

(2011) 03 SHI CK 0009
In the High Court Of Himachal Pradesh
Case No : CWP No. 5795 of 2010

Rajesh Bhardwaj

APPELLANT

Vs

State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 10-03-2011

Acts Referred:

Citation : (2011) 03 SHI CK 0009

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Judgement

V.K. Sharma, J.—The petition has been filed on the following averments vide paras 2 and 3:

2. That a post of Tabla Instructor was vacant in Post Graudate College, Bilaspur in the year 1998 and the Petitioner who was eligible to be appointed as Tabla Instructor applied for the post and was offered the appointment as Tabla Instructor on daily wage basis. The Petitioner was appointed as Tabla Instructor in the year 1998 on daily wage basis and the wages which were being paid to the Petitioner were the same as has been recommended by the Deputy Commissioners. The engagement of the Petitioner as daily waged Tabla Instructor was extended from time to time and Petitioner is continuing as such till date.

3. That the Petitioner does not possess copy of the appointment letter as Tabla Instructor in the year 1998. However to corroborate this fact that the Petitioner is successfully working as Tabla Instructor since, 1998 the Petitioner is enclosing copy of the office order vide which the Petitioner has been deputed to accompany students for participation in H.P. Youth Festival on 15.11.1990 as Annexure P-1 to the writ petition. Thereafter certain documents to prove that the Petitioner is continuing as such are being placed on record as Annexures P-2, P-3, P-4, P-5, P-6, P-7 and P-8 to the writ petition. The work and conduct of the Petitioner has been to the entire satisfaction of his superiors as nothing adverse has ever been conveyed to the Petitioner. The Respondent State has taken a policy decision to

regularize services of all those daily wagers who have completed eight years service on 31.3.2006. Copy of the policy decision of the Government is being placed on record as Annexure P-9 to the writ petition. The post is available with the Respondents and simultaneous perusal of the documents annexed with the petition would show that the Petitioner is eligible for being appointed as Tabla Instructor on regular basis. In these circumstances, non consideration of the case of the Petitioner for regularization has resulted in miscarriage of justice.

2. On the above averments, the following prayers have been made:

i) The Respondents may kindly be directed to regularize the services of the Petitioner w.e.f 28.3.2006 with all consequential benefits.

ii) That the Respondents be directed to pay wages to the Petitioner for the months of July and August, 2010.

iii) That the Respondents may be directed to pay wages for vacation period to the Petitioner since the date of his initial appointment and Respondents be further directed to pay wages for paid holidays to the Petitioner from the date of his initial appointment.

3. In reply, the Respondents have taken the following stand vide paras 1 to 4:

1. That the contents of this para are admitted to be correct to the extent that the Petitioner is permanent resident as per address given in the memo of parties and citizen of India. However, the rest of the contents of this para are wrong, hence, denied. It is submitted that the Petitioner has no cause of action to invoke the jurisdiction of this Hon"ble Court as no injustice has been caused to the Petitioner by the replying Respondent. It is further submitted that the services of the Petitioner were engaged on purely on temporary need basis and he was paid out of the funds charged from the students. Therefore, he has no legal and valid right to ask for the regularization of his services as Tabla Instructor.

2. That in reply to the averments made in this para it is submitted that the Petitioner was engaged on the purely temporary need basis to prepare the students for the performance of various cultural functions. The services of the Petitioner were never extended but taken in the Academic Session as per the requirement of the students and that too on their expense. It is further submitted that the Petitioner was never paid the salary out of the Government exchequer and therefore, he cannot be considered as Government Servant.

3. That in reply to the averments made in this para it is submitted that the Petitioner was never issued any appointment letter as he was hired purely on temporary need basis to prepare the students for the performance of various cultural programmes. It is not disputed that the Petitioner was assigned different kinds of duties and engaged from time to time. However, he was not paid his wages from the Government Exchequer and therefore, his case cannot be considered for regularization of services. Hence, the present petition is liable to be dismissed in the interest of justice.

4. That the averments made in this para are wrong, hence, denied. It is submitted that as per the information received from the Principal Government Degree College, Bilaspur the Petitioner was hired only for three days for the cultural programme. The Petitioner has been paid for the said days. Therefore, the Petitioner is not entitled to prefer and maintain the present petition and the same is liable to be dismissed in the interest of justice.

4. It is seen from Annexures P-1 to P-8 and P-10 to P-12 that the Petitioner is working as daily rated Tabla Instructor in Government Post Graduate College, Bilaspur, for sufficiently long time.

5. In the facts and circumstances of the case, the petition is disposed of with a direction to the Respondents to consider the case of the Petitioner for regularization as Tabla Instructor, if otherwise found eligible, from due date and allied reliefs claimed by him, as above, in accordance with law and taking into consideration the policy of the State Government, framed in this regard, within three months, from the date of production of copy of this judgment by the Petitioner, after affording an opportunity of being heard, if so advised.

6. The petition, so also pending application(s), if any, stand disposed of in the above terms.