

(2012) 03 SHI CK 0539
In the High Court Of Himachal Pradesh
Case No : CWP No. 872 of 2009-B

Sh. Abhiya Ram

APPELLANT

Vs

The State of Himachal Pradesh

RESPONDENT

Date of Decision : 17-03-2012

Acts Referred:

Citation : (2012) 03 SHI CK 0539

Hon'ble Judges : Dharam Chand Chaudhary, J

Bench : Single Bench

Advocate : Adarsh K. Vashista, for the Appellant; J.K. Verma, D.A.G., for the Respondent

Judgement

Justice Dharam Chand Chaudhary, Judge

1. The petitioner who initially was engaged as Helper on daily wage basis in the year 1991 and thereafter as Air Compressor Operator in the year 1994, has filed this writ petition with the following prayer:-

i) That writ in the nature of mandamus may kindly be issued directing the respondents to grant all the service benefits of pay alongwith arrears, seniority and other incident benefits to the petitioner from the date the same has been granted to similarly placed persons and also to allow the benefits of appointment against a regular post to the petitioner w.e.f. the date the same has been allowed to similarly placed persons i.e. w.e.f. 2001.

The above relief has been sought on the ground that the services of the persons, whose particulars find mention in para 5 of the writ petition and similarly situated to him were regularized w.e.f. 1.1.2001, whereas, by regularizing his services w.e.f 2006 he has been discriminated against such similarly situated persons as he had completed the period of 10 years with 240 days in each calendar year in the joint cadre of Helper and Air Compressor Operator in the year 2001 and as Air Compressor Operator in the year 2004 on the completion of the period of 10 years.

2. The respondents when put to notice have filed the reply and pleaded by way of preliminary submissions that petitioner remained deployed as Helper from the year 1990 to 1993 however, he could complete the requisite number of man days only during the year 1991 to 1993. Thereafter, he was engaged as Air Compressor Operator in the month of February, 1994 and as such has rightly been regularized as Air Compressor Operator in the year 2006 on the availability of post, pursuant to the policy framed by the State Government and approved by the Hon"ble Apex Court in Mool Raj Upadhyaya Vs. State of H.P. and Others, It is denied that writ petitioner is similarly situated to the persons he referred in para 5 of the writ petition and rather being Air Compressor Operator could have been considered for regularization on his own turn in accordance with the policy and subject to the availability of regular post.

3. I have heard Mr. Adarsh K. Vashisth learned counsel on behalf of the petitioner and Mr. J.K. Verma, learned Deputy Advocate General on behalf of the respondents.

4. Before advertng to the factual matrix, it would be appropriate to make a reference to the law laid down by the Hon"ble Apex Court in Mool Raj Upadhyaya Vs. State of H.P. and Others, . The relevant portion of this judgment reads as under:-

4. (1) Daily-wage/muster -roll workers, whether skilled or unskilled, who have completed 10 years or more of continuous service with a minimum of 240 days in a calendar year on 31-12- 1993, shall be appointed as workcharged employees with effect from 1-1- 1994 and shall be put in the time-scale of pay applicable to the corresponding lowest grade in the Government;

(2) daily-wage/ muster-roll workers, whether skilled or unskilled, who have not completed 10 years of continuous service with a minimum of 240 days in a calendar year on 31-12-1993, shall be appointed as work-charged employees with effect from the date they complete the said period of 10 years of service and on such appointment they shall be put in the time-scale of pay applicable to the lowest grade in the Government.

(3) daily-wage/muster-roll workers, whether skilled or unskilled who have not completed 10 years of service with a minimum of 240 days in a calendar year on 31-12-1993, shall be paid daily wages at the rates prescribed by the Government of Himachal Pradesh from time to time for daily-wage employees falling in Class-III and Class-IV till they are appointed as work-charged employees in accordance with paragraphs 2;

5. Now if applying the ratio of the judgment of the Hon"ble Apex Court supra, in the given facts and circumstances of this case the petitioner is entitled to claim his regularization as Air Compressor Operator from the day, he completed 10 years of service as such on daily wage basis. Admittedly, he was engaged as Air Compressor Operator on daily wage basis in the month of February, 1994. He is thus entitled to claim regularization as Air Compressor Operator from the date he

had completed 10 years of service with 240 days in each calendar year. He has completed the period of 10 years as Air Compressor Operator in the month February, 2004 as it is not the case of the respondents that there were breaks in between or that he has not completed the period of 10 years with 240 days in each calendar year. The petitioner cannot claim his regularization as Compressor Operator from the year 2001 because in that year the requisite period of service on daily wage basis as Compressor Operator was not in his credit. The period of three years w.e.f. 1991 to January, 1994 when he remained deployed as Helper on daily wage basis cannot be counted towards seniority on the post of Air Compressor Operator carrying higher pay-scale which was offered to him in the month of February, 1994 and accepted by him voluntarily. Otherwise also in terms of the ratio of the judgment of our own High Court in Gauri Dutt & Ors. v. State of H.P., Latest HLJ 2008 (HP) 366 the period during which a workman remained deployed on a post carrying lesser payscale can not be combined with the period during which he remained deployed on a post carrying higher pay-scale for the purpose of regularization. In such a situation, the option has to be given to the workman concerned as to whether he want his regularization against the post carrying lesser payscale or to wait till he completes the requisite length of service against a post carrying higher pay-scale. If applying the ratio of the judgment supra, in the given facts and circumstances, obviously the petitioner would have opted for the 2nd option because on 31.12.1993, the requisite length of service i.e., 10 years as Helper was not in his credit and length of service on that day as such was rather hardly three years. He even could not have been regularized as Helper w.e.f. 1.1.1994 for want of requisite length of service. His services could not have been regularized in the year 2001 as helper because he had abandoned his deployment on daily wage basis as Helper in February, 1994 on his appointment as Air Compressor Operator. He could not have been regularized as Air Compressor Operator also for want of the requisite length of service in that year. He, no doubt, was entitled to be considered for regularization immediately after completion of period of 10 years with 240 days in each calendar year w.e.f. February, 2004. However, he has been regularized as such vide order dated 9.6.2006 Annexure R-2 prospectively. The petitioner however should have been considered for regularization immediately after completion of 10 years service i.e., in February, 2004, in the light of the law laid down by the Hon''ble Apex Court in Mool Raj Upadhaya's case supra. The explanation as set-forth in reply to the writ petition that pursuant to the judgment of the Hon''ble Apex Court, the petitioner could have not been placed on work charge establishment/regularization automatically and rather he could have been regularized subject to the availability of sanctioned post is neither plausible nor substantiated by the record, as it is not the case of the respondents that in February, 2004, no post of Air Compressor Operator was available nor that before resorting to his regularization, the post was got sanctioned/created. Thus, the petitioner in all fairness and ends of justice was required to be brought on regular establishment as Air Compressor Operator, immediately after completion of 10 years i.e. service as in the month of February, 2004.

6. In view of the above position, this writ petition partly succeeds and the same is accordingly allowed. Consequently, there shall be a direction to the 1st respondent to consider the case of the petitioner for regularization of his services as Air Compressor Operation w.e.f. February, 1994, in the light of the ratio of the judgment of Hon''ble Apex Court in Mool Raj Upadhaya's case supra and the observations of this Court in this judgment, within three months from the date of production of a copy of this judgment by the petitioner. With the above direction, the writ petition is disposed of, so also the pending application (s), if any.