

(2014) 05 P&H CK 0564
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6657 of 2008

Union of India and Others

APPELLANT

Vs

Sher Chand and Another

RESPONDENT

Date of Decision : 20-05-2014

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2014) 3 SCT 810

Hon'ble Judges : Sanjay Kishan Kaul, C.J.; Arun Palli, J

Bench : Division Bench

Advocate : Rajiv Sharma, Advocate for the Appellant; J.R. Syal, Advocate for Respondent No. 1, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, C.J.—Sher Chand, respondent No. 1, was appointed as Valveman with effect from 13.1.1977 through the Employment Exchange. He was born on 5.12.1952 and, thus, would have retired on attaining the age of 60 years i.e. about a year and a half ago. Respondent No. 1 was, however, engaged for casual service from 13.1.1977 to 4.1.1987 for a period of 10 years, but the same was regularised by an order dated 21.11.1997, referring to an earlier instruction dated 17.3.1986 read with the judgment of the Central Administrative Tribunal, Chandigarh Bench, stating that "the casual service rendered by the individuals are to be regularized with consequential reliefs". The order was applicable to both Sher Chand and another employee Shri Karamjit Singh. The Garrison Engineer consequently passed an order on 8.12.1997. The controversy pertains both to the aforesaid order as well as the Assured Career Progression (for short "ACP") Scheme, which is stated to have been introduced in the year 1999. Respondent No. 1 was granted the first upgradation under the ACP Scheme, which is admissible on completion of at least 12 years of service, on 9.8.1999. The second upgradation is admissible on completion of at least 24 years of service and respondent No. 1 claims that this was admissible to him on

13.1.2001 which was, however, not granted. This led to respondent No. 1 filing an application u/s 19 of the Administrative Tribunals Act, 1985, being Original Application No. 346-PB of 2006 that despite representations, he was not being granted the second upgradation and the same should be granted to him with effect from 13.1.2001, along with interest.

2. The aforesaid application was resisted by the petitioner-department before us. It has been averred that as per the letter of Engineer-in-Chief dated 17.3.1986, respondent No. 1 should have been only granted age relaxation on account of rendering the casual service while appointing him against a regular vacancy but, inadvertently, while issuing the order dated 21.11.1997, his services were regularised with consequential relief. Not only that, undisputedly, all payments have been made to respondent No. 1 accordingly, along with allowances. We may note that the letter of the Engineer-in-Chief dated 17.3.1986 is actually qua a particular officer Shri Thilkan KA in the suit filed by him. It is not really a general circular though he was also a Valveman. The petitioner, thus, pleads that on the mistake having been detected almost six years later, a show cause notice dated 28.7.2003 was issued. The show cause notice was a sequitur to an inter-departmental communication dated 22.7.2003 pointing out the mistake in seniority being fixed from the date of casual service rather than of regular service. This show cause notice (Annexure R-2) is cryptic in its terms as it only mentions the fact that the full arrears of pay and allowances for the period of casual service ought not to have been granted to respondent No. 1 and calling upon respondent No. 1 to submit his version within 15 days. It is not known whether any reply was sent or not but suffice to say that even in pursuance to the show cause notice, no action was taken right till the filing of the Original Application before the Tribunal. It is only thereafter that Annexure A-7 dated 1.12.2006 was issued seeking immediate action to regularise the over payment made to the individual at the earliest and for all other purposes to refer to seniority from the date of regular appointment.

3. The petitioner-department, thus, sought to contend that the second upgradation admissible to respondent No. 1 would be on completion of 24 years of service and would, thus, become due on 5.1.2011 and, thus, the same could not have been granted to him with effect from 13.1.2001.

4. A rejoinder was filed by respondent No. 1 annexing therewith Annexure A-6 and Annexure A-7 (already referred to above). Annexure A-6 deals with counting of regularised casual service for purposes of grant of benefits under the ACP Scheme and reads as under:-

Subject:-Regarding Counting of Regularized Casual Service for The Purpose of Grant of Benefits Under ACP Scheme.

1. Reference Minutes of the meeting of the Steering Committee for the 85th Departmental Council (JCM) item No. (e)(ii) regarding counting of the regularized casual service for ACP benefits.

2. It is stated that the matter was taken up with DOP & T and Def/Fin. DOP & T vide their note dated 18.12.2002 (copy enclosed) as well as Def/Fin (AG/PB) note dated 25.11.2003 (copy enclosed) have opined that depending on the circumstances of each case, the individual cases would need to be considered for issuing such orders as may necessary, on a case to case basis for counting of regularized casual service for the purpose of grant of financial upgradation under ACP scheme if appointments were made against the sanctioned vacant posts.

3. All concern may please see and take up such cases to their concerned Integrated Def/Fin.

5. The stand of respondent No. 1, thus, was that there was no mandate for counting only the regular service but, on the other hand, what has been opined aforesaid is that depending on each case, the regularised casual service could be counted for purposes of grant of financial upgradation under the ACP Scheme, if appointments were made against the sanctioned vacant posts. Thus, the very premise of a mistake in issuance of the communication dated 21.11.1997 regularising the services of respondent No. 1 and granting him all consequential reliefs qua casual service, is denied.

6. The Tribunal decided the Original Application vide the impugned order dated 7.1.2008. The application filed by the petitioner was allowed predicated on the aforesaid circular dated 17.10.2006 (Annexure A-6). The earlier circular dealing with the aspect that no benefit of service be extended to temporary status employees after their regularisation for the purpose of ACP was, thus, held to be not applicable on account of this subsequent circular, more so, as the letter dated 21.11.1997 specifically mentioned "with consequential reliefs". Thus, once the entire casual service of respondent No. 1 had been regularised, the Tribunal found no justification in the same not being granted for the purposes of grant of benefit of the second upgradation under the ACP Scheme, holding that the same was so as respondent No. 1 was never granted the temporary status.

7. We have heard learned counsel for the parties at length. In our view, the impugned order of the Tribunal cannot be faulted.

8. It must be noticed at the threshold that the communication dated 21.11.1997 straightway regularised the services of respondent No. 1 against existing vacancy. There was no issue of any temporary status being granted. While doing so, it was specifically observed that casual services were to be regularised "with consequential reliefs". The order issued by the Garrison Engineer in terms thereof on 8.12.1997 also stated so and, thus, all the financial benefits were accordingly granted.

9. The first upgradation under the ACP Scheme was granted soon after the introduction of the Scheme in 1999. Nothing has been placed before us nor the records stated to be available in Court, are stated to contain any material by which we can decipher how the period was calculated for grant of the first upgradation under the ACP Scheme. In fact, both the instructing officer with the

record and the learned counsel for the petitioners expressed complete ignorance about this aspect.

10. It again cannot be doubted that if the casual service is regularised with consequential relief and all financial benefits are paid including for the period of casual service, then, the natural sequitur would be to count the initial date of appointment of casual service for purposes of the upgradation under the ACP Scheme and, thus, the second upgradation would be admissible to respondent No. 1 in the year 2001, as prayed for. This view is fortified by the fact that the first upgradation would have been granted on the same basis as analysed in 1999 as respondent No. 1 could not have completed the minimum 12 years of service, which was only completed from the date of initial appointment on casual basis. Thus, the second upgradation is admissible on the same parameter as the first upgradation.

11. The other aspect to be noticed is that there was some confusion detected in the year 2003 when the aspect was noticed in the inter-departmental communication dated 22.7.2003. This, in turn, resulted in a show cause notice being issued on 28.7.2003. However, even thereafter, nothing happened right till the filing of the Original Application in the year 2006, when the clarification dated 1.12.2006 was sought to be issued whereby the payments already made were sought to be regularised, but seeking to change the seniority from the date of regular appointment. This communication refers to other inter-departmental communications but does not refer to Annexure A-6 dated 17.10.2006, apparently seeking to deal with this issue on case to case basis.

12. We may notice that the writ petition was admitted and the operation of the impugned order stayed on 24.4.2008 noticing the plea of the petitioners based on the Division Bench judgment of this Court in Dilawar Singh vs. Haryana Power Generation Corporation Limited and others, 2006(2) PLR 732. The ratio laid down by the said judgment is that only the regular service would be counted as the qualifying service for purposes of grant of ACP scale and the period of work-charge service cannot be counted. As a proposition, we have no difference of opinion with the same. However, the material fact in the present case is the regularisation order dated 21.11.1997 which itself sought to regularise the services of respondent No. 1 and one other person "with consequential reliefs". Thus, factually, what was sought to be done was that the period of casual service was to be counted as period of regular service for all purposes and, in fact, payments had been made to respondent No. 1 on this basis even for the period he had worked on casual service basis. Thus, casual service already stands confirmed as regular service by a conscious decision of the petitioners and this also finds support from Annexure A-6 which is in the same terms and talks about "regularized casual service". Once the casual service is regularised, it cannot be treated as casual any more. The grant of the first upgradation under the ACP Scheme was also made on this very basis. All that respondent No. 1 prayed for was for grant of second upgradation under the ACP Scheme on the same basis

i.e. on account of regularisation of his casual service and the first upgradation granted under the ACP Scheme, keeping his initial date of appointment for casual service as the date of appointment on account of the regularisation.

13. The second judgment referred to in this behalf is in State of Haryana Vs. Haryana Veterinary and A.H.T.S. Assn. and Another, , which is, again, on the proposition that ad-hoc service and regular service are separate and adhoc service cannot be held to be regular service after regular appointment. At the cost of repetition, we may state that the law enunciated by the Hon"ble Supreme Court has been consistently so but, in the facts of the present case, the casual service itself has been regularised by a conscious decision as regular service and once it is counted as regular service for payment of emoluments as also for grant of the first upgradation under the ACP Scheme, there can be no reason for not granting the second upgradation under the ACP Scheme accordingly. There would have been no occasion to grant the first upgradation under the ACP Scheme if the period of casual service would have been excluded as the petitioner would have barely done two years of service instead of the minimum requirement of 12 years of service, while that 12 years of service has been counted to grant the said upgradation taking the date of initial appointment as that when respondent No. 1 was appointed on casual basis.

14. The view that we are taking is in accordance with the service record of respondent No. 1 and, in fact, after the stated show cause notice dated 28.7.2003, no order had been passed affecting the service conditions of respondent No. 1, which could have been assailed by respondent No. 1. Even till date, nothing has been brought on record nor is pleaded before us that this was so.

15. In view of the aforesaid position, we find no merit in the writ petition and, accordingly, dismiss the same leaving the parties to bear their own costs.

16. The consequential monetary benefits along with interest, as admissible, be remitted to respondent No. 1 within two months from today.