

(2024) 11 SHI CK 0034
In the High Court Of Himachal Pradesh
Case No : CWP No. 8839 Of 2023

Pushap Kumar & Others

APPELLANT

Vs

State Of Himachal Pradesh & Others

RESPONDENT

Date of Decision : 07-11-2024

Acts Referred:

Citation : (2024) 11 SHI CK 0034

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : Deven Krishan Khanna, Deshender Khanna, Anup Rattan, Sumit Sharma

Final Decision : Disposed Of

Judgement

Ajay Mohan Goel, J

1. By way of this Writ Petition, the petitioners have, inter alia, prayed for the following reliefs:-

"A. That the respondents be directed to regularise the service of petitioners as per instructions dated 28- 12-2021(Annexure P-2) in accordance with their seniority and they be held entitled to be regularised from the date regularization has been granted to Forest Guards at Dharamshala Circle vide Order dated 31-01-2022 (annexed vide ANNEXURE P- 35), with all consequential benefits.

B. That the respondents may be directed to remove anomaly of pay scale in case of petitioners and forest guards appointed in Dharamshala forest circle who were regularised after two years and are similarly situated as the petitioners and are availing the benefit of revised pay under notification dated 03-01-2022 (Annexure P-4).

C. That respondents be directed to count the contract service of the petitioner for the purpose of regularization and the petitioners be treated as regular appointees from initial date of appointment. Further, grant all consequential benefits

accruing thereof as per seniority assigned from the date of their initial appointment in 2019.

D. That the respondents may be directed to pay the arrears in pay scale within a time bound period.”

2. The case of the petitioners is that they were appointed on contract basis as Forest Guards after following the due process of recruitment and were regularized vide Office Order dated 01.02.2022. According to them, in the same process, in terms whereof they were recruited, Forest Guards were appointed like the petitioners, on contract basis in Forest Circle Dharamshala also. Whereas, the petitioners, who were appointed as Forest Guards on contract basis in the Forest Circles other than Dharamshala were thereafter regularized in the month of January, 2022 and February, 2022, their counterparts in Dharamshala stood regularized with effect from 31.12.2021. According to the petitioners, this discriminatory treatment meted out to the petitioners qua the date of their regularization as compared to their counterparts serving in Forest Circle, Dharamshala and appointed along-with them on contract basis through the same process in Forest Circle Dharamshala is bad and it is in this backdrop that the petitioners have approached this Court praying for the reliefs, already quoted hereinabove.

3. When the case was listed on 20.05.2024, the following order was passed:-

“The grievance of the petitioners herein is that though they were appointed on contract basis as Forest Guards, after following the due process, as were their counter-parts in Forest Circle, Dharamshala, yet whereas the Forest Guards appointed on contract basis in Forest Circle, Dharamshala have been regularized with effect from 31.12.2021, the petitioners have been regularized vide office order dated 01.02.2022 with effect from 02.02.2022. Result thereof is that the benefit of pay fixation which stands conferred by the Government vide notification dated 03.01.2022 Annexure P-4, as amended thereafter, has been denied to the petitioners, for no fault of theirs. Learned Counsel for the petitioners further submits that in case this disparity between the date of regularization is undone by the Department and the petitioner are also conferred regularization with effect from 31.12.2021, their grievance would stand redressed. Learned Deputy Advocate General to have specific instructions in this regard. List after two weeks.”

4. In response to the directions passed by the Court, learned Deputy Advocate General on 25.07.2024, produced the following instructions imparted to the Office of learned Advocate General by Chief Conservator of Forests:-

“Sir,

Kindly refer to your letter No. CWP 8839/2023-39960 dated 12.07.2024 on the subject cited above wherein specific instructions was sought in terms of order dated 20.05.2024 issued by Hon'ble High Court H.P.

2. The above CWP was listed before the Hon'ble High Court of HP on 20.05.2024, when after hearing the matter for some time the Hon'ble High Court has passed the following orders :-

"The grievance of the petitioners herein is that though they were appointed on contract basis as Forest Guards, after following the due process, as were their counter-parts in Forest Circle, Dharamshala, yet whereas the Forest Guards appointed on contract basis in Forest Circle, Dharamshala have been regularized with effect from 31.12.2021, the petitioners have been regularized vide office order dated 01.02.2022 with effect from 02.02.2022. Result thereof is that the benefit of pay fixation which stands conferred by the Government vide notification dated 03.01.2022 Annexure P-4, as amended thereafter, has been denied to the petitioners, for no fault of theirs. Learned Counsel for the petitioners further submits that in case this disparity between the date of regularization is undone by the Department and the petitioner are also conferred regularization with effect from 31.12.2021, their grievance would stand redressed.

Learned Deputy Advocate General to have specific instructions in this regard. List after two weeks."

3. That the Government of Himachal Pradesh vide letter No. PER(AP)C-B(2)-1/2019 dated 28.12.2021 (Annexure-A) has conveyed that the Government has decided to reduce the service period of contract appointees for their regularization from existing 3 years to 2 years and the services of contractual appointees who have completed two years of continuous services as on 30.09.2021 shall be regularized. As per terms and condition listed in the ibid notification dated 28.12.2021, it is clearly mentioned that the regularization will be with prospective effect i.e. from the date of issue of regularization orders. Accordingly, their salary was fixed from dated to their regularization.

4. In pursuance to the above instruction of the Govt., all contractual Forest Guards alongwith the petitioners, who had completed two years of continuous services as on 30.09.2021 were regularized by concerned Forest Circle after completing all codal formalities. In Forest Circle Dharamshala, the meeting of screening committee was convened on 31.12.2021 and after recommendation of screening committee, the services of 08 eligible contractual Forest Guards were regularized on 31.12.2021 by Chief Conservator of Forests, Dharamshala. However, contractual Forest Guards of other Circles along with petitioners were regularized after 03.01.2022 after completing all codal formalities by the different Forest Circles i.e. constitute screening committees, convened meetings, assess eligibility of officials, recommendation of screening committee, production of medical certificate by the officials etc. The whole process of regularization of Forest Guards have been done by the different Circles in different, dates being different appointing authorities.

5. That the reasons behind the variations in the date of regularization of Forest

Guards is that the entire cadre of Forest Guards in the State is regulated in 10 Territorial and 3 Wildlife Circles which are situated in different location of the State and the Conservator of Forests of concerned Forest Circle is the appointing and disciplinary authority in respect of Forest Guard and their seniority is maintained at Circle level. Later on, the Govt. of Himachal Pradesh vide notification No. Fin-(PR)B(7)-1/2021- loose dated 06.09.2022 (Annexure-B) allowed the benefit of higher scale on completion of two years service with the condition that these rules apply to employees who have been appointed before 03.01.2022.

Keeping in view the above facts, the petitioners were regularized strictly as per terms and condition issued by Government of Himachal Pradesh vide instruction No. PER(AP)C-B(2)-1/2019 dated 28.12.2021, wherein under point No. (ix) it is clearly mentioned that the regularization will be with prospective effect i.e. from the date of issue of regularization orders. However, the petitioners were regularized after 03.01.2022 as such they are not getting the benefit of higher scale on completion of 02 years of regular service. Therefore, it is humbly submitted to kindly apprise the factual position to the Hon'ble Court accordingly."

5. Learned Deputy Advocate General, on the strength of the reply as well as the instructions, dated 25.07.2024, has submitted that regularization of the petitioners was preceded by completion of formalities undertaken in different Forest Circles which included constitution of Screening Committees, convening of meetings, assessing eligibility of officials etc. followed by recommendation of the Screening Committee as well as production of medical certificates by the officials and as said process took time and on this count, because the regularization of the petitioners was done in the months of January and February, 2022, they cannot claim regularization at par with the Forest Guards, who were appointed on contract basis along-with them in Forest Circle Dharamshala. Accordingly, he submitted that as there is no merit in the petition, the same be dismissed.

6. I have heard learned counsel for the parties and have also carefully gone through the pleadings as well as the documents appended therewith.

7. It is not in dispute that Forest Guards, who were recruited along-with the petitioners in the same process and appointed on contract basis in Forest Circle, Dharamshala, while petitioners were appointed as Forest Guards on contract basis in other circles, were regularized after completion of all the codal formalities on 31.12.2021.

8. This Court is of the considered view that the mode and process of regularization of the Forest Guards of Forest Circle, Dharamshala, neither can be nor is different from other circles. Meaning thereby that if the codal formalities, shelter whereof is being taken by the respondents, have been complied by the Officers of Forest Circle, Dharamshala in time, then this Court fails to understand as to why the same could not have been complied diligently by the Officers in other Forest Circles. Dereliction on the part of the Officers in other Forest Circles

cannot act to the deterrent of the petitioners and they cannot be made to suffer for the acts and omissions of someone else.

9. It is not the case of the respondents that the petitioners indeed were not eligible for regularization as on 31.12.2021. At this stage, it is necessary to mention that it is not as if the petitioners are aggrieved by their late regularization ornamentally. The delay in regularization of the petitioners as compared to their counterparts in Dharamshala Circle has deprived them the benefits of Notification dated 03.01.2022, Annexure P-4 and Notification dated 06.09.2022, Annexure P-6, in terms whereof, the incumbents who were appointed before 03.01.2022, were to get benefit of the revised pay scale and because the petitioners have been regularized after this date, they have been deprived to the benefit thereof, whereas their counterparts who were regularized before 03.01.2022, have been benefited from the said Notifications, i.e. Annexures P-4 and P-6.

10. In fact, a perusal of communication dated, 31.01.2022, Annexure P-5, which has been issued by the Conservator of Forest, Solan, H.P., demonstrates that incumbents mentioned therein, which include some of the petitioners had completed two years of contract service as far back as in the month of August, 2021. It is not in dispute that in fact all the petitioners had completed two years service on contract basis as in the month of August, 2021.

11. Therefore, in light of the above discussion, this Writ Petition is allowed. The respondents are directed to order the regularization of the petitioners with effect from 31.12.2021, i.e. the date when their counterparts in Dharamshala Circle were regularized, with all consequential benefits, including the benefit of Notification dated 03.01.2022 (Annexure P-4) and Notification dated 06.09.2022 (Annexure P-6).

12. The petition stands disposed of. Pending miscellaneous applications, if any, also stand disposed of.