

(2021) 11 SHI CK 0078

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition (Original Application) No.4052 Of 2019

Subhash Chand

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 22-11-2021

Acts Referred:

Constitution Of India, 1950 — Article 16

Indian Penal Code, 1860 — Section 120B, 408, 409, 420

Citation : (2021) 11 SHI CK 0078

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : Ashok Chaudhary, Vinod Thakur, Ashwani Sharma, Vikrant Chandel, Kunal Thakur

Final Decision : Allowed

Judgement

Jyotsna Rewal Dua, J

1. In nut shell, the case of the petitioner is that he was denied regularization at the relevant time on account of pendency of a criminal case against him. Even though, the criminal case has ended in petitioner's acquittal, yet, the respondents have not given him the benefits of regularization alongwith all consequential benefits from the due date.

2. Facts

2(i) The petitioner was engaged as daily waged Depot Watcher on 01.06.1987 by the respondents-Forest Corporation. He was posted in Forest Working Unit Bharwain falling in Forest Working Division Una, H.P.. During the year, 1992-93, shortage of Khair wood, amounting to Rs.1,42,221/- was detected by the respondent-Corporation in this Forest Working Unit. An inquiry report in this regard was submitted on 12.03.1994, recommending the recovery of this amount from seven employees, including the petitioner, Subhash Chand. On the basis of inquiry report dated 12.03.1994, the Divisional Manager, Forest Working

Division Una, on 22.03.1994, ordered recovery of the amount specified therein from all seven persons, including the petitioner. As per the reply filed by the respondents, an amount of Rs.28986/- was recovered from the monthly salary of the petitioner in terms of this order.

2(ii) An FIR No.6/1994 regarding the above incident was registered against some of the employees, including the petitioner, under Sections 120B, 408, 409 and 420 of the Indian Penal Code at Police Station, Enforcement North Zone, Dharamshala, District Kangra, H.P. The trial started in the Court of learned Judicial Magistrate First Class Court No.IV, Una.

2(iii) A meeting of Screening committee was convened by the respondents on 30.12.1997 for regularizing the services of those daily wagers, who had completed ten years of continuous service. Name of the petitioner also figured at Sr. No.440 of these proceedings. He having completed 10 years of continuous service as daily waged Depot Watcher was being considered for regularization as Chowkidar. The screening committee found the petitioner unfit for regularization as an enforcement case was pending against him at that time. The petitioner, therefore, continued to serve with the respondent-Corporation as a daily wager.

2(iv) In the year 2007, about 1030 daily wagers in the respondent-Corporation were treated as surplus. Since the petitioner was also working as daily wager at that time, therefore, he was also treated as surplus. The respondent-corporation took up the matter with the State Government for regularizing the services of such daily wagers in other Government Departments against available vacancies. This proposal was accepted by the Government. Petitioner being treated as a surplus daily wager in the respondent- Corporation in the year 2007, gave his option for regularization in the Education Department. The petitioner was accordingly regularized in Education Department in the year 2007. Eversince, he is working in Education Department.

2(v) The criminal case pending against the petitioner was decided by the learned JMFC, Court No.IV, Una on 30.03.2010. All the accused persons, including the petitioner were exonerated from the charges leveled against them. On 03.07.2010, the petitioner represented to the respondents seeking his regularization with effect from due date alongwith consequential benefits. His representation was rejected on the ground that he had already been regularized in Education Department in the year 2007. In the aforesaid background, the petitioner has filed the instant petition, praying for following reliefs:-

"(i) That the Respondent Corporation/Respondents may be directed to consider and regularize the petitioner as a Depot Watcher or on any other equivalent Class-IV post w.e.f. the date the junior daily waged workers were regularized w.e.f. 31.12.1997 or w.e.f. 1.4.1998 or immediately thereafter; after his acquittal in the criminal case on 30.3.2010 vide Annexure P-2, with all the consequential benefits, including regular pay scale, pay fixation, increments and arrears as above till his belated regularization in September, 2007 and thereafter forthwith.

(ii) That the action of the Respondent Corporation in giving all admissible benefits to others after acquittal but in denying the same to the petitioner may kindly be held discriminatory, illegal and unsustainable.

(iii) That the rejection orders issued by the Respondent No.2 in June 2011 may kindly be quashed and set aside forthwith."

3. Contentions

Learned counsel for the petitioner argued that regularization was denied to the petitioner by respondents No.1 and 2 at the relevant time only in view of pendency of the criminal case against him at that time. Since the petitioner was exonerated in the criminal case on 30.03.2010, therefore, he was required to be regularized with effect from the due date alongwith all consequential benefits.

Learned counsel for the respondents No.1 and 2 submitted that the petitioner had already been regularized in respondent No.3-Education Department in the year, 2007, as per the option exercised by him. The petitioner had given his option that he was willing to serve in any department on regularization. He was thereafter allocated to the Education Department. Writ petition seeking retrospective regularization of the petitioner in the Forest Corporation is not maintainable at this stage.

Respondent No.3-Education Department, in its separate reply submitted that the petitioner became employee of Education Department on his joining the Department on 18.08.2007, whereas, the relief sought by him pertain to the period when he was in employment of State Forest Corporation.

4. Observations

Having heard learned counsel for the parties, I am of the considered view that this petition deserves to be allowed for the following reasons:-

4(i). As per the stand taken by the respondent No.1 and 2, recovery of Rs.28986/- stood effected from the salary of the petitioner on account of shortage of Khair wood detected in the year 1992-93. That having completed ten years of continuous service as Depot Watcher, the petitioner was eligible for regularization of his services in the year 1997. That his name was accordingly considered by the respondent Corporation for regularization as Chowkidar. However, the Screening Committee in its meeting convened on 30.12.1997 found the petitioner unfit for regularization on account of pendency of criminal case i.e. FIR No.6/1994 against him and four other employees of the respondent-Corporation.

4(ii) In CWP No. 2110 of 2019, titled Rajinder Kumar Versus Himachal Road Transport Corporation & another, decided on 22.10.2019, a Division Bench of this Court was examining a case where services of the petitioner therein, who was working as driver on contract basis, were not being regularized on the ground of pendency of a criminal case against him. The Court held that 'the pendency of a

criminal case and registration of FIR is to be taken into account but it depends upon the gravity and nature of the offence. Mere registration of a criminal case itself is not a ground, it shows non application of mind'. Criminal case coming in the way of regularization of an employee has to be carefully scrutinized by the Head of Office or Appointing Authority.

Relevant paras from the judgment reads as under:-

"5. The pendency of a criminal case and registration of FIR is to be taken into account but it depends upon the gravity and nature of the offence. Merely registration of a criminal case itself is not a ground and it shows that the Appointing Authority or the Head of Office has not applied its mind in the present case. Getting an employment/regularization though is not a fundamental right but consideration for regularization is a fundamental right for the purpose of Article 16 of the Constitution of India. When such is a fundamental right for consideration then while dealing with such rights, the respondents should take all care and caution. The respondents in the present case are dealing with the right to life of an employee which ultimately affects his dependents as well. When such interest is involved, which includes the employee as well as his family members, dealing always should be with more care and caution and not in a mechanical and negligent manner.

6.

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8. In the light of the observations made by the Hon'ble Supreme Court and the material placed before us, we are of the opinion that a criminal cases when comes in the way of regularization in respect of an employee, it has to be carefully scrutinized by the Head of Office or Appointing Authority, unless it is to be held that it is a case of a serious nature and colourable exercise of powers.

9. In view of the above, the writ petition is allowed with a direction to the respondents to regularize the service of the petitioner as his name has already been recommended for regularization. The needful shall be done within a period of three months."

4(iii) The fact remains that during pendency of the above referred criminal case, respondent Corporation itself proposed regularization of the petitioner in the year 2007 in Education Department. The petitioner was absorbed as regular employee in the Education Department on 18.08.2007. The criminal case was pending against the petitioner in the year 1997. It was pending even in the year 2007. If notwithstanding pendency of criminal case against the petitioner, the respondents could regularized him in the Education Department in the year 2007, then he could have also been regularized in the Forest Corporation at the appropriate time i.e. in the year 1997. Denial of regularization to the petitioner in the year 1997, in view of the stand taken by the respondents No.1 and 2, in its reply is not justifiable.

4(iv) Recovery of Rs. 28986/- had already been ordered to be effected from the petitioner in the year 1994. Petitioner was continuing in service even thereafter. But for the criminal case, nothing was pending against the petitioner. Respondents No.1 and 2 have pleaded that the petitioner could not be regularized in the year 1997 on account of pendency of criminal case against him at that time. It is an admitted fact that the criminal case was decided on 30.03.2010. Petitioner was exonerated from the charges leveled against him. The judgment of acquittal passed by learned JMFC, Court No.IV, Una, District Una, has attained finality. Therefore, all benefits which were withheld from the petitioner only on account of pendency of criminal case are required to be granted to him. The exercise of option by the petitioner in the year 2007 in accepting his regularization in the Education Department will not come in his way to be regularize w.e.f. the year 1997. The option was exercised by the petitioner as his services had not been regularized and he was continuing to serve as a daily wager in the respondent-Forest Corporation at that time. As a daily wager he was treated as surplus by the respondents No.1 and 2 in the year 2007 and was given the option to go to other department on regular basis. Petitioner had no bargaining power and accordingly option was exercised or else he could have been retrenched from services as a surplus daily wager.

For all the above reasons, this petition is allowed. Respondents No.1 and 2 are directed to regularize the services of the petitioner in accordance with law with effect from the due date i.e. 30.12.1997, within three weeks from today. Actual financial benefits shall be admissible to the petitioner from three years prior to the filing of this petition. All notional benefits shall be worked out w.e.f. 30.12.1997. Since the petitioner is working with respondent No.3-Education Department w.e.f. 18.08.2007, therefore, benefits admissible to him shall be worked out by all the respondents jointly. The writ petition stands disposed of in the above terms, so also the pending miscellaneous application(s), if any.