

(2011) 11 SHI CK 0140
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 9742 of 2011-E

Piar Chand

APPELLANT

Vs

State of Himachal Pradesh and others

RESPONDENT

Date of Decision : 17-11-2011

Acts Referred:

Citation : (2011) 11 SHI CK 0140

Hon'ble Judges : Rajiv Sharma, J;Kurian Joseph, J

Bench : Division Bench

Judgement

Justice Kurian Joseph, C.J.—The issue pertains to the claim made by the petitioner in this case for regular appointment in terms of the Recruitment and Promotion Rules, as applicable in the Ayurveda Department. A similar issue was considered by this Court in a common judgment dated 21.12.2010 in CWP No. 7896 of 2010 titled as Jai Singh vs. State of H.P. and others and connected cases. The text of the judgment reads as follows:

The issue raised in these writ petitions pertains to the claim made by the petitioners for regularization in service in terms of the Himachal Pradesh Department of Indian System of Medicine and Homoeopathy, Class IV Karamchari (Non-Gazetted) Recruitment and Promotion Rules (First Amendment) Rules, 1998. The petitioners have been originally engaged as part time workers. According to them, they are entitled for regularization in terms of Rule 10 of the Rules. Rule 10 reads as follows:

10. Method of recruitment whether by direct recruitment or by promotion, deputation, transfer and the percentage of vacancies to be filled in by various methods.

50% by direct recruitment and 50% by appointment from amongst the wholly paid daily waged Class-IV workers of the Department who possess at least 10 years service having 240 days in each calendar year, failing which by ppointment from amongst the departmental working Part-time workers who also possess at

least 10 years service having 240 days in each calendar year, failing which by direct recruitment.

2. According to the petitioners, they are entitled for regularization in respect of 50% quota of the posts reserved for either the daily waged workers or the part time workers. The contention of the petitioners is that there were no daily waged Class IV workers available in the Department with 10 years service and having 240 days in each calendar year for regularization and hence in respect of the 50% vacancies, the petitioners who have been working as part time workers and who possess 10 years service with 240 days in each calendar year should have been considered, since on the date of the completion of 10 years of service by such part time workers there were no eligible daily wagers for regularization.

3. The learned Deputy Advocate General rightly points out that the matter requires factual verification by the competent authority.

4. As far as the provision in the Rules is concerned, there is no ambiguity. 50% of the regular posts are reserved for the daily waged workers with 10 years service and having 240 days in each calendar year. In case, there is no such daily wager is available on the date of occurrence of vacancy with the above qualification, then the part time workers with 10 years of service and 240 days in each calendar year if available are to be considered. That alone will serve the object of the Rules. So long as the position in the Rules remains as above, such part time workers have a right to be considered, subject to the preconditions of availability of vacancy in the quota, non-availability of eligible daily wagers and the part timers possessing the eligibility. As far as the regularization of part time employees are concerned, it is to be seen that the Ayurveda and Education Departments are to follow their own policies as available in the prescribed Rules and hence the notification pertaining to other Departments will not apply to the employees in the matter of part time becoming full time daily wagers as per the Rules. It is so clarified also in Annexure P-3, Government communication dated 21.5.2004, which reads as follows: "I am directed to refer to your letter No. Ayu Kha (2)2/2003 dated 28.4.2004 on the subject cited above and to say that Ayurveda Department and Education Department have their own policies relating to Part Time workers hence it has been decided that these departments will not be covered by the instructions issued by this Department on 27.2.2004 regarding conversion of daily wagers status, it is therefore requested that further action in the matter may please be taken accordingly at your own level."

5. Therefore, these writ petitions are disposed of directing the second respondent/competent authority to look into this aspect, verify the facts and take appropriate action in the light of the Rules, as explained above within a period of four months from the date of production of a copy of this judgment and a copy of the writ petition by the petitioner concerned before the second respondent/competent authority, so also the pending applications, if any.

2. There will be a direction to the respondents to consider the case of petitioner

herein also in terms of the judgment, referred to above. The needful action shall be taken within a period of four months from the date of production of a copy of this judgment along with a copy of the writ petition and the copy of the judgment, referred to above.

3. The writ petition is disposed of, so also the pending applications, if any.