
(2011) 05 SHI CK 0138

In the High Court Of Himachal Pradesh

Case No : CWP No's. 562 of 2009 and 5907 of 2010

Sukh Chain

APPELLANT

Vs

State of H.P. and Others
 H.P. State Forest Corp. and
Another Vs Chand Kishore

RESPONDENT

Date of Decision : 04-05-2011

Acts Referred:

Citation : (2011) 05 SHI CK 0138

Hon'ble Judges : Kurian Joseph, C.J;V.K. Ahuja, J

Bench : Division Bench

Judgement

Kurian Joseph, C.J.—The issue raised in all these writ petitions pertains to the claim made by the Petitioners for retrospective regularization. To refer to the undisputed facts, all the Petitioners were engaged as daily waged workers under the Himachal Pradesh State Forest Development Corporation. According to the Petitioners, despite availability of vacancies, they have not been regularized in service. There is also a common contention that in any case they should have been granted work charge status in case the regularization was delayed even for want of vacancy. All the Petitioners have been subsequently absorbed in Government Service in the year 2007, in various departments, in Class-IV. It is also seen that except in the cases of a few, the Petitioners have been granted one time relaxation in the of qualification while absorbing them as regular employees in the Government Service. It is the stand of the Corporation that it has been facing serious financial crisis and the Corporation was not in a position to offer job to the daily waged employees since quite a few years and they were proposing to retrench the daily waged workers. It is at that juncture, according to the Corporation, the Government came forward to rescue the Petitioners by offering regular appointment even by relaxing the qualification. According to the Corporation, it did not have sufficient funds at that time even to pay wages to its employees. It is further submitted that the employees had no demur at the relevant time when they were offered regular appointment by the Government in the year 2007. Still further, it is submitted that the Forest Development

Corporation is not a work charged establishment and hence, there is no question of conferring work charge status to any of the employees. Yet another submission is that the allegation regarding availability of vacancies is not true to the facts and in any case even if vacancies were there, since the Corporation was finding it difficult even to manage its day to day affairs, it could not have thought of making the regular appointment at the relevant time when it was planning to retrench the available employees.

2. Learned Deputy Advocate General, representing the State, submits that the State has in fact shown indulgence to the Petitioners by saving them from being retrenched from the Forest Development Corporation for want of work. It is also submitted that the said decision was taken after several rounds of discussions with various departments, the Forest Development Corporation and representatives of the employees. The employees having thus been given regular appointment in Government service as a one time measure in full and final settlement of all their grievances, it is unjust on their part to turn round and contend for retrospective regularization, it is submitted.

3. On 1.3.2011, this Court directed the Chief Secretary to the State of Himachal Pradesh to file an affidavit as to the background and basis of the offer for regular appointment. The Chief Secretary has accordingly filed a detailed affidavit on 30th April, 2011. At paragraph 4 of the affidavit, it is stated that the various instructions issued by the Government regarding regularization of daily waged/contingent workers were not ipso facto applicable to the Boards or Corporations. ? The management of these organizations is, however, at liberty to adopt the government policy/instructions at their own level, keeping in view their financial positions and resources?.

4. Further at paragraph 5, it is stated that the Government had taken a lenient view for the welfare of the surplus workers in the Corporation and had shown a special indulgence to those workers by deviating from its policy. It is also stated that ?There was no any commitment to count the past daily waged service rendered in the Forest Corporation of these surplus daily waged workers in the Government Department for any purpose after their regularization/absorption?. Still further, at paragraph 7, it is stated as follows:

That regarding second relief of regularization, it is most respectfully submitted that the Petitioners and other similarly situated persons have been regularized in the year 2007 which they have accepted without any protest on their part. It is only in the year 2010, that the Petitioners have filed the present writ petitions. The Petitioners are, therefore, barred by delay and laches hence no relief of regularization can be granted to them.

5. Referring to the claim for retrospective benefits, as claimed by the Petitioners, it is stated at paragraph 8 of the affidavit as follows:

8. It is most respectfully submitted that Government of Himachal Pradesh and all the Public Sector Undertakings which come under it, have done their best for

these Petitioners before this Hon?ble Court, from time to time, for their betterment, regularization and appointment, by framing different beneficial schemes, policies and subsequent instructions. Now, no consequential benefit can be accorded to them by the State or any Public Sector Undertakings under it, as it will be against the law of the land and against the constitutional mandate as discussed above. It any consequential benefit is accorded to them, it is respectfully submitted that it would lead to their unjust enrichment.

6. Thus, it is clear from the affidavit of the Chief Secretary that the offer of regular appointment extended to the employees has a chequered history. Normally an employee or a workman of the Corporation is not absorbed in Government service. At any rate, in the State of Himachal Pradesh, there are no such Rules enabling the absorption. However, in the case of the surplus workmen of the Forest Development Corporation, who had been working there for long, but without any regular status and who were facing the threat of retrenchment for want of work, the Government has shown a special consideration as one time measure by relaxing the Rules and by relaxing also the qualification, as prescribed under the Rules. If the Petitioners/workmen have any grievance with regard to such steps taken by the Government while offering the regular employment in Government service without any commitment with regard to their past service in the Forest Development Corporation, it is for the Petitioners to approach the Government since the Government alone will be in a position to decide the grievance, if any, which remained to be settled.

7. We may also refer to one contention of the Forest Development Corporation regarding the work charge status. No doubt, the counsel, who represented the Corporation before the Tribunal or elsewhere from time to time have not taken a consistent and correct stand as to the position of the establishment. However, we find that the issue has been ultimately addressed by this Court in the judgment dated 1.12.2005 in CWP No. 214 of 2004, wherein it has been held as follows:

The category of employees which exists in the Corporation is regular staff and daily wage staff. There is no category of work charge worker or employee.

8. Learned Deputy Advocate General submits that on account of change of counsel for Corporation from time to time, the matters have not been properly followed up before the Tribunal or courts in the correct perspective. The people at the helm of affairs of the Corporation were also not quite serious. But wrong precedent will not and cannot constitute good law. The illegality cannot be permitted to be perpetuated. That issue thereafter was considered by this Court in the judgment, dated 17th May, 2010 in CWP(T) No. 7229 of 2008, wherein also it has been categorically held that "The category of employees which exists in the Corporation is regular staff and there is no category of work charged workers or employees." Therefore, the legal position has to be settled to the effect that the H.P. State Forest Development Corporation is not a work charge establishment and any stray deviation to the contrary shall not be a precedent to be followed. It is for the Corporation, as and if permitted under law, to take

appropriate steps for rectification of such mistakes, in accordance with law.

9. Learned Counsel for the Petitioners have made two further contentions; (i) in the option they submitted to the Government, they had only agreed to work in any department in the Government and they had not given up their claim regarding retrospective regularization in the Corporation. (ii) It is also pointed out that the Corporation had in fact agreed to bear the financial burden on account of their regularization in the Corporation before their absorption in the Government.

10. As far as the first contention is concerned, the Petitioners were right in the sense that the option exercised by them does not in any way give any indication that they have given up any right. They had only accepted the offer to work anywhere in Government. But, this option has to be understood in the light of the offer made by the Government for regular service in the Government, so as to avoid retrenchment in the Corporation, as clearly stated by the Chief Secretary in the affidavit, as extracted above. In case the Petitioners have not given up their right to any of the benefits which are otherwise legally due to them and which the Government has not considered while making offer, as we have already indicated above, it is for them to pursue their grievance before the Government.

11. As far as the contention regarding commitment on the part of the Corporation, reference is invited to Annexure P-6, a document in CWP No. 197 of 2010. P-6 is a letter written by the Government to the Corporation wherein it has been stated that the Finance Department had conveyed its concurrence for absorption for daily waged workers from the Corporation in Government with the stipulation that the complete details regarding expenditure would be furnished to the department. It was also made clear that the Corporation would have to bear the enhanced expenditure of the employees till such time they as they can be deputed elsewhere. That would only take in a situation of post regularization in Government and not of any situation earlier. With reference to the said letter, only Annexure P-7, communication has been given to the Government by the Corporation wherein it is stated that Corporation was ready to bear the enhanced expenditure on account of such regularization till the time they are not permanently deputed to other department(s). Therefore, the contention of the Petitioners that an inference has to be drawn with regard to the claim pertaining to the pre-regularization period in Government service cannot be appreciated.

12. Learned Counsel for the Petitioners have also drawn our attention to the order dated 9.5.2002, passed by the Tribunal, in O.A. No. 9856 of 2001. In the said order, in view of the regularization policy of the State, the Administrative Tribunal had directed the Corporation to create a post of Chowkidar in the Forest Corporation and thereafter consider and regularize the Applicant against that post without any delay. The Corporation took up the matter before this Court in CWP No. 2004 of 2003. By judgment, dated 24.4.2003, the writ petition was dismissed. It was observed in the judgment that the policy of the Government of

regularization clearly envisages that the daily waged/contingent paid workers, who had completed 8 years of continuous service with a minimum of 240 days in a calendar year as on 31.3.1999 should be considered for regularization either against the available vacant post or if vacant post is not available, by creating a post in the respective Organizations. The Corporation still aggrieved, took up the matter before the Supreme Court in Civil Appeal No. 2526 of 2004 and by judgment dated 24.4.2010, the appeal was dismissed holding that there is no infirmity in the impugned order. It is the contention of the Petitioners that the matter thus having attained finality, the Corporation cannot now wriggle out from their responsibility in regularizing all the workers who had completed 8 years of continuous service, in terms of the Government Policy.

13. As we have already noted above, the Corporation was in fact at a stage of taking steps to retrench the then existing workmen for want of work. In order only to avoid such retrenchment and the Petitioners having worked in the Corporation for ten years or more, the Government came forward with a helping hand in deviation of their policies offering regular appointment as one time measure. There is no quarrel on the submission that the policy regarding regularization was applicable to the Corporation. But the question is whether there should have been regularization at a stage when the Corporation itself was proposing to retrench the workmen for want of work. Regularization can be considered only if there is work available in the Corporation. The question of regularization, in other words, arises only when the work force is retained in the service and not when sought to be retrenched. The case decided by the Tribunal and referred to above *Janam Singh v. M.D. Forest Corporation* hence does not compel the Corporation to regularize all the employees who have completed 8 years of service also for the reason that it was the case of a Chowkidar. Therefore, the contention based on the said judgment cannot be accepted in the case of the Petitioners before us.

14. The Government of Himachal Pradesh having shown an extraordinary indulgence in absorbing the daily waged workers of the Forest Development Corporation in Government as a special case in deviation of the Rules and in relaxation of the eligibility conditions in Rules and having thus offered regular appointment in Government service, so as to avoid retrenchment in the Corporation for want of work, in the background of the old process, in case the Petitioners have still any grievance left, it is for them to work out the same before the Government only since it is a package, as rightly contended by the learned Deputy Advocate General that has been offered by the Government and if anything is left out in the package, it is for the Petitioners to point out the same before the Government.

15. Though this Court has held that the Forest Development Corporation is not a work charge establishment, there was a direction to the Corporation to consider the case of the workmen for regularization in terms of the Government Policy. The regularization and conferment of work charge status are two different

concepts altogether. Work charge status has to be conferred where even if there is no vacancy being a work charged establishment, whereas the regularization will depend only on availability of vacancy. The case of the Corporation is that due to want of work, they had been proposing to retrench the surplus staff.

16. We are informed that in some of the cases even after the regular appointment being offered by the Government, it took a few months thereafter to actually deploy/depute them in their respective departments. The learned Counsel appearing for the Corporation submits that there being commitment, as referred to in the communication Annexure P-7, that the wages of that period would be paid by the Corporation, if in any individual case the same has not been done, the same shall be done by the Corporation within a period of two months.

17. In the above facts and circumstances, we do not find any legal merit in the claim advanced by the Petitioners for conferment of work charged status in the Corporation or for retrospective regularization as they have been absorbed in Government Service as regular employees in deviation of the policy and in relaxation of the Rules, as a one time package. However, in case anything is left out in that package, it is for them to approach the Government.

18. All the writ petitions stand disposed of, so also the pending applications, if any.