
(2013) 04 SHI CK 0019

In the High Court Of Himachal Pradesh

Case No : Civil Writ petition No. 11625 of 2011-C

Parma Ram

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 16-04-2013

Acts Referred:

Citation : (2013) 2 ShimLC 965

Hon'ble Judges : Dharam Chand Chaudhary, J

Bench : Single Bench

Advocate : Devender Sharma, for the Appellant; Virender Verma, Additional Advocate General, Mr. P.M. Negi, D.A.G. and Mr. J.S. Rana, Assistant Advocate General, for the Respondent

Judgement

Dharam Chand Chaudhary, J.—Petitioner, admittedly, was engaged as a Beldar in respondent-department in the year 1991. On the completion of 10 years continuous service as such, he was brought on work-charge establishment on and w.e.f. 2.2.2001. He was subsequently regularized as such on and w.e.f. 30.9.2006. He is aggrieved from office order dated 17.12.2011 Annexure P-6, whereby the 3rd respondent has notified his retirement on attaining the age of superannuation w.e.f. 31.12.2011 (afternoon). The complaint is that he being a workman (Class-IV employee) and having been brought on work-charge establishment on and w.e.f. 2.2.2001 irrespective of having been regularized as Beldar 30.9.2006 is due for retirement on attaining the age of 60 years in terms of FR 56(b) and that the Notification dated 10.5.2001 (Annexure P-2) qua amendment in FR 56(b) and reducing thereby the retirement age of such employees in the State from 60 years to 58 being prospective has no application in his case.

2. On the other hand, the stand of the respondent-department, as disclosed from reply to the writ petition and supplementary affidavit dated 28.2.2013, in a nutshell, is that had the petitioner continued on work-charge establishment alone and his services not regularized after the amendment in FR 56(b) (Annexure

P-2), he would have superannuated from service on attaining the age of 60 years. However, since he was regularized as Beldar on and w.e.f. 30.9.2006, i.e. after the amendment in FR 56(b), therefore, in terms of the amended provisions in the Fundamental Rules, vide Notification Annexure P-2, he had to retire at the age of 58 years and as such stood rightly retired from service on 31.12.2011 on attaining the age of superannuation in accordance with rules.

3. Having gone through the record and taking into consideration the submissions made on both sides, this Court finds that as per FR 56(b), a workman, including a workman on work-charge establishment, shall retire from service on the afternoon of the last day of the month in which he attains the age of 60 years. In the State of Himachal Pradesh this Rule, however, has been amended further and as per the amended provisions, a workman, including the one on the work-charge establishment, appointed on or after the date of publication of Notification, notifying such amendment, shall retire from service on the afternoon of the last day of the month in which he attains the age of 58 years. Similar is the case of Class-IV Government servant appointed on regular basis on or after the date of publication of the Notification.

4. The Notification Annexure P-2 is dated 10.5.2001. In the supplementary affidavit dated 28.2.2013 filed by Additional Principal Chief Conservator of Forests (HRD & TE), Himachal Pradesh, it has been clarified that had the services of the petitioner been not regularized as a Beldar on 30.9.2006 and had he continued to work only on the work-charge establishment till his superannuation, being appointed on work-charge establishment prior to the issuance of the Notification Annexure P-2, would have continued till the age of 60 years. However, in view of regularization of his services after the publication of this Notification and he being ceased to be an employee on the work charge establishment, rendered himself to retire on attaining the age of 58 years in accordance with the amended provisions of Rule 56(b). There is substance in the position so clarified for the reason that appointment of the petitioner on work-charge establishment was made pursuant to the direction of the Apex Court in Mool Raj Upadhyaya Vs. State of H.P. and Others, for want of a substantive post in the respondent department. The petitioner, however, on the availability of post, was regularized as Beldar in the year 2006 and thereby became entitled to all service benefits. No doubt, while on work-charge establishment, he was given the benefit of fixation of pay and increments etc. at the lowest rung at par with a regular class-IV employee in order to protect him like other work-charge employees from financial hardship for want of a regular post. There is, however, distinction between a work charge employee and a regular employee. A work charge employee is charged against the work and not against the consolidated funds of the State Government. Meaning thereby that such an employee always remains under the rigor of being removed from the job on account of non-availability of work, whereas an employee on regular establishment does not have any such apprehension. Therefore, the petitioner is not justified in claiming that his appointment on work charge basis prior to the issuance of Notification

Annexure P-2 was regular for all intents and purposes for the reason that he was not appointed against a substantive post on regular basis. The service he rendered on work-charge establishment, however, has to be counted towards continuity, seniority and also for pensionary benefits, because in Public Works and Irrigation & Public Health Departments on the conversion of all work-charge posts into regular, the services rendered on work-charge establishment have been considered for the purpose of seniority and pensionary benefits. The service w.e.f. 2.2.2001 till his regularization, rendered by the petitioner as a work charge employee, therefore, is required to be counted towards seniority and pensionary benefits. He, however, is not entitled to remain in service till the age of 60 years. He thus stands retired rightly on his superannuation at the age of 58 years vide impugned order Annexure P-6. A coordinate Bench of this Court has also taken a similar view of the matter in CWP No. 9713 of 2011 titled Het Ram v. State of H.P. and others, decided on 28.3.2012.

5. In view of what has been stated hereinabove, the petitioner though is not held entitled to remain in service till the age of 60 years, however, there will be a direction to the respondents to count the service he rendered on work charge establishment towards, seniority and grant of pensionary benefits, if already not counted and he otherwise is legally entitled to pensionary benefits. In that event, due and admissible benefits be released to the petitioner in a lump sum within three months from the date of production of a copy of this judgment by the petitioner before the 3rd respondent, failing which together with interest @ of 9% per annum. With the above observations, the writ petition stands disposed of. Pending application(s), if any, shall also stand disposed of.