
(2011) 05 SHI CK 0136
In the High Court Of Himachal Pradesh
Case No : CWP No. 6722 of 2010

Netar Singh

APPELLANT

Vs

State of H.P. and Another

RESPONDENT

Date of Decision : 12-05-2011

Acts Referred:

Citation : (2011) 05 SHI CK 0136

Hon'ble Judges : Kurian Joseph, C.J;V.K. Ahuja, J

Bench : Division Bench

Judgement

Kurian Joseph, C.J.—The Petitioners in these cases are aggrieved since according to them despite eight years of continuous service with 240 days and more in each year, they are not regularized in service. Learned Deputy Advocate General submits that all the Petitioners had approached the Tribunal and the Tribunal had disposed of their cases and hence the writ petitions are not maintainable. It is also contended that the claim of the Petitioners for regularization can be considered only subject to the availability of vacancies. Learned Counsel for the Petitioners submits that they may be regularized in case the vacancies are available and in case the vacancies are not available, the Petitioners may be conferred the work charge status. But as rightly pointed out by the learned Deputy Advocate General, IPH Department has ceased to be a work charged establishment after 2005 pursuant to the specific orders issued in that behalf. Thus, it is a case only for regularization in service.

2. The regularization in service has to be considered in terms of the policy prevailing at the relevant time. Learned Counsel for the Petitioners submits that as per the policy of the Government as on today, the employee who has completed eight years of continuous service with 240 days or more is entitled for regularization, subject to availability of vacancies and strictly in accordance with the seniority. Therefore, these writ petitions are disposed of with the following directions:

3. In case any of the Petitioners have completed the required number of years as

per the policy uninterruptedly with 240 days in each year, subject to seniority and subject to availability of vacancies, they shall be considered for regularization. We make it clear that the claim should be considered in terms of the policy available as on the date of availability of vacancies. It is also made clear that in case any of the juniors has been regularized in service, over-looking the claim of the Petitioners, the same shall also be addressed and in case the juniors were wrongly given regularization, steps shall be taken to rectify the mistake and justice shall be done to the seniors by regularizing the eligible seniors in that vacancy. The needful action, as above, shall be taken within a period of three months from the date of production of a copy of this judgment by the Petitioner concerned before the second Respondent.

4. Learned Counsel for the Petitioners submits that the short breaks in some of the years may also be directed to be condoned. We are afraid that the contention cannot be appreciated. In case the Petitioners are of the view that the breaks have been given only to deny their eligibility for regularization to make them fall short of 240 days in a particular year, it is a matter to be established before the Labour Court/Industrial Tribunal and for that the Petitioners will have to initiate the process under the Industrial Disputes Act, 1947. Learned Counsel for the Petitioners submits that in view of the order of the Tribunal, that matter has to be considered by the competent authority. In case the Petitioners are entitled to any benefit under any order passed by the Tribunal, it is for the Petitioners to approach the Respondents concerned, who are parties to the proceedings before the Tribunal.

5. The writ petitions are disposed of, so also the pending applications, if any.