
(2017) 12 SHI CK 0042
In the High Court Of Himachal Pradesh
Case No : 2949 of 2016

State of Himachal Pradesh & Ors.

APPELLANT

Vs

Manoj Singh

RESPONDENT

Date of Decision : 18-12-2017

Acts Referred:

Citation : (2017) 12 SHI CK 0042

Hon'ble Judges : Sanjay Karol, Ajay Mohan Goel

Bench : Division Bench

Advocate : Shrawan Dogra, Varun Chauhan, J.K. Verma, Kush Sharma, ?A.K. Gupta, Babita

Judgement

1. We have heard learned Advocate General and we have also heard learned counsel for the respondent. 1Whether reporters of Local Papers may be allowed to see the judgment?

2. The contention of the State that the order passed by learned Tribunal is bad as learned Tribunal erred in not appreciating that earlier also original applicant has filed a petition on the same ground which was dismissed as withdrawn i.e. Original Application No. 1369 of 2004 perhaps may not be sustainable because we find that thereafter the petitioner filed CWP(T) No. 96 of 2008, which was disposed of by learned Single Judge of this Court by passing the following order:- "The case of petitioner, in nut-shell, is that he has completed 240 days in each year and his case has not been considered for regularization, According to him the person junior to his have been regularized. However, the fact of the matter is that petitioner has failed to substantiate that he has completed 240 days in each calander year to seek regularization, Petitioner has been working as Beldar since 1997, in these circumstances, it will be fast and fair to direct respondents to consider the case of petitioner for regularization immediately after he has completed 8 years of service with 240 days in each calander year. Accordingly, the respondents are directed to consider the case of petitioner for regularization immediately after he has completed 8 years of service with 240 days in each

calander year. The need full be done within period of six weeks from today

. With the aforesaid observation/directions, the petition stands disposed of No costs."

3. Pursuant thereto, as the case of the original applicant stood rejected by the Superintending Engineer, HP I&PH Circle, Chamba, vide order dated 20.05.2010 (Annexure P-3), he assailed the same vide CWP No. 7298 of 2010 which thereafter was transferred to learned Tribunal in which impugned order stands passed by learned Tribunal. This demonstrates that a fresh cause had arisen in favour of the original applicant pursuant to which he filed CWP No. 7298 of 2010, which was thereafter transferred to learned Tribunal and disposed of as TA No. 277/15.

4. Even otherwise, we find no infirmity with the order which has been passed by learned Tribunal dated 08.12.2015. A perusal of the said order demonstrates that learned Tribunal took note of the fact, as is evident from Para-4 of the impugned order, that the employer adopted a practice whereby the applicant could work only for about 20 days in a month, which resulted in his not completing 240 days in each of the 10 years for the purpose of claiming regularization as per the policy of the Government. Learned Tribunal relying the judgment of Hon"ble Supreme Court in Mohd. Abdul Kadir and another Vs. Director General of Police, Assam and others, (2009) 6 SCC, directed that the applicant was deemed to have completed 240 days in the years 1997 to 2004.

5. In our considered view, said order calls for no interference. It is but evident that from 1994 onwards, the original applicant was performing his duties as a daily wager but on account of frictional breaks so granted to him, he was not permitted to complete 240 days, which resulted in the denial of his claim of regularization as per the policy of the State Government.

6. During the course of arguments, State could not persuade us to take a view contrary to that taken by learned Tribunal, whereby learned Tribunal held that but for frictional breaks the original applicant was denied his due, whereas workcharge status was conferred upon even juniors to the applicant. Findings so returned by learned Tribunal could not be demonstrated to be perverse or not borne out from the records of the case.

7. In view of above, as we do not find any merit in the present petition, the same is accordingly dismissed. Miscellaneous applications pending, if any, stand disposed of.