

(2021) 09 SHI CK 0089

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition (Original Application) No. 183 Of 2020

Tek Chand And Others

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 28-09-2021

Acts Referred:

Citation : (2021) 09 SHI CK 0089

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Anoop Chitkara, J

1. Challenging the order of disallowing work charge status by the respondent-department, the employees have come up before this Court.
2. The petitioners claimed to have been appointed on daily wage basis, with respondent-department in the year 1994. The petitioners further claimed that they had worked continuously with the respondent-department and they were considered for regularization on 14.9.2007 instead of the date when they had completed eight years service. They further claimed that they were entitled to get the work-charge status on completion of eight years, however, the respondent-department did not confer the same upon them. The services of the petitioners were regularized on 14.9.2007.
3. The petitioners have assailed the action of the respondent-department regarding not conferring the work charge status upon them by filing writ petition before this Court. The said writ petition was disposed of along with the identical petitions vide common judgment dated 20.9.2011, Annexure A-1 with a direction to the respondents to examine the matter whether it is covered by the judgment of this Court rendered in CWP No. 2735 of 2010, titled Rakesh Kumar versus State of H.P. & Others, or not.

4. Vide impugned order, Annexure A-2, the Principal Chief Conservator of Forests (HoFF) Himachal Pradesh, Shimla-1, denied them the conferment of work-charge status on the ground that the Forest Department is not a work charged Establishment, as such, they were not conferred with such status.

5. Challenging the order, Annexure A-2, passed by the Principal Chief Conservator of Forests (HoFF), Himachal Pradesh, the petitioners had filed the Original Application before the erstwhile H.P. Administrative Tribunal.

6. After abolition of H.P. Administrative Tribunal, the case file was transferred to this Court and registered as CWPOA No.183 of 2020.

7. The limited claim of the petitioners is that they were entitled to work charge status on completion of eight years' service as they have worked with the respondent-department with 240 days in each calendar year. A reference to this effect be also made to the order Annexure R-1, which reveals that the petitioners have worked for more than 240 days in each calendar year. As far as the conferment of work charge status is concerned, the matter is no more *res Integra*.

8. The State did not claim any irregularity in their initial recruitments or its process.

9. In *Gauri Dutt v. State of HP*, 2007 Law Suit (HP) 397, Division Bench of this Court holds,

[1] By this judgment we are disposing of the aforesaid batch of writ petitions since the following common questions of law arise for decision in these petitions.

1. Whether the scheme of putting the workers on work charged basis as approved by the Apex Court in *Mool Raj Upadhyaya's* case is applicable to those daily waged employees who had not completed minimum of 240 days of service in a calendar year as on 31st December, 1993?

2. If the answer to the first question is in the negative, what will be the process of regularization of services of those employees who had not completed 240 days of service in a calendar year as on 31st December, 1993 or had joined service after 1st January, 1994?

3. Whether the scheme, as approved by the Apex Court, in *Mool Raj Upadhyaya's* case, is only applicable to the employees of the Irrigation and Public Health Department and Public Works Department of the State of Himachal Pradesh or is applicable to all the daily rated employees working under the Government of H.P.?

4. Where if an employee has rendered service on daily waged basis on 2 separate posts in lower and higher scales, can the employee be given benefit of the service rendered by him in the lower scale and be regularized in the higher scale by combining the two services after 10 years?

[17] Under para 4 of the scheme the State was under an obligation to regularize

all daily waged/muster roll workers whether they had joined prior to 31.12.1993 or thereafter. The State has framed a scheme in this behalf on 6th May, 2000. In our opinion those employees who are not governed by the direction given in Mool Raj Upadhyaya's case as set out by us above, shall be governed by the scheme of 2000. The second question is answered accordingly.

[18] The State of H.P. has also raised a plea that the scheme in Mool Raj Upadhyaya's case is only applicable to the employees of the IPH and PWD departments of the State of H.P. and is not applicable to other employees. We have already quoted para 6 of the affidavit of Mr. Subramanyam which clearly shows that the scheme, as presented by the State of H.P. to the Apex Court, was to be applicable to all the daily rated employees in all the departments in H.P. In view of the affidavit of Mr. Subramanyam, the State cannot now urge that this scheme is not applicable to other departments. In answer to the third question, it is held that the scheme is applicable to all daily waged employees working in any department of State of H.P.

10. The services of the petitioners were regularized with effect from 5.9.2007, 13.9.2007 and 14.9.2007, following the scheme framed by the State Government as applicable to them, however, the petitioners have completed eight years of service in the year 2002 with 240 days in each calendar year. Since the petitioners have completed eight years of service with 240 days in each calendar year, in the year 2002, therefore, they were entitled to conferment of the work charge status on the date when they completed eight years of service. Thus, as per the policy applicable at that time and in view of the law laid down by this Court in Gauri Dutt v. State of HP, CWP 778 of 2006 , decided on 29-12-2007, (2007 Law Suit (HP) 397), the petitioners would be entitled to get the work charge status on completion of eight years of service and other incidental and consequential benefits, subject to their fulfilling the terms and conditions of such policy. Therefore, the respondents are directed to verify and grant such benefits, if applicable, within four months from today. All the officials, who shall deal with this file shall put a date when they receive/forward the file so that the deadwood is identified in case of any lapse.

11. Consequently, the present petition is disposed of in the above terms, so also the pending miscellaneous application(s), if any.