

**(2022) 06 SHI CK 0031**

**In the High Court Of Himachal Pradesh**

**Case No :** Civil Writ Petition (Original Application) No.7370 Of 2019

Rajinder Kumar

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

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**Date of Decision :** 17-06-2022

**Acts Referred:**

**Citation :** (2022) 06 SHI CK 0031

**Hon'ble Judges :** Jyotsna Rewal Dua, J

**Bench :** Single Bench

**Advocate :** Shubham Sood, Onkar Jairath, Ajay Vaidya

**Final Decision :** Disposed Of

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## **Judgement**

Jyotsna Rewal Dua, J

1. The contractual service rendered by the petitioner w.e.f. 19.09.2005 till March, 2008 has not been considered by the respondents towards regularization of his services. Hence, he has filed the instant writ petition for the following substantive relief:-

"i) That the respondents may be directed to regularize the services of the Applicant as per the policy of the Government from the due date i.e. on and w.e.f. 01.04.2012, the day on which he has completed 6 years' service on Contractual Basis with all consequential benefits."

2. The facts which come out from the pleadings of the parties are that:-

2(i). The petitioner was appointed by respondent No.4 on 19.09.2005 against an available vacancy on contract basis for a period of 89 days on fixed monthly remuneration. His services were thereafter continued to be renewed for a period of 89 days from time to time after giving him break on completion of 89 days in each spell. This went on till March, 2008.

2(ii). In March, 2008, the contractual period of the petitioner was renewed on

yearly basis on the same terms & conditions as conveyed to him at the time of his first contract appointment for 89 days.

2(iii). The respondents-State circulated a policy on 31.08.2012 regarding regularization of contract appointees in the government departments. In terms of the said policy, the government took a decision to regularize the services of the contractual appointees on completion of six years of services as on 31.03.2012, subject to the terms & conditions mentioned therein.

2(iv). Respondent No.4 considered petitioner's contractual services rendered by him w.e.f. March, 2008 and accordingly passed order of regularization of his services on 06.08.2015. The name of the petitioner figures at Sr. No.3 in the office memorandum dated 06.08.2015.

The point being put forth by learned counsel for the petitioner is that the entire contractual service rendered by the petitioner w.e.f. 19.09.2005 was required to be taken into consideration for the purpose of regularization and in this manner, having put in six years of contractual service as on 31.03.2012, the petitioner was eligible for regularization of his services in terms of the policy dated 31.08.2012.

3. The stand taken by the respondents in their reply as canvassed by learned Senior Additional Advocate General is that the petitioner's contractual service period was renewed on year to year basis only after March, 2008. Hence, only the contractual service put in by the petitioner on year to year basis on and w.e.f. March, 2008 was required to be considered for regularization. Petitioner had not completed six years of contractual service as on 31.03.2012 required for regularization under the policy dated 31.08.2012. Therefore, his case was not covered under the policy dated 31.08.2012. In support of these submissions, reliance was placed upon a judgment passed by the Hon'ble Apex Court on 24.03.2022 in Civil Appeal No.1951 of 2022, titled The State of Gujarat and others Versus R.J. Pathan and others.

4. I have heard learned counsel for the parties and gone through the case file.

5. In my considered view, the grievance of the petitioner concerning non-counting of the contractual service rendered by him for the period 19.09.2005 to March, 2008 for the purpose of regularization of his services is genuine. This is so for the following reasons:-

(i). It is the pleaded case of the respondents that the petitioner was appointed on 19.09.2005 against an available vacancy on contract basis for a period of 89 days on a fixed monthly remuneration.

(ii). The said contractual appointment of the petitioner for a period of 89 days was based on the recommendations of the selection committee duly constituted for the purpose.

(iii). The appointment of the petitioner was in a regular establishment of the

respondents.

(iv). The contractual service period of the petitioner was renewed by the respondents in different spells on completion of 89 days after giving him break. The contract service for a period of 89 days was repeatedly renewed from 19.09.2005 upto March, 2008.

(v). After March, 2008, the contractual period of the petitioner was renewed on yearly basis on the same terms & conditions as contained in his contractual appointment made initially for 89 days.

There is no difference between the contractual appointment of the petitioner after March, 2008 and prior to March, 2008. The terms & conditions of the contractual service of the petitioner for both the periods have remained the same. The petitioner has not undergone any fresh selection process after March, 2008. His post also did not undergo any change. He was appointed on an available vacancy in regular establishment pursuant to a selection process. Therefore, just because the contractual appointment of the petitioner prior to March, 2008 was initially for 89 days, which period was renewed from time to time thereafter, will not mean that the said contractual service is liable to be ignored for the purpose of regularization of his services. The break admitted by the respondents to have been given in the contractual service of the petitioner after 89 days before renewing his contract for further period of 89 days, has to be deemed to be a fictional/notional break in the facts and circumstances of the case. The respondents have themselves taken into consideration the contractual services rendered by the petitioner on year to year basis after March, 2008. There is no stipulation in the policy dated 31.08.2012 framed by the respondents- State for regularization of such contractual service, which is rendered by an employee only on year to year basis. In the facts of the case, the contractual services rendered by the petitioner w.e.f. 19.09.2005 to March, 2008 cannot be ignored by the respondents for the purpose of regularization of his services.

Reliance placed by the learned Senior Additional Advocate General upon the judgment of the Hon'ble Apex Court in R.J. Pathan's case, supra, is misplaced. The facts of that case were entirely different. In the said case, the writ petitioners were initially appointed for a period of 11 months on a fixed salary in a particular project. The project came to an end. The unit, where the writ petitioners were appointed, was required to be closed, being a temporary unit. Instead of putting an end to the services of the writ petitioners, the State Government thought it fit to transfer and place the writ petitioners with the Indian Red Cross Society. Pursuant to the interim orders passed by the High Court, the writ petitioners continued to serve on contract basis. In the letters patent appeal filed by them, the High Court directed the State Government to consider their cases for absorption/regularization sympathetically and if required by creating supernumerary posts. In the civil appeal filed by the State, the Hon'ble Apex Court held that no such direction could be issued by the High Court

for absorption/regularization of the employees appointed in a temporary unit, which was created for a particular project and that too by creating supernumerary posts. The facts of the instant case, as noticed earlier, are entirely different.

For all the foregoing reasons, the present petition is allowed. The respondents are directed to take into consideration the contractual services rendered by the petitioner with the respondents w.e.f. 19.09.2005 till March, 2008 for the purpose of regularization of his services and to regularize him from the due date in terms of policy dated 31.08.2012 with all consequential benefits.

The writ petition stands disposed of in the above terms, so also the pending miscellaneous application(s), if any.