
(2010) 07 SHI CK 0192
In the High Court Of Himachal Pradesh

State of Himachal Pradesh and Others	APPELLANT
Vs	
Puran	RESPONDENT

Date of Decision : 01-07-2010

Acts Referred:

Citation : (2010) 3 ShimLC 441

Hon'ble Judges : Kurian Joseph, C.J.;Rajiv Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—State has filed this Letters Patent Appeal against the judgment dated 15.7.2009 passed by the learned Single Judge in CWP (T) No. 3723/2008.

2. Material facts necessary for the adjudication of this Letters Patent Appeal are that the respondent (hereinafter referred to as "the workman" for convenience sake) was engaged as Beldar/Helper/Chowkidar, all Class-IV posts, in various spells from 1978 to 1987. Thereafter he started discharging the duties of Air Compressor Operator. He continuously worked in this capacity till January, 1992. He was conferred work charge status of Beldar on 29.1.1992. He preferred OA (D) No. 451/1995 before the erstwhile Himachal Pradesh Administrative Tribunal. The Tribunal was pleased to direct to treat the original application as representation to the Engineer-in-Chief. He rejected the same on 24.6.1996. Petitioner filed OA(D) No. 329/1996, which was converted to CWP (T) No. 3723/2008. The contention of the workman before the learned Single Judge in CWP (T) No. 3723/2008 was that his case is required to be considered in view of the law laid down by this Court in Gauri Dutt and Ors. v. State of H.P. Latest HLJ 2008 (HP) 366. The learned Single Judge disposed of the writ petition on 15.7.2009. Operative portion of judgment dated 15.7.2009 reads thus:

In the present case, the petitioner has already been made work-charged Beldar on 29.1.1992. The respondents have not admitted that petitioner has worked for more than ten years as Air Compressor Operator. The petitioner has also not

placed on record irrefutable evidence to show that he had actually worked for more than ten years as Air Compressor Operator on 29.1.1992 when he was made work-charged Beldar. The petitioner is not satisfied with the work-charge status of Beldar, therefore, in light of Gauri Dutt (supra), the respondents are directed to take the option of the petitioner within two months from today whether he would like to accept the work-charge status of Beldar as already granted to him on 29.1.1992 or he would like to work on daily rates basis as Air Compressor Operator and shall claim work-charge status as Air Compressor Operator on completion of ten years of continuous service as Air Compressor Operator. In case, the petitioner shall not give option within 30 days from the date of service of notice seeking his option, as directed above, then his claim for work-charge status as Air Compressor Operator shall be deemed to have been waived. However, it is made clear that in that situation in case the petitioner is entitled to work-charge status as Air Compressor Operator, after 29.1.1992 under some scheme of respondent No. 1 or otherwise under law then the petitioner shall be entitled to work-charge status as Air Compressor Operator after 29.1.1992. The petition is disposed of in the aforesaid terms with no order as to costs.

In sequel thereto respondent has filed detailed representation vide Annexure R-11 dated 19.8.2009.

Mr. R.K. Sharma, learned Senior Additional Advocate General has strenuously argued that since the work charge status has been conferred upon the workman on 29.1.1992, he cannot be regularized to the post of Air Compressor Operator as per Gauri Dutt's case. He has supported the decision of the State whereby workman has been conferred work charge status as Beldar instead of Air Compressor Operator.

Mr. Ranjan Sharma on the basis of the documents annexed with the reply has strenuously argued that his client had started working as Air Compressor Operator with effect from September, 1987 and even though his client was conferred work charge status on 29.1.1992, he has been continuously working as Air Compressor Operator and his services should have been regularized in the year 1997 or 1998.

We have heard the learned Counsel for the parties and have perused the pleadings carefully.

Workman has placed on record Annexure R-1, i.e. his seniority list. A bare perusal of Annexure R-1 reveals that the workman started working with effect from 1977. He has worked in various spells till 1987, namely, Beldar/Helper/Chowkidar. He started working Air Compressor Operator with effect from September, 1987. He has worked for more than 240 days with effect from 1987 to 1992, however, he was conferred work charge status vide office order dated 29.1.1992. Original application preferred by him, as noticed above, was directed to be treated as representation by the Engineer-in-Chief. He rejected the same

on 24.6.1996. Mr. Ranjan Sharma has drawn the attention of the Court to Annexures R-3 dated 24.11.1986, R-4, R-5 dated 26.12.2008 and R-6 dated 20.8.2009. The text of letter dated 20.8.2009 reads thus:

In this connection it is intimated that the above named person was engaged under this Sub-Division as a daily waged Beldar during January 1977 and worked in different categories i.e. Beldar as a Chowkidar as a Helper and as a Air Compressor Operator. After completion of ten years continue service his services were regularized as a Work-Charged Beldar on 29.1.1992 because maximum period he worked as a Beldar. Since 1/1988 he is working as A/C Operator till date. The seniority list of the appellant is also attached herewith for necessary action please.

We have gone through the log-book placed on record vide Annexure R-7. A bare perusal of Annexures R-1, R-3 to R-6 reveals that the workman had been working and discharging the duties of Air Compressor Operator since 1987.

Mr. R.K. Sharma, learned Senior Additional Advocate General has strenuously argued that since the workman has been conferred with work charge status as Beldar on 29.1.1992, he is estopped from seeking regularization to the post of Air Compressor Operator. There is no merit in this contention. A bare perusal of Annexures R-3 to R-6 proves that the workman had started working as Air Compressor Operator since 1987 and after completion of ten years uninterrupted service as Air Compressor Operator, was required to be regularized as Air Compressor Operator. He is not precluded from seeking regularization as Air Compressor Operator in 1998 though he was conferred with work charge status of Beldar in the year 1992. Mr. Ranjan Sharma during the course of arguments submitted that in case the Court directs the appellant-State to consider the case of his client for regularization as Air Compressor Operator with effect from 1998, he will claim seniority with continuity in service but not the back wages. Workman has already made representation in view of the judgment of the learned Single Judge on 19.8.2009. This has not been decided till date by the appellant-State.

Accordingly, in view of the observations made hereinabove, the Letters Patent Appeal is dismissed with direction to the appellant-State to consider the case of the workman for regularization to the post of Air Compressor Operator with effect from 1998 with continuity in service and seniority except back wages. Needful be done within a period of six weeks after the production of certified copy of this judgment. No costs.