

(2023) 10 SHI CK 0017

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 2146 Of 2023

Parveen Kumar And Others

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 09-10-2023

Acts Referred:

Citation : (2023) 10 SHI CK 0017

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : Sanjeev Bhushan, Rajesh Kumar, Pratush Sharma, Priyanka Chauhan, Rahul Thakur, Maan Singh

Final Decision : Allowed/Disposed Of

Judgement

Satyen Vaidya, J

1. By way of instant petition, petitioners have prayed for following substantive reliefs:

i That appropriate writ order or direction may very kindly be issued and Annexure P-3 dated 06.07.2019 may very kindly be quashed and set-aside.

ii. That appropriate writ order or direction may very kindly be issued directing the respondents to regularize the services of the petitioners as per the regularization policy of the State on completion of three years service as contract employees from the due dates with all consequential benefits of pay, arrear and seniority etc., in the interest of law and justice.

iii. That directions may very kindly be issued to the respondents to pay the emoluments to the petitioners on the similar pattern as is paid to other contractual employees of respondent Nos. 1 to 4 i.e. Basic pay of the post of Field Assistant + dearness pay and a fixed increment @ 3% per annum from the date of their engagement, by further directing to pay the arrears from the date of their initial appointment, in the interest of law and justice.

2. Indisputably, the petitioners are working as Field Assistants in National Air Quality Monitoring Programme (for short, "NAMP") under the aegis of the Himachal Pradesh Pollution Control Board (for short, "The Board") since the periods ranging w.e.f. 18.09.2010 to 30.10.2017. To be precise the dates of appointments of petitioners are as under:

Appointment of petitioner(s)

Dates

Petitioner No.1

18.09.2010

Petitioner No.2

09.11.2010

Petitioner No.3

19.11.2010

Petitioner No.4

16.05.2011

Petitioner Nos. 5 & 6

24.07.2012

Petitioner No.7

30.10.2017

3. It is also not in dispute that the petitioners have been engaged through respondent No.4- National Council & Technology Consortium (for short, "NCTC") under an agreement dated 17.06.2010 executed between the Board and the NCTC. As per terms of the agreement, the Board has agreed to pay fixed amount to NCTC per annum and in lieu thereof, the NCTC has agreed to provide manpower for NAMP stations managed by the Board.

4. The above appointments are continuing since long and in between the petitioners raised demand for being regularized on the posts of Field Assistants in terms of the regularization policy adopted by the Board and also at par with the treatment given to similarly situated employees.

5. As the brief background, it will be relevant to notice that the petitioners in the first instance had approached the erstwhile H.P. State Administrative Tribunal (for short, 'the Tribunal') by way of O.A. No.1039 of 2018 and claimed benefit of order rendered by the State Administrative Tribunal in T.A. No.5592 of 2015, titled Deepak Dogra and others vs. State of Himachal Pradesh and another, decided on 21.12.2016. The Tribunal vide order dated 29.05.2019 disposed of O.A. No.1039 of 2018 with a direction to the respondents/competent authority to extend the

benefit of the order passed in T.A. No.5592 of 2015 to the applicants therein (petitioners), in case they were found similarly situated. In compliance to the aforesaid direction, the Board considered the representation of petitioners and rejected the same vide impugned office order dated 6.7.2019 on the ground that the status of petitioners herein was distinct than that of the incumbents, who had obtained the benefit of directions issued by the State Administrative Tribunal in T.A. No.5592 of 2015. The distinction was drawn on the ground that the petitioners were not directly employed by the Board and hence there was no relationship of employer and employee, whereas the beneficiaries of directions in T.A. No. 5592 of 2015 had been employed by the Board and their services were regularized on the recommendation of the Service Committee against the sanctioned posts in the Board strictly as per the regularization policy dated 22.4.2016 of the State Government.

6. The case as set up by the petitioners is that in the same Programme NAMP various other categories of employees were engaged by the Board. All such engagements and postings were through various Hydro Electric Projects (for short. "HEPs") and were funded by the projects themselves. The categories of employees as engaged for Environment Monitoring Plans of various HEPs were the beneficiaries of the directions issued by the State Administrative Tribunal in T.A. No. 5592 of 2015. As per the petitioners, they are similarly situated to the categories of employees engaged by the Board under Environment Monitoring Plans of HEPs as the said category of employees were engaged by the Board for its routine functions and the petitioners are also engaged in discharge of the regular functions of the Board. In the case of those employees, the payments of wages were released by the respective HEPs, whereas, in the case of petitioners though their wages are released by the NCTC, but the funds are provided by the Board. On the strength of such assertion, petitioners claimed themselves to be on better footing than the beneficiaries of the directions issued in T.A. No. 5592 of 2015. It is also the case of the petitioners that they are performed the same and similar duties as is being performed by their regular counter-parts i.e. Field Assistants in the Board.

7. The Board has contested the claim of the petitioners by seeking to distinguish their case with the beneficiaries of directions issued in T.A. No.5592 of 2015 on reiteration of the ground as taken for rejecting the representation of the petitioners vide impugned office order dated 6.7.2019 (Annexure P-3).

8. I have heard learned counsel for the parties and have also gone through the records of the case carefully.

9. Learned Senior Counsel for the petitioners has placed reliance on a judgment passed by this Court on 28.9.2023 in CWP No. 2074 of 2020 titled Rajeev Sharma vs. Himachal Pradesh State Pollution Control Board alongwith connected matters, to assert that while considering the case of similarly situated persons, this Court has directed the Board to absorb the services of such incumbents by placing them at par with the beneficiaries in T.A. No. 5592 of 2015. On the

strength of said judgment, it has been contended that the case of petitioners is also identical rather is on better footings and they also deserve the same treatment as granted to the petitioners in CWP No. 2074 of 2020 and connected matters decided by this Court on 28.09.2023.

10. In order to assess the contentions so raised on behalf of the petitioners, it becomes relevant to notice certain facts involved in the above referred cases decided by this Court on 28.09.2023. The Board had employed the manpower for the Environment Monitoring Plans for certain categories of HEPs in the State of Himachal Pradesh. One category was called "bill base" employees and the other was called "in kind" employees. The distinction was drawn between the "bill base" and "in kind" employees, firstly, on the ground that the "bill base" employees were engaged by the Board, whereas, "in kind" employees were employed by the project proponents. Secondly, in the case of "bill based" employees, the project proponents transferred the funds to the Board towards salary of "bill based" employees and the disbursement was made by the Board, whereas in the case of "in kind" employees, they were paid directly by the project proponents.

11. This Court has held the classifications so drawn by the Board to be superfluous after placing reliance on the judgment passed by Hon'ble Supreme Court in Nihal Singh and others vs. State of Punjab and Others (2013) 14 SCC 65.

12. The facts of instant case clearly suggest that the Board requires the manpower for management of NAMP stations and instead of employing the persons by itself, the Board adopted a method to employ the manpower through NCTC. The petitioners have specifically averred that they were employed by the NCTC after a due selection process, which fact has not specifically been denied by the respondents including the Board. The terms of agreement between the Board and NCTC clearly reveal that the Board had bound itself contractually to pay lump sum amount per annum to NCTC in lieu of the manpower to be provided by the NCTC for NAMP stations. It is further revealed that the calculation of such payable amount was made on the basis of per head payable amount to each employee. The contract amount, thus, was calculated for total 15 numbers of employees.

13. The Board has not denied that the petitioners have been engaged for discharge of duties which are part of routine and normal function of the Board. Evidently, the Board holds the disciplinary control over the petitioners. In the above circumstances, the distinction sought to be drawn by the Board between the petitioners and the "bill based"/ "in kind" employees is clearly superfluous.

14. The Board had itself recommended the absorption and regularization of the "bill based" and "in kind" employees to the Service Committee. It was the Service Committee, which had recommended the regularization only of "bill based" employees. While contesting the cause of "in kind" employees, in CWP No. 2074 of 2020 alongwith connected matters, the Board had tried to

distinguish between the "bill based" and "in kind" employees on the grounds which were negated by this Court vide judgment dated 28.09.2023.

15. It is not the case of the Board that the Board does not require the Field Assistants for its routine functions. This fact can otherwise be inferred from the long tenure for which the petitioners have been working with the Board. Merely, because the Board has taken the services of NCTC for employing petitioners, their case cannot be said to be different than the case of "bill based" and "in kind" employees. In such view of the matter, the petitioners are also entitled for the benefits of absorption and regularization as granted by the Board to "bill based" employees.

16. Accordingly, the instant petition is allowed. The impugned office order dated 06.07.2019, Annexure P-3, is quashed. The respondent-Board is directed to absorb the services of petitioners in the Board initially on contract basis and thereafter by way of regularization exactly in the same manner as has been done in the case of "bill based" employees. The entire process shall be completed by the Board within three months from today. The petitioners shall be entitled to all consequential benefits notionally save and except monetary benefits only for a period of three years immediately prior to the filing of the petition.

17. The petition is accordingly disposed of, so also the pending miscellaneous application(s) if any.