116 of 2019.

3. The petitioner claimed to have been appointed on daily wage basis as Class-IV employee, with respondent No.4-department w.e.f. 01.05.1994. The petitioner further claimed that she had worked continuously with the respondent-department and her services were regularized on 15.12.2006, after 12 years of daily wage services, whereas, she was entitled to conferment of work-charge status, on completion of eight years service with 240 days in each calendar year, as per the policy prevalent at that time. She also submitted that the respondent-department granted the work-charge status to the similarly situated persons. She further submitted that the action of the respondent-department in not granting the work-charge status from the due date is illegal, arbitrary discriminatory, unconstitutional and violative of Articles 14 and 16 of the Constitution of India.

4. In the reply, the respondents contradicted the initial engagement of the petitioner as well as the fact regarding completion of 240 days in each calendar year, from the date of initial engagement. The respondents submitted that the petitioner was initially engaged as daily paid labourer on 1.1.1991 and admitted that the petitioner has completed 160 days, in each calendar year, after the year 1994, as per the criteria fixed for Pangi Sub-Division of Chamba District. The respondents further submitted that the services of the petitioner were regularized strictly as per the policy for regularization and on seniority basis.

5. The respondents further submitted that the ratio of the judgment rendered in CWP No. 2735 of 2010, titled Rakesh Kumar versus State of H.P. & others does not apply to the petitioner as the Hon'ble Court itself has directed that the question of conferment of work-charge status does not arise in case the establishment ceases to be a work-charge establishment. The respondents further submitted that since the respondent-department is not a work charge establishment, therefore, the applicant is not entitled to regularization on the analogy of Rakesh Kumar's case.

6. The limited claim of the petitioner is that she was entitled to conferment of work charge status on completion of eight years' service as she worked with the respondent-department with 240 days, in each calendar year. However, as per the criteria fixed for Lahaul area of Lahaul and Spiti District and Pangi Sub-Division of Chamba District, the number of minimum requisite days are 160. A reference to this effect be also made to man-days chart Annexure R-1, which reveals that the petitioner has worked for more than 160 days in each calendar year, after the year 1994 as well as ANNEXURE-'A' to the Regularization Policy Annexure R-2, which provides for number of minimum requisite days. As far as conferment of work charge status is concerned, the matter is no more res Integra.

7. The State did not claim any irregularity in her initial recruitment or its process.

8. In Gauri Dutt v. State of HP, 2007 Law Suit (HP) 397, Division Bench of this Court holds,

[1] By this judgment we are disposing of the aforesaid batch of writ petitions since the following common questions of law arise for decision in these petitions.

1. Whether the scheme of putting the workers on work charged basis as approved by the Apex Court in Mool Raj Upadhyaya's case is applicable to those daily waged employees who had not completed minimum of 240 days of service in a calendar year as on 31st December, 1993?

2. If the answer to the first question is in the negative, what will be the process of regularization of services of those employees who had not completed 240 days of service in a calendar year as on 31st December, 1993 or had joined service after 1st January, 1994?

3. Whether the scheme, as approved by the Apex Court, in Mool Raj Upadhyaya's

case, is only applicable to the employees of the Irrigation and Public Health Department and Public Works Department of the State of Himachal Pradesh or is applicable to all the daily rated employees working under the Government of H.P.?

4. Where if an employee has rendered service on daily waged basis on 2 separate posts in lower and higher scales, can the employee be given benefit of the service rendered by him in the lower scale and be regularized in the higher scale by combining the two services after 10 years?

[17] Under para 4 of the scheme the State was under an obligation to regularize all daily waged/muster roll workers whether they had joined prior to 31.12.1993 or thereafter. The State has framed a scheme in this behalf on 6th May, 2000. In our opinion those employees who are not governed by the direction given in Mool Raj Upadhyaya's case as set out by us above, shall be governed by the scheme of 2000. The second question is answered accordingly.

[18] The State of H.P. has also raised a plea that the scheme in Mool Raj Upadhyaya's case is only applicable to the employees of the IPH and PWD departments of the State of H.P. and is not applicable to other employees. We have already quoted para 6 of the affidavit of Mr. Subramanyam which clearly shows that the scheme, as presented by the State of H.P. to the Apex Court, was to be applicable to all the daily rated employees in all the departments in H.P. In view of the affidavit of Mr. Subramanyam, the State cannot now urge that this scheme is not applicable to other departments. In answer to the third question, it is held that the scheme is applicable to all daily waged employees working in any department of State of H.P.

9. The services of the petitioner were regularized with effect from 15.12.2006, following the scheme framed by the State Government as applicable to her, however, the petitioner had completed eight years of services, with 160 days in each calendar year, as on 30.04.2002. Therefore, she was entitled to conferment of the work charge status on the date when she had completed eight years of service. Thus, as per the policy applicable at that time and in view of the law laid down by this Court in Gauri Dutt v. State of HP, CWP 778 of 2006, decided on 29-12-2007, (2007 Law Suit (HP) 397), the petitioner would be entitled to get the work charge status on completion of eight years of service and other incidental and consequential benefits, subject to her fulfilling the terms and conditions of such policy. Therefore, the respondents are directed to verify and grant such benefits, if applicable, within four months from today. All the officials, who shall deal with this file, shall put a date when they receive/forward the file so that the deadwood is identified in case of any lapse.

10. Consequently, the present petition is disposed of in the above terms, so also the pending miscellaneous application(s), if any.