
(2011) 08 SHI CK 0015
In the High Court Of Himachal Pradesh
Case No : C.W.P. (T) No. 8810 of 2008

Ramesh Chander Thakur

APPELLANT

Vs

Municipal Corporation and others

RESPONDENT

Date of Decision : 09-08-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2012) 1 ShimLC 148

Hon'ble Judges : Surjit Singh, J

Bench : Single Bench

Judgement

Surjit Singh, J.—Petitioner, who has been working as Supervisor in the Municipal Corporation, Shimla, filed Original Application in the year 2002, before the H.P. State Administrative Tribunal, which has now been abolished, seeking issuance of directions to the respondents to regularize him as Supervisor, on completion of requisite numbers of years of service, by treating him into service since 1986. On abolition of the said Tribunal in the year 2008, the matter has come to this Court. Facts, as emerge from the record, are as follows. Petitioner was engaged as mazdoor (in record), in the year 1986 by the Municipal Corporation, but actually work of Supervisor (Stacking) was taken from him. In February, 1989, he was retrenched. Petitioner challenged the retrenchment order, by taking recourse to remedy available under the Industrial Disputes Act. An award was passed by the Industrial Tribunal. That award was challenged in this Court, by filing a writ petition, under Articles 226/ 227 of the Constitution of India. That petition was disposed of vide order, dated 7.12.1994. Relevant order is quoted in the reply of the respondents and reads as follows:

Learned Counsel for the petitioner stated that pursuance to an interim order passed by this Court, the petitioner has been re-employed and is working. The petitioner according to the learned Counsel, is fully satisfied with his re-employment and does not wish to seek any further relief from this Court. Since this re-employment was directed only because of the statement of the

respondent No. 3 contained in the impugned award, this Court would hope that the re-employment settles the matter for ever. In this view of the matter, nothing remains to be decided in this Writ Petition, which stands disposed of accordingly.

2. As is made out from the above reproduced order of this Court, petitioner was re-employed in the year 1993. It has been admitted by both the parties that he was re-employed on 16.4.1993. Since the petitioner was re-employed on and with effect from 16.4.1993, his claim that he should be treated to be in service from 1986, cannot be accepted.

3. Learned Counsel for the petitioner, during the course of hearing, submits that the petitioner should be treated as Supervisor, from the date of his re-employment, i.e. 16.4.1993 and on completion of requisite numbers of years, his services as Supervisor should be regularized. Case of the respondents is that the petitioner had been engaged as mazdoor in the year 1986 and his re-employment in the year 1993 was also as mazdoor, but he, in connivance with some functionaries of the Municipal Corporation, procured bogus documents, indicating that he had been discharging the duties of a supervisor and on the strength of those bogus documents, he is making a false claim for regularization as Supervisor. According to the respondents, petitioner was mazdoor and his services as mazdoor had been regularized and that now his services as Supervisor have also been regularized, since 2010.

4. I have heard learned Counsel for the parties and gone through the record.

5. Respondents plea that petitioner had been working only as mazdoor and not as Supervisor as claimed by him, is belied by one of their own orders, which among others, was endorsed to the petitioner. The order is dated 15.9.1998, Annexure A-12. It was issued by Assistant Commissioner of Municipal Corporation. The order says that pursuant to an order dated 10.9.1998 of Commissioner, petitioner, who had already been working as Supervisor (Stacking), was appointed as Supervisor (Stacking), on the condition that he would not be entitled for back wages. The order of the Commissioner dated 10.9.1998, reference to which is there in Annexure A-12, was passed on a note prepared by office superintendent and submitted to the Commissioner, through various officers of the Municipal Corporation. Copy of that note is Annexure A-16 and the order of the Municipal Commissioner also appears at the end of this note. Now, as per this note and reporting by other functionaries, petitioner had been working as Supervisor from the very beginning and so, he was proposed to be appointed as Supervisor, with wages of Supervisor, on the condition that he would not claim back wages as Supervisor, meaning thereby that he would not claim arrears, on account of difference between the wages of a mazdoor and Supervisor.

6. In view of the aforesaid order, Annexure A-12 and note, Annexure A-16, it does not lie in the mouth of the respondents to say that the petitioner had been working as mazdoor, but he manipulated to procure some false reports and

documents from the functionaries of the Municipal Corporation, to the effect that he had been discharging the duties of a Supervisor.

7. The aforesaid two documents establish, to the hilt, that the petitioner had been serving the respondents as Supervisor (Stacking) since 16.4.1993, when he was re-employed, as noticed hereinabove, and so, he is entitled to regularization as Supervisor, on completion of requisite numbers of years of service, to be counted from 16.4.1993. In view of the above stated position, the present petition is disposed of, with a direction to the respondents to regularize the petitioner as Supervisor, on completion of requisite numbers of years of service, to be counted from 16.4.1993 and the entire process regarding creation of post, etc. be completed within a period of six months from today. Petitioner, on such regularization, will be entitled to salary from the date of regularization, in regular pay scale.