
(2010) 12 SHI CK 0403
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 9480 of 2008

Narpat Ram

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 24-12-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 300, 311

Citation : (2010) 12 SHI CK 0403

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Judgement

V.K. Sharma, J.—The petition has been filed on the following averments set up vide paras 6 (I), (III) and (V) (A , C and F):

(I) That the applicant was appointed as Beldar in the Respondent Department w.e.f. 1st September, 1999. The applicant had discharged his duties with artificial breaks w.e.f. 1st September, 1999 to 2nd April, 2003 and thereafter w.e.f. 1st May, 2003 to 15th June, 2003 in Ropari Beat and Dehar Beat respectively.

(III) That the applicant was legitimately expecting that on the basis of his experience and taking into consideration his educational qualification i.e. Matriculation, the service of the Whether reporters of Local Papers may be allowed to see the judgment? No.

applicant would be regularized, but, to the contrary, the Respondent No. 3 has terminated the services of the applicant orally w.e.f. 15th June, 2003 in a most illegal and arbitrary manner without following the procedure as per the law.

(V) (A) That the termination of the applicant effected orally by the Respondent No. 3 w.e.f. 15th June, 2003 is illegal, arbitrary, discriminatory, unjustifiable, unconstitutional, thus violative of Articles 14 & 16 of the Constitution of India.

(C) That it is most humbly submitted that besides terminating the services of the applicant orally, the Respondents have retained one Shri Balak Ram, son of Shri

Piaru Ram, who was appointed as Beldar by the Respondent Department in Ropri Beat in the month of April, 2000. It is settled law that while effecting termination, the principle of "first-come-last-go" has to be applied. The applicant had completed 240 days preceding his oral termination by the Respondent No. 3 on 15th June, 2003. The applicant is entitled to invoke the principles of industrial jurisprudence while assailing his termination.

(F) That the wages of the applicant has also not been released w.e.f. August, 2003 upto June, 2003. Salary/daily wage is a property within the meaning of Article 300A of the Constitution of India and the applicant could not be deprived of the same save in accordance with law. This Hon''ble Tribunal can take judicial notice of the fact that the applicant and similarly situated persons are paid a meager daily wage and it is difficult for them to make both ends meet. The applicant's family is solely dependent on the income of the applicant.

2. Against the above back drop, the petition has been filed on the following prayers vide paras 7(i) to 7(iii):

(i) that the termination of the applicant effected orally by the Respondents w.e.f. 15th June, 2003 may be quashed and set aside:

(ii) That this Hon''ble Tribunal may declare the applicant to be deemed to be in service without any break with all consequential benefits like arrears of salary, seniority etc.;

(iii) That the Respondents may be directed to release the wages of the applicant w.e.f. August, 2002 till June, 2003 and to pay arrears thereof alongwith interest @18% per annum.

3. In reply on behalf of the Respondents, the following stand has been taken vide paras 3 and 6(i):

3. That in reply to para, it is submitted that the applicant had been working as casual daily waged labourer and as such he was not a civil government servant within the meaning of Civil Service Rules. He was removed from the work on its completion and also on account of non availability of funds the budget grant being a casual and daily waged labour. In the circumstances, no infringement of principle of natural justice as well as articles 311 of the Constitution of India whatsoever as alleged has been made. 6(i). The contents of this sub-para are not admitted. In fact, the applicant was engaged as a casual labourer on daily wages on the basis of need of the work and on daily wage rate fixed by the government from time to time in case of unskilled labourers w.e.f. October, 1999 and continued to work with many breaks in the intervening period in different years for number of days in each month as under:

Month

1999

2000

2001

2002

January

31

30

28

February

29

28

28

March

30

30

28

April

20

30

26

May

31

28 1/2

30

June

30

July

22

30

25

August

23

30

24

September

30

October

24

16

November

30

23

December

29

Total

54

255

236 1/2

218

From the perusal of above, the applicant had worked last upto 29th December, 2002 without completing 240 days in the year. Since the applicant was engaged as a daily waged labourer for carrying out seasonal work, he was removed from the enrollment on completion of work. It may be pointed out here that no budget is provided regularly for payment of wages to such labourers who are engaged on particular seasonal and casual work and they are removed on completion of work and on-availability of funds and the same principle had been applied to the applicant

4. In view of the pleadings on behalf of the parties and facts and circumstances of the case, the petition is disposed of with a direction to Respondent No. 2 that subject to the Petitioner

5 making a representation supported by materials, if any, along with copy of this judgment within one month from today the said Respondent shall consider the same and take a final decision in the matter within the next three months in accordance with law and justice and taking into consideration whether person(s) junior to the Petitioner, if any, have been retained, after affording an opportunity of being heard to the petition, if so desired.

5. The petition stands disposed of, so also pending CMP(s), if any.