

(2010) 11 SHI CK 0197
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 6482 of 2008

Shri Sat Pal

APPELLANT

Vs

The State of H.P. and Others

RESPONDENT

Date of Decision : 23-11-2010

Acts Referred:

Citation : (2010) 11 SHI CK 0197

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Judgement

V.K. Sharma, J.—The petition has been filed on the following prayers:

7 (ii). That the Respondents may be directed to consider and then to appoint the applicant as a Work Charge Fitter Grade-I w.e.f. 1.1.1996 (in view of the long and 10 years of continuous service as such w.e.f. 1.1.1986 to 31.10.1985) forthwith.

(iii). That the Respondents may be directed to give all consequential benefits like seniority and arrears of salary as Fitter Grade-I w.e.f. 1.1.1996 or in the alternative w.e.f. 1.4.1996 forthwith.

(iv). That in case relief(s) (ii) and (iii) are inadmissible then the Respondents may be directed to consider and then to reappoint the applicant as Fitter Grade-II w.e.f. the date of his earlier appointment as Fitter Grade-II on 31.10.1995 (A-4) forthwith.

(vi). That the action of the Respondents in not counting the period of sickness w.e.f. 4.9.1991 to 18.10.1991 (A-2) towards the duty period/continuous service period of the applicant as per Section 25B of the Act, on the basis of executive orders issued by the respondent-State, may kindly be declared illegal, malafide and unsustainable.

2. Respondents have taken the following stand as per preliminary submissions:

It is submitted that applicant in his petition amongst other has sought directions from this Hon"ble Tribunal to the Respondent to consider the case of the applicant for appointment as Fitter Grade-I with effect from 1.1.96 or in the alternative as Fitter Grade-II as per order dated 31.10.95 with all consequential benefits.

In this connection, it is respectfully submitted that applicant who was initially engaged as a daily rated worker (Fitter coolie) with effect from 18/10 had been working indifferent capacities like that of Beldar. Fitter coolie, pipe line-man, Asstt. Fitter/Fitter was offered the post of Assistant Fitter by the Executive Engineer, IPH Division, Dehra vide his letter No. 13115-19 dated 31.10.95 erroneously, a copy of which is placed by the applicant on records as Annexure "A4" with his petition. But the applicant did not join pursuant to the aforesaid offer vide his option dated 4.11.95, a copy of which is placed on record as Annexure "A7" by the applicant with his petition. Mandays qua the applicant is placed on record as Annexure "RA", perusal of which would reveal that applicant was not entitled to be regularized as a work charge Fitter Grade II in 1995 as he does not fulfill the criteria as laid down by the Hon"ble Apex court in Mool Raj Upadhyaya case i.e. 10 years of continuous service with minimum of 240 days in each calendar, as the perusal of mandays chart would show that applicant had worked for 194 days only in the year 1991 as such he was not entitled to be regularised in 1995 and the orders were issued inadvertently. It is further submitted that again the applicant has been offered the post of Fitter Grade II by the XEN IPH Division, Dehra vide his letter No. 6977-81 dated 23.7.99, a copy of which is placed on record as Annexure "RB" and the applicant had joined as such vide his joining report "RC". Since these orders are also issued due to oversight and inadvertently as the applicant did not fulfill the criteria as laid down for the regularization as he did not complete 240 days in the calendar year 1991 as such necessary corrigendum in the appointment order is required to be made in the appointment order of the applicant after affording him reasonable opportunity.

As regard medical certificate appended by the applicant with his petition as Annexure "A2" with his petition it is submitted that no such certificate was ever submitted by the applicant to the Respondent-department and moreover as per the Govt. notification No. PBW (A) -2 (13)-19/93 issued by the FC-cum-Secy (IPH) to the Govt. of H.P. Shimla, it is submitted that only those certificate would be entertained where daily waged worker have obtained treatment from Govt. Hospital or recognized clinics/Hospitals as Indoor patient, a copy of which is placed on records as Annexure "RD" whereas the medical certificate appended by the applicant with his petition as Annexure "A2" shows that he had not undergone treatment as Indoor patient moreover as per the reports of BMO Dadasibba, the applicant has not taken treatment in Community Health Centre Dadasibba w.e.f. 4.9.91 to 18.10.91 neither as indoor patient, nor his name was entered in the OPD register. A copy of the report issued by the BMO Dadasibba is placed on record as Annexure "RE".

In view of above, this Hon"ble Tribunal will kindly appreciate that applicant was neither entitled to be regularised as a Fitter Grade-I with effect from 1.1.1996 nor Fitter Grade-II w.e.f. 31.10.1995 and regularization order dated 23.7.99 to which applicant has joined with effect from 23.7.99 are required to be amended in view of the law laid down by the Hon"ble apex Court in Mool Raj Upadhyaya case, as he does not fulfill the criteria meant for regularization, 10 years of continuous service with minimum of 240 days as would be evident from the mandays chart.

3. A rejoinder refuting the stand on behalf of the Respondents and reiterating the averments set up in the petition has been filed.

4. The learned Counsel for the Petitioner submits at the very outset that the case of the Petitioner is covered under a judgment of this Court in Gauri Dutt and Ors. v. State of H.P., Latest HLJ 2008 (HP) 366. Para 20 of the judgment being relevant is extracted below:

After considering all the pros and cons and keeping in view the fact that various anomalous situations may arise we are of the considered view that when an employee completes 10 years of continuous service combined in two scales, an option should be given to the employee to either accept work charge status in the lower scale or he may continue to work on daily rated basis in the higher scale and claim work charge status in the higher scale on completion of 10 years of continuous service in the said scale. In the examples given above, employee (A) may prefer to accept work charge status w.e.f. 1.1.2001 even in the lower scale of beldar because otherwise he may have to wait for 9 years before he is granted work charge status. On the other hand, employee (B) in the second example may prefer to delay the grant of work charge status by one year so that he can get work charge status in the higher scale. We feel that in each case the choice should be left to the employee. However, if the employee on being given a chance to exercise his option does not convey his option within 30 days, he shall be granted work charge status in the lower scale by combining the service rendered in both the scales. This answers the fourth question.

5. According to the Petitioner, he had joined the employment of the Respondents, particularly Respondents No. 3 and 4 as Fitter Grade-II on 1.1.1985 and had worked as such for one year. Thereafter, he was engaged on the higher post of Fitter Grade-I on and w.e.f. 1.1.1986. Thus, he was entitled for regularization as Fitter Grade-I and in the alternative for grant of work charged status on completion of 10 years of service w.e.f. 1.1.1996, but for shortage of 32 mandays during the calendar year 1991 as unfortunately he was taken ill on 4.9.1991 and remained bed ridden upto 18.10.1991 as is apparent from medical certificate, Annexure A-2 issued by a Government Medical Officer. It is stated that prior intimation about illness was duly communicated to the concerned Junior Engineer vide communication dated 4.9.1991, Anenxure A-1. The Petitioner seeks indulgence of this Court for condonation of the aforesaid shortage of 32 mandays during the year 1991 on the strength of the law laid

down by this Court in CWP-T No. 353 of 2008, titled Het Ram v. State of Himachal Pradesh and Ors., text whereof is as follows:

Petitioner by way of this petition is seeking directions to Respondents for giving him work charge status after completion of requisite number of years as stipulated in the policy. According to Petitioner, he was engaged in the year 1987 and has continuously worked up to 2007 and has completed 240 days in each calendar year except in the year 2002, in which year he has only completed 225 days.

Plea of Mr. R.K. Sharma, learned Sr. Addl. Advocate General is that since Petitioner has not completed 240 days in the year 2002, he could not be granted the work charge status.

Mr. L.N. Sharma has placed on record copy of medical certificate whereby Petitioner has been reported sick with effect from 18.3.2002 to 18.7.2002. It is in view of his illness, Petitioner could not complete 240 days in the year 2002. Moreover, Petitioner has worked continuously for more than 8 years and completed 240 days in each calendar year except in the year 2002. He has completed 225 days in the year 2002. There is shortfall of only 15 days. Respondent-State being a Welfare State should have overlooked shortfall of merely 15 days. The action of Respondent-State not to condone shortfall of 15 days rather amounts to unfair labour practice and is contrary to constitutional philosophy.

Accordingly, the petition is allowed. Respondents are directed to grant work charge status to Petitioner after condoning 15 days shortfall in the year 2002 with all the consequential benefits like seniority etc. No costs.

6. In view of the above, if on facts, the case of the Petitioner is covered under the aforesaid judgments, in the cases of Gauri Dutt and Het Ram (supra) and is a similarly situate person, his case for regularization/work charged status on the higher post of Fitter Grade-I on and w.e.f. 1.1.1996 shall be considered by the Respondents, particularly Respondent No. 3 in the light of the aforesaid judgments within three months on production of a copy of this judgment within one month from today, particularly, when he has already been regularized on the lower post by condoning the aforesaid shortage of 32 mandays as per office order dated 23.7.1999, Annexure A-8 with effect from 1.4.1998. Needless to say that the Petitioner shall also be entitled to consequential benefits, if any, pursuant to the decision to be taken by the competent authority in the light of this judgment.

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