

(2011) 10 SHI CK 0087

In the High Court Of Himachal Pradesh

Case No : LPA No. 285 of 2011 Alongwith LPA No's. 299, 300, 320, 321, 337, 376 And 383 of 2011

State of Himachal Pradesh and Others

APPELLANT

Vs

Charan Singh

RESPONDENT

Date of Decision : 21-10-2011

Acts Referred:

Citation : (2012) 1 ShimLC 230

Hon'ble Judges : Kurian Joseph, C.J; Surinder Singh, J

Bench : Division Bench

Judgement

Kurian Joseph, C.J.

CMP (M) No. 975 of 2011 in LPA No. 285 of 2011

CMP (M) No. 1003 of 2011 in LPA No. 299 of 2011

CMP (M) No. 1004 of 2011 in LPA No. 300 of 2011

CMP (M) No. 1045 of 2011 in LPA No. 320 of 2011

CMP (M) No. 1046 of 2011 in LPA No. 321 of 2011

CMP (M) No. 1079 of 2011 in LPA No. 337 of 2011

CMP (M) No. 1347 of 2011 in LPA No. 376 of 2011

CMP (M) No. 1400 of 2011 in LPA No. 383 of 2011

1. Heard. The delay in filing the appeals is condoned. The applications stand disposed of. LPA No. 285, 299, 300, 320, 321, 337, 376 and 383 of 2011.

The Respondents-State have come up in appeal, against the common judgment dated 23.3.2010, rendered in CWPT No. 14054 of 2008 and other connected matters, whereby the learned Single Judge has directed release of pay in the scale of cooks to the writ petitioners w.e.f. 1980 with interest at the rate of 9% per annum. It is the case of the State that the petitioners are class-IV employees

and they are only rendering assistance in the kitchen on their own and hence, they are not entitled to a protection on the principle of "equal pay for equal work". The learned Single Judge has taken note of the factual position that there were 12 sanctioned posts of cooks in the IGMC and they were to prepare food for around 600 patients daily. Out of the 12 sanctioned posts of cooks, only one was filled up.

The posts are sanctioned based on the work load. Therefore, the people who are actually discharging the work in the kitchen against the sanctioned posts, so long as they work so, in principle, as rightly held by the learned Single Judge, are entitled to the protection of the principle of "equal pay for equal work". However, we find that the learned Single Judge has erred in entering a finding that the principle is followed on the decision of the Administrative Tribunal in O.A. No. 1687 of 2000 as in the case of one Chet Ram. It was a case where the said Chet Ram was originally appointed as Cook and he made a claim for the scale attached to the post. That was, what was granted by the Tribunal. Therefore, as rightly contended by the learned Additional Advocate General, the writ petitioners cannot be equated with the case of said Chet Ram. However, the fact remains that all the writ petitioners are working in the kitchen. 12 sanctioned posts of cooks are there. Only one is filled up. Necessarily, rest of the work of 11 cooks is carried out only by the writ petitioners, since nobody has a case that anybody else is engaged in the kitchen as a cook. The reply would also indicate that steps were being taken to depute regularly appointed cooks in IGMC.

2. The writ petitioners seem to have approached the Tribunal only in the year 2006. From their own record, Annexure A-3, it is seen that the writ petitioners are engaged in the kitchen only as follows:

Sr. No.

Name of employees

Date of working on the post of cook.

1.

Sh. Devi Ram

3.4.1980

2.

Sh. Shobha Ram

1988

3.

Sh. Sher Singh

1989

4.

Sh. Mal Ram

1995

5.

Sh. Jagdish Lal

1995

6.

Sh. Atma Ram

1995

7.

Sh. Charan Singh

1996

8.

Sh. Bhag Singh

1976

9.

Sh. Hukam Singh

1974/ retired now

10.

Sh. Ganga Ram

1975

11.

Sh. Prem Lal

2006

We find from the endorsement in Annexure A-3 by the dietician, that they have been working as cooks in IGMC.

3. In the above circumstances, the appeals are partly allowed, holding that the writ petitioners (private respondents herein) would be entitled to the scale attached to the post of cooks, so long as they are working in the kitchen of IGMC and are not replaced by regular cooks w.e.f. 1.1.2003, three years prior to the filing of the OA, in the case of all the writ petitioners except Shri Prem Lal, whose entitlement shall be only from the date of the filing of the OA in the 2006, since

even according to Annexure A-3, he is only engaged in the year 2006.

4. In the facts and circumstances of the case, we do not find any justification for the grant of interest, since their very entitlement on the principle of "equal pay for equal work" is based on the declaration by the Court and not on any crystallized right, otherwise conferred on the writ petitioners or denied by the State. Interest is not to be invariably granted under all circumstances. In service matters, it would depend on whether an otherwise available right expressly under a Statute or guidelines has been unjustly denied despite being requested or not. Therefore, a direction for grant of interest is also vacated. The benefits, as above, shall be calculated and released to the writ petitioners within three months from today and if not, the writ petitioners shall be entitled to interest at the rate of 9% per annum from the respective dates indicated above and the officers responsible for the delay shall be personally liable for the same.

5. With these observations, the appeals are disposed of, so also the pending applications, if any. A copy of this judgment be sent to the Accountant General.