

(2013) 06 SHI CK 0100
In the High Court Of Himachal Pradesh
Case No : CWP No. 4305 of 2010

Sh. Leeladhar

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 17-06-2013

Acts Referred:

Citation : (2013) 06 SHI CK 0100

Hon'ble Judges : Surinder Singh, J; R.B. Misra, J

Bench : Division Bench

Advocate : Rakesh Dogra, for the Appellant; D.C. Pathik, M.A. Khan, A.A.G. for Respondents Nos. 1 to 3 and Mr. Neeraj Gupta, Advocate, for the Respondent

Judgement

R.B. Misra, J.—The present writ petition has been filed with the following prayers:

(a) That the respondent No. 1-3 may kindly be directed to regularize the services of the petitioner forthwith or grant him work charge status w.e.f. 1.7.2001 when has completed 10 years daily wage services with them. They may also be directed to pay arrears of consequential benefits to the petitioner with interest @ 12% within stipulated period.

(b) That respondent 1-3 may kindly be directed to repatriate the services of the petitioner to his parent department forthwith and his seniority be counted as regular chowkidar w.e.f. 1.7.2001 in respondent No. 2 and 3 office, in the interest of justice.

(c) That respondents No. 4 and 5 may kindly be directed to pay revised pay and allowances with arrears of revised time scale to the petitioner with interest @ 12% ion stipulated period.

This Court on 28.7.2010 while issuing notices to respondents No. 1 to 4 had directed the respondents to allow the petitioner to continue till disposal of the writ petition. Thereafter various other orders were passed and on 1.9.2011 an order was passed, namely, in CMP No. 7805 of 2011 of CWP No. 4305/2010,

indicating that in the meantime, due and admissible salary shall be paid to the petitioner by respondent No. 5 within four weeks.

2. On 29.12.2010 the matter was admitted. Subsequently on 2.12.2011, again this Court (learned Single Judge) reiterated that due and admissible salary payable to the petitioner, if unpaid, by respondent No. 4/5, the same shall be paid within a week. In respect of these interim orders indicated above, i.e., 28.7.2010, 1.9.2011 and 2.12.2011 the contempt petition C.O.P.C. No. 537 of 2012 has been filed.

3. In view of the directions of this Court, replies have been filed on behalf of the respondents. On perusal of the records, it appears that on earlier occasion, the present writ petitioner has filed Civil Writ Petition No. 1093/2010 titled Leeladhar versus State of H.P. & Ors with the following prayers:-

(a) That the respondent No. 1 to 3 may kindly be directed to regularize the services of the petitioner forthwith and grant him work charge status w.e.f. 1.7.2001 when has completed 10 years daily wage services with them. They may also be directed to pay arrears of consequential benefits to the petitioner with interest @ 12% in stipulated period;

(b) That respondents may kindly be directed to repatriate the services of the petitioner to his parent department forthwith in the interest of justice;

(c) That respondent No. 4 and 5 may kindly be directed to pay revised pay and allowances with arrears of revised time scale to the petitioner with interest @ 12% in stipulated period.

4. This Court vide judgment/order dated 31.3.2010 (D.B.) has been pleased to give direction to the respondents to consider the representation of the petitioner, if preferred, within three weeks from 31.3.2010 in accordance with law and to dispose of the same within one month thereafter.

5. In compliance of the above judgment and order of this Court, the Collector/ Deputy Commissioner, Mandi after taking into consideration the averments and records by a detailed, speaking and reasoned order has dismissed the representation of the petitioner on 7.5.2010. The relevant contents of the order dated 7.5.2010 reads as under:-

In compliance of the direction given in the decision dated 31.3.2010 this office has ordered to submit the parawise comments from the respondent No. 3, 4 and 5 i.e. SDM/Sub-Divisional Officer ? Sundernagar, District Mandi, H.P. Land Acquisition Collector (Koldam) NTPC, Bilaspur, District Bilaspur, HP and General Manager, NTPC (Koldam), Barmana, Tehsil and District Bilaspur, HP. The Land Acquisition Officer Koldam, Bilaspur (HP) has submitted his comments as under:-

1. That the petitioner was/is performing the duties of Chainman on contract/need basis in the office of LAO, Sundernagar/LAO Bilaspur w.e.f. 15.1.2002 to date.

2. That the orders to release the salary in accordance with the Notification of

new pay scale by the Govt. is under consideration.

3. That the service of the petitioner has now been extended upto 30.6.2010. As the services of the petitioner is based purely on need basis and after completion of contract period there shall be no liability of HP Govt. HPSEB and other Govt. undertaking NTPC and LAO (Koldam), Bilaspur.

4. That the power to repatriate the petitioner is not vested with him, moreover on the expiry of contract, the contract will automatically be cancelled.

The Manager (HR/LA) NTPC Koldam has submitted his comments that the Land for Koldam Project has been acquired by the Land Acquisition Officer, appointed by the Govt. of HP NTPC has not taken the services of any official directly. He further offered that NTPC only provided funds for land acquisition. The staff is engaged by the L.A.O.

The SDM/SDO ?, Sundernagar, district Mandi, has furnished a certificate that there is no record in his office regarding working of Chowkidar in the Bachat Bhawan Sarain Sundernagar since 1991 to year July 2005. Therefore, the record pertaining to the appointment, attendance, payment etc. of Sh. Lee/a Dhar son of Narainu R/o. Neri PO Chambhi Tehsil Sundernagar is not traceable.

This case is fixed for consideration today on 7.5.2010. Shri Lee/a Dhar applicant, Sh. Hamir Chander, Supdt. O/O LAO Bilaspur, Shri Surender Pal, Sr. Assistant o/o. GM Koldam and Shri A. Krishan Chand Supdt. Tehsil Office Sundernagar are present.

The applicant was asked to produce documentary proof regarding his appointment as daily wage Chowkidar but he could not produce any documentary proof regarding his appointment/engagement as daily wages Chowkidar in small saving sarai, in the o/o SDM Sundernagar, district Mandi. He could only produce a photo copy of office order NO. 1-MND-EA-6 (8)194-27001-11 dated 16.7.1996 issued by the Deputy Commissioner, Mandi vide which along with others, Shri Manohar Lal Daily wager Chowkidar Sewa Samiti Mandi has been appointed as Chowkidar whose analogy the applicant has cited for his own case. Shri Krishan Chand, Supdt. Who is present on behalf of SDM/SDO ? Sundernagar has told that there is of record available in the office about the appointment of the applicant as daily wage Chowkidar in small saving sarai.

Shri Hamir Chander, Supdt. Office of LAO Bilaspur told that applicant Shri Lee/a Dhar is performing the duties of Chainman on contract/need basis in the office of LAO Sundernagar/LAO Bilaspur w.e.f. 15.1.2002 to date. He further told that the services of petitioner has been further extended up to 30.6.2010 purely on need basis and after completion of contract period thee shall not be the liability of HP Govt. HPSEB, any other Govt. undertaking NTPC & LAO, Koldam Bilaspur.

I have heard the petitioner as well as representative of respondents and gone through the contents of CWP, comments submitted by the respondents and record produced in this behalf thoroughly. As regards the appointment made to

one Shri Manohar Lal, Daily wage Chowkidar vide office order No. 1-MND-EA-6 (8) 194-27001-10 dated 16.7.1996, th is file stand already destroyed, so the facts regarding his appointment cannot be verified. As such the applicability of Manohar Lal's case cannot be ascertained for the case of the applicant. For what ever can be deduced, it appears that the petitioner had worked as daily wage Chowkidar in Bachat Bhawan Sarai Sundernagar without any appointment order of the competent Authority. It seems that the then SDO ? Sundernagar who is also the Secretary of Bachat Samiti engaged the petitioner orally to work as daily wage Chowkidar and was paid out of income of the sarai. But no record regarding payment of wages was produced neither by the petitioner nor by the SDM/SDO ? Sundernagar.

Therefore, the relief sought in para No. 13 (A) regarding regularization of his service is rejected in the absence or record. The petitioner is not working with the LAO (Koldam) Bilaspur on deputation basis but is working on contract basis, hence the relief sought in para No-12 (B) of the petition regarding repatriation of his services does not arises. As regards the para No. 13 (C) of the petition, the LAO (Koldam) Bilaspur has admitted that the order release the salary in accordance with the Notification of new pay scale by the Govt. is under consideration. Hence keeping in view of the facts mentioned hereinabove the request of the petitioner is rejected. Copy of this order be sent to the applicant and file be cosigned to the English Record Room.

07-05-2010 Place: Mandi Collector/Deputy Commissioner, Mandi, Distt. Mandi, H.P.

6. It is very surprising that instead of challenging the order dated 7.5.2010 passed by the Deputy Commissioner, Mandi, above mentioned, the present petitioner has again filed the present petition for the same relief with prayers which were made verbatim in the writ petition CWP No. 1093 of 2010. Such endeavour of the petitioner is unfair and abuse of process of law. For such unfairness, the present writ petition could have been dismissed outrightly with heavy costs.

7. Since there is no necessity to go into the replies of the respective respondents as the facts and the averments have been mentioned in detail in the order dated 7.5.2010 passed by the Deputy Commissioner which is self speaking order. However, as revealed from the records that on 31.3.2009 the petitioner was engaged on contract basis for one year, i.e., w.e.f. 1.4.2009 to 31.3.2010 only and petitioner had only occasion to serve as daily wager in Bachan Samiti in the office of Sub Divisional Officer ? Sundernagar for which no written appointment order was issued as only on the oral order, the petitioner was deployed and the payment was made from the income of Sarai Bachat Samiti Sundernagar. The order dated 31.3.2009, annexure P9 also reveals that after completion of the petitioner on contract basis on 31.3.2010 there shall have no liability of HP Govt. HPSEB and other Govt. undertaking, including NTPC and LAO (Koldam), Bilaspur.

8. Replies by respondents No. 1 to 3 also reveals that no record pertaining to the petitioner is available in the small Savings Sarai regarding his deployment from the year 1991 to January 2002 as the petitioner left the employment without any information from the office of Secretary Bachat/Sub Divisional Officer, Sundernagar.

9. In the facts and circumstances, the petitioner is not entitled to any relief as prayed for in the writ petition. However, keeping in view the humble prayer of the learned counsel for the petitioner that the petitioner is allegedly a poor person, as such no cost be imposed. As such suffice to say that petitioner has not come with clean hands to this Court and has abused the process of law, he is not entitled to any relief, as prayed for in the present writ petition, more so, when the petitioner is otherwise also not entitled to any relief in terms of the judgment and order dated 26.4.2013 of this Court (DB) passed in CWP No. 835 of 2013-D titled Smt. Roopan Devi versus State of H.P. and another (DB). In view of the above observations writ petition No. 4305 of 2010 as well as the COPC is dismissed. Notice is discharged.