

(2021) 08 SHI CK 0266
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 5021 Of 2020

Saroj Kumari

APPELLANT

Vs

State Of H.P And Others

RESPONDENT

Date of Decision : 27-08-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2021) 08 SHI CK 0266

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Anup Rattan, Desh Raj Thakur, Narender Thakur

Final Decision : Allowed

Judgement

Sandeep Sharma, J

1. Being aggrieved and dissatisfied with the order dated 10.1.2020 (Annexure P-9), passed by Director Ayurveda, Himachal Pradesh in purported compliance of order dated 30.12.2019 (Annexure P-11), passed by this Court in COPC(T) No.101 of 2019, whereby this Court disposed of the aforesaid contempt petition on the basis of the statement made by learned Additional Advocate General on the instructions of the Law Officer present in Court, that fresh consideration order in terms of order dated 19.11.2015 read with order dated 13.12.2012, shall be passed positively within a period of ten days, petitioner has approached this Court in the instant proceedings filed under Article 226 of the Constitution of India, praying therein following reliefs:-

(i) That the impugned order dated 10.1.2020 may kindly be quashed and set aside being illegal and erroneous.

(ii) That respondents be directed to regularize the services of the husband of the petitioner as per Recruitment and Promotion Rules as notified on 31.12.1998 or as per the Rules prevailing on completion of 10 years of service as Part Time Class-IV employee having 240 days in each calendar year by strictly and

correctly complying with the judgment passed in CWP No.2031/2011 and TA No.1356/2015.

(iii) That respondent be directed to give all pecuniary benefits as well as service benefits and consequential benefits of regularization of services of the petitioner's husband when the vacancy is available with the respondent Department.

2. Precisely, the facts of the case as emerge from the record are that deceased Lachho Ram i.e. husband of the petitioner herein was appointed as Class-IV part time worker on 1.8.1969 and in this capacity, he served the Department till 10.8.2005 when he unfortunately expired. Respondents regularized the services of the petitioner on 19.10.2005, as is evident from Annexure P-3, whereas the services of the petitioner were required to be regularized on 01.01.1999 in terms of Recruitment and Promotion Rules, as such, he filed writ petition before this Court bearing CWP No.2031 of 2011, which was allowed with the direction to the respondents to re-consider the case of the petitioner's husband in terms of Clause-11 of the Recruitment and Promotion Rules counting his services as part time worker and then consider his case for regularization on the availability of vacancy on the date on which petitioner's husband Lachho Ram has completed 10 years service with 240 days in each calendar year. Apart from above, Co-ordinate Bench of this Court vide aforesaid judgment dated 13th December, 2021 also ordered that merely because the decision was taken in October, 2005 would not mean that it deprive the petitioner's husband from such regularization. It is the availability of the posts to be filled in, in accordance with the Recruitment and Promotion Rules. Co-ordinate Bench of this Court also held that since Lachho Ram, husband of the petitioner has died, his wife in such eventuality would be entitled to the consequential monetary benefits, if her husband is found eligible. Despite there being aforesaid positive directions to do the needful, respondents after having considered the case of the petitioner rejected the claim of the petitioner vide order dated 24.8.2013 (Annexure P-5). In the aforesaid order, respondents observed that husband of the petitioner was illiterate and did not possess the requisite essential qualification and as such, he did not fulfill the provision of the Recruitment and Promotion Rules, which disqualifies his entitlement for regularization even though he has put in more than 10 years services. Besides above, respondents also observed in the aforesaid order that no post of Class-IV workers were filled up under Recruitment and Promotion Rules before 2005 as no daily waged workers were eligible for regularization at that time. In the aforesaid order, respondents claimed that services of 170 Part Time Worker including husband of the petitioner were regularized on 19.10.2005 with the prior consultation/approval of the Advisory Departments as well as Cabinet by relaxing the essential educational qualification.

3. Being aggrieved and dissatisfied with the aforesaid order dated 24.8.2013, passed by the respondents, petitioner once again approached this Court by way of CWP No.5415 of 2014, however such petition was transferred to erstwhile H.P.

Administrative Tribunal on its establishment and was registered as TA No.1356 of 2015. Learned Tribunal vide judgment dated 19.11.2015 (Annexure P-6), allowed the petition and directed the respondents to consider the case of the deceased husband of the petitioner (Lachho Ram) for regularization against the available vacancies with all consequential benefits. Since, the respondents did not comply the judgment, petitioner filed contempt petition bearing COPC No.95 of 2016 before the learned Tribunal below, however respondent-State again passed consideration order (Annexure P-7), rejecting the case of the petitioner on the same and similar ground as was raised prior to passing of judgment dated 19.11.2015 by learned Tribunal in Transfer Application No.1356 of 2015, titled as Saroj Kumari versus State of Himachal Pradesh and another.

4. Record reveals that respondent-State also filed writ petition bearing CWP No. 263 of 2017-G against the judgment dated 19.11.2015, passed by learned Tribunal below in Transfer Application No.1356 of 2015, but same was dismissed on the basis of the statement made by learned Deputy Advocate General that impugned order already stands considered (Annexure P-8). In compliance to order dated 30.12.2019, passed by this Court in COPC(T) No.101 of 2019, respondent-State again passed order dated 30.12.2019, rejecting the case of the petitioner on the ground that there was no provision for regularization of services of part time employees in the Recruitment and Promotion Rules, however on the directions/ orders of learned Tribunal passed on 01.5.1997 in O.A No.875 of 1991, following provisions for the recruitment/appointment of the Peons and Sweepers were made in the R&P Rules for part timers for the first time and notified on dated 31.12.1998 which stipulated as under:-

"11.) 50% by appointment from amongst the wholly paid daily waged Class-IV workers of the department who passes at least 10 years service having 240 days in each calendar year, failing which by appointment from amongst the departmental working part time workers who also possess at least 10 years service having 240 days in each calendar years as such, and fulfill the qualification as per Column 6 R & P Rules."

5. In the aforesaid order respondents claimed that no posts of Class-IV could be filled up under aforesaid R & P Rules before 2005 on account of the ban imposed by the Government on filling up of vacant posts, which is evident from the copy of instructions issued by Finance Department vide letter No.Fin.1-C(14)-1/83 dated 8th July, 1998. In the aforesaid order respondent also claimed that 170 Part Time workers alongwith 93 Part Time Sweepers were regularized on 19.10.2005, which also included late Sh. Lachho Ram after getting the approval from the Government by according one time relaxation in upper age limit to those part time workers who had crossed 45 years of age as well as in educational qualification for those who did not fulfill the same as per the R&P Rules. In the aforesaid background, petitioner has approached this Court in the instant proceedings, praying therein reliefs, as have been reproduced hereinabove.

6. Having heard learned counsel representing the parties and perused the material available on record, this Court finds that there is no dispute that husband of the petitioner was appointed as Class-IV part time worker on 1.8.1969 and he after having served the Department for more than 35 years unfortunately breathed his last on 10.08.2005. It is also not in dispute that prior to filing of the petition at hand, petitioner, who happens to be wife of late Sh. Lachho Ram had approached this Court by way of CWP No.2031 of 2011, wherein positive direction was issued to the respondents to consider the case of the petitioner's husband in terms of Clause-11 of the Recruitment and Promotion Rules counting his services as part time worker and then consider his case for regularization on the availability of vacancy on the date on which petitioner's husband Lachho Ram completed 10 years service with 240 days in each calendar year, but it appears that respondents ignoring aforesaid positive direction issued by Co-ordinate Bench of this court vide judgment dated 13th December, 2012, proceeded to reject the case of the petitioner on the ground that husband of the petitioner was illiterate and did not possess the requisite essential qualification and as such, he is not entitled for regularization as per provision contained under Recruitment and Promotion. Since vide aforesaid judgment Co-ordinate Bench of this Court had categorically ruled that merely because the decision was taken in October, 2005 to fill up the posts would not mean that it deprive the petitioner's husband from such regularization and it is the availability of the posts to be filled in, in accordance with the Recruitment and Promotion Rules, which is to be kept in mind while considering the case of the petitioner's husband for regularization. However, at no point of time respondents denied that no post of Class-IV workers were available or filled up under Recruitment and Promotion Rules before 2005, but their consistent stand has been that since till 2005 there was ban imposed by the Government, case of the petitioner's husband for regularization could not be considered against the vacant post.

7. Learned Tribunal while passing order dated 19.11.2015 in TA No.1356 of 2015 specifically recorded that there were 313 vacancies available with the respondent-department when petitioner's husband had become eligible to be regularized against the post in question. It is not the case of the respondents that 313 vacancies were not available in the department when petitioner's husband had become eligible for regularization, rather there simple case is that unfilled vacancies could not be filled up till 2005 on account of the ban imposed by the State Government for filling up the vacant posts. However, such plea cannot be made basis to reject the eligible claim of the petitioner's husband, who admittedly had become eligible for regularization on his having completed 10 years as part time Class-IV employee with 240 days in each calendar year in terms of the Recruitment and Promotion Rules as notified on 31.12.1998.

8. Reply filed by the respondents nowhere suggests that petitioner's husband had not become eligible for regularization after his having completed 10 years as part time employee with 240 days in each calendar year as per Recruitment and Promotion Rules as notified on 31.12.21998. Since petitioner had become eligible

for regularization on his having completed 10 years services as part time Class-IV employee in terms of Recruitment and Promotion Rules as notified on 31.12.1998, he could not be denied such benefit on the ground that no posts of Class-IV were filled up under Recruitment and Promotion Rules as no approval was granted by the Government due to ban for filling up the posts. Since posts were available when petitioner's husband had completed 10 years regular service entitling him for regularization in terms of Recruitment and Promotion Rules as notified on 31.12.1998, mere delay in granting approval by the State Government cannot be made ground to deny rightful claim of the petitioner.

9. Record reveals that petitioner before his death rendered 35 years uninterrupted service with the department. Though, as per Recruitment and Promotion Rules petitioner's husband became entitled to be regularized after 10 years of his having completed part time service with 240 days in each calendar year, but yet for no fault of him, he was denied his rightful claim and as such, his wife repeatedly knocked the doors of court of law. Record reveals that despite there being positive directions issued by this Court in one petition or other respondents for no justifiable reasons kept on rejecting the case of the petitioner. Though, this court finds that after passing of judgment dated 13th December, 2012 by Co-ordinate Bench of this Court in CWP No.2031 of 2011, respondent had no reason to deny the claim of the petitioner, as has been raised in the petition, but yet authorities on one pretext or other left no stone unturned to deny the rightful claim of the petitioner's husband. Since, there is no dispute that 313 vacancies were available when petitioner had completed 10 years regular service, submission made by learned Deputy Advocate General that till year 2005, no vacancy could be filled up on account of the ban imposed by the State Government has no relevance and deserves outright rejection. Even after lifting of ban by the State, case of the petitioner's husband was required to be considered from the date when he had become eligible for regularization on account of his having completed 10 years regular service as part time worker with 240 days each in calendar year. Though, now petitioner's husband services have been regularized with effect from 19.10.2005 by granting one time relaxation qua qualification, but such order of regularization from 19.10.2005 is not sustainable for the reason that petitioner's husband ought to have been regularized from the date when he had completed 10 years regular service as part time worker. Secondly, case of the petitioner otherwise could not be rejected by the respondents on the ground of qualification. Hon'ble Apex Court in *Bhagwati Prasad Versus Delhi State Mineral Development Corporation*, (1990)1 Supreme Court Cases 361, has already held that minimum education qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but is so at the time of the initial entry into the service. Once the appointments are made as daily rated workers and they are allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualification. In the aforesaid judgment, Hon'ble Apex Court has held

that practical experience gained by daily wage before his regularization always aid him to effectively discharge the duties and is a sure guide to assess the suitability.

10. Consequently, in view of the above, the present petition is allowed and order dated 10.1.2020 (Annexure P-9), passed by Director Ayurveda, Himachal Pradesh is quashed and set-aside and respondents are directed to regularize the services of the petitioner's husband as per Recruitment and Promotion Rules as notified on 31.12.1998 from the date he had completed 10 years service as Part Time Class-IV employee with 240 days in each calendar year with all the consequential benefits. Pending applications, if any, also stands disposed of.