



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 7647 of 2022

Decided on: 25.04.2024

Sh. Ramiya

... Petitioner

Versus

State of Himachal Pradesh & others

... Respondents

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge.

Whether approved for reporting?¹ Yes

For the petitioner : Mr. Nishant Khidtta, Advocate.

For the respondents : Mr. Anup Rattan, Advocate General,
with Mr. Rupinder Singh Thakur,
Additional Advocate General.

Ajay Mohan Goel, Judge (Oral)

By way of this petition, the petitioner has, *inter alia*,
prayed for the following relief:-

“(i) That the impugned order dated 11.04.2019 (Annexure P-7) may kindly be quashed and set aside.

(ii) That the respondents may kindly be directed to consider the case of the petitioner for grant of work charge status after completion of 8 years on daily wage basis as per the Rakesh Kumar judgment w.e.f. 01.01.2006 with all consequential benefits.”

2. The case of the petitioner is that he was initially engaged as a beldar by respondent No.4 during the year 1982-83. His services were illegally dispensed with by the respondent-Department in the year 1987. Feeling aggrieved, the petitioner raised a demand

¹ Whether reporters of the local papers may be allowed to see the judgment?



under the provisions of the Industrial Disputes Act, 1947. This culminated into a reference being made by the Appropriate Government to learned Labour Court. The reference was answered by learned Labour Court in terms of award dated 26.02.2002 (Annexure P-1), wherein the petitioner alongwith other reference petitioners were held entitled to reinstatement with continuity and seniority from the date of receipt of the reference in the Court, i.e. 16.04.1998. Thereafter, the petitioner was reinstated in service and his services were regularized as a beldar w.e.f. 26.11.2008.

3. The petitioner in the year 2010 filed CWP No.5702 of 2010, praying for conferment of work charge status post completion of eight years of service. This Writ Petition was disposed of on 22.09.2010 by Hon'ble Division Bench of this Court with the direction that the matter be considered by the Department in light of the judgment of this court in CWP No.2735 of 2010, titled Rakesh Kumar vs. State of H.P. & others, decided on 28.07.2010 and connected matters. As nothing happened thereafter, the petitioner again filed an Original Application, i.e. O.A. No.6171 of 2016, titled as Sh. Ramiya vs. State of Himachal Pradesh and others, before learned Himachal Pradesh Administrative Tribunal. This Original Application was disposed of by learned Tribunal vide order dated 13.09.2018 (Annexure P-5), directing the Authorities concerned to



decide the case of the petitioner in light of the judgment of the High Court in CWP No.2735 of 2010 (supra). Pursuant to these orders, vide Office Order dated 11.04.2019 (Annexure P-7), the case of the petitioner has been rejected by the Competent Authority by holding that the petitioner was granted seniority by learned Labour Court w.e.f. 16.04.1998 and therefore, the petitioner was not liable to be granted parity of Rakesh Kumar's case in Class-IV category as the work charge status was abolished on 19.04.2005 and converted into regular establishment by the Government.

4. Feeling aggrieved, the petitioner has filed this Writ Petition.

5. Whereas, learned counsel for the petitioner has submitted that non-conferment of work charge status after completion of eight years of service w.e.f. 16.04.1998 is arbitrary and not sustainable in the eyes of law, learned Advocate General has submitted that in view of the law laid down by this Court in Rakesh Kumar's case, the petitioner cannot be conferred work charge status.

6. I have heard learned counsel for the petitioner as well as learned Advocate General and have carefully gone through the pleadings and documents appended with the plaint.

7. This Court is of the considered view that the petitioner is entitled for the relief of conferment of work charge status after



completion of eight years of service on daily wage basis as counted from 16.04.1998, i.e. post completion of eight years of service as from 16.04.1998.

8. The issue as to whether the conferment of work charge status is dependent on the establishment being a work charge establishment stands settled. Hon'ble Division Bench of this Court in State of Himachal Pradesh and Ors. vs. Sh. Ashwani Kumar, CWP No. 3111 of 2016, decided on 10.05.2018, while confirming an order passed by the erstwhile Tribunal, held as under:-

6. Having carefully perused material available on record, especially judgment rendered by this Court in Ravi Kumar v. State of H.P. and Ors, as referred herein above, which has been further upheld by the Hon'ble Apex Court in Special Leave to appeal (C) No. 33570/2010 titled State of HP and Ors. v. Pritam Singh and connected matters, this Court has no hesitation to conclude that there is no error in the finding recorded by the learned Tribunal that work charge establishment is not a pre-requisite for conferment of work charge status. The Division Bench of this Court while rendering its decision in CWP No. 2735 of 2010, titled Rakesh Kumar decided on 28.7.2010, has held that regularization has no concern with the conferment of work charge status after lapse of time, rather Court in aforesaid judgment has categorically observed that while deciding the issue, it is





to be borne in mind that the petitioners are only class-IV worker (Beldars) and the schemes announced by the Government, clearly provides that the department concerned should consider the workmen concerned for bringing them on the work charged category and as such, there is an obligation cast upon the department to consider the case of daily waged workman for conferment of daily work charge status, being on a work charged establishment on completion of required number of years in terms of the policy. In the aforesaid judgment, it has been specifically held that benefits which accrued on workers as per policy are required to be conferred by the department.

7. *Subsequent to aforesaid decision, this Court while disposing of CWP No. 2398 of 2016 titled HPSEB and Anr. V. Nanak Chand and Ors, (alongwith connected matters), upheld the decision rendered by the learned Tribunal, whereby the respondent-electricity board was directed to consider the case of the applicant for conferment of work charge status on completion of ten years of service with all benefits incidental thereto. It may be noticed that decision rendered by the learned Tribunal in OA No. 3207 of 2015 in Narotam Singh v. HPSEB Ltd. and Ors, dated 14.12.2015, which subsequently came to be assailed in CWP No. 3301/2016, was squarely based upon decision rendered by the Hon'ble Apex Court in Bhagwati Prasad v. Delhi State Mineral Development Corporation (1990) 1 SCC*

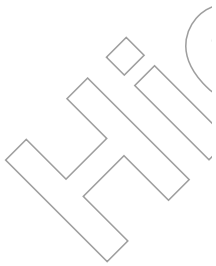




361, as well as judgment rendered by this Court in CWP No. 9970 of 2012 titled *Laxmi Devi v. State of H.P. and ors.*, decided on 26.11.2012.

8. Mr. A.K. Gupta, learned counsel representing the respondent has also brought factum to our notice with regard to the implementation of similar directions as issued in the present case by the various departments pursuant to the directions issued by the learned Tribunal as well as this Court in the case of other similarly situate persons. Mr. Gupta also invited attention of this Court to the judgments having been passed by this Court in CWP No.2735 of 2010, dated 28.7.2010, titled as *Rakesh Kumar v. State of H.P. and others*; 13.5.2013, passed in CWP No.1906 of 2013-A, titled as *Hira Singh v. HPSEB Ltd. & anr.*; 14.8.2014, passed in CWP No.2551 of 2014, titled as *H.P. State Electricity Board and another v. Bhag Singh and others*; 10.9.2014, passed in CWP No.179 of 2014, titled as *Beg Dass and others v. HPSEB Ltd. and anr.*; and 20.11.2014, passed in LPA No.621 of 2011, titled as *H.P. State Electricity Board Limited and others v. Jagmohan Singh*, perusal whereof clearly suggests that benefit as prayed for in the instant petition stands duly accorded to other similarly situate persons.

9. Consequently, in view of the aforesaid discussion as well as law relied upon, we see no reason to interfere with the well reasoned judgment passed by the learned Tribunal and as such, present petition fails and dismissed accordingly.”





9. The judgment passed by this Court in abovementioned case was assailed by the Department before Hon'ble Supreme Court of India and the findings returned by this Court were upheld by the Hon'ble Supreme Court in Civil Appeal No. 5753/2019, in the following terms:-

"1. Leave granted.

2. We have issued notice in this matter limited to the question of grant of back-wages. The respondent was engaged as a daily wager (Class IV) on 01.08.1994. Thereafter, he was given the post of Work Inspector in Class III that too on the daily wages basis, in view of the decision of the Government on completion of eight years of service. On 09.06.2006, regularization policy was framed and the appellant was regularized on 21.12.2006 on the temporary post of Work Inspector. Thereafter, he filed a writ petition in the High Court on 14.11.2013 seeking work charge status with effect from 01.01.2003 and other incidental benefits. The High Court, at the first instance, considered and rejected the representation of the respondent vide order dated 26.03.2014. The respondent filed another O.A. No.412 of 2016 before the Central Administrative Tribunal. The Tribunal has quashed the order and has ordered that on completion of eight years as daily wager work charge status can be conferred.

3. We are not disturbing the finding of the Tribunal,





which was affirmed by the High Court, with respect to the conferral of the status of the work charge from 01.01.2003. However, as regularization has been made only in the year 2006, obviously, notional benefit could have to be granted as the petition was initially filed in the year 2013.

4. Thus, we make the modification that the respondent would be entitled only for notional benefits of the order passed by the Central Administrative Tribunal. Accordingly, with the aforesaid modification in the order of the Central Administrative Tribunal and the High Court, the appeal is disposed of."

10. While referring to this judgment subsequently, another Hon'ble Division Bench of this Court in LPA No. 165 of 2021, titled as State of H.P. and others vs. Surajmani and another, was pleased to hold that in Ashwani Kumar's case, it was held specifically that work charge establishment was not a prerequisite for conferment of work charge status and the decision given by this court was upheld by Apex Court.

11. Incidentally, Hon'ble Division Bench of this Court in State of H.P. and others vs. Surajmani and another (supra) has also referred to its judgment in Rakesh Kumar in Para-55 thereof and observed that the observation made in Rakesh Kumar's case to the effect that question of conferment of work charge status did not



arise in case the establishment ceases to to be a work charge establishment, was made without there being any issue raised in this regard and admittedly even in Rakesh Kumar's case the petitioners were granted work charge status after completion of service on daily wage basis.

12. In view of these observations made by by Hon'ble Division Bench of this Court in Suraj Mani's case (supra), the relief of conferment of work charge status after completion of eight years of service as from 16.04.1998 could not have been denied to the petitioner on the ground that the establishment ceased to be work charge establishment. In fact, otherwise also these decisions of the Department or the Government cannot in one sweep wipe away the right that accrues to an employee, more so a Class-IV daily wage employee upon completion of eight years of service, i.e. that right of conferment of work charge status when the Department is not in a position to regularize the service of the incumbent at the said stage.

13. Accordingly, in view of the above discussion, this Writ Petition is allowed and respondents are directed to confer work charge status to the petitioner post completion of eight years of service as counted from 16.04.1998, with monetary benefits which shall be notional as upto three years before the filing of the Writ Petition and thereafter actual monetary benefits shall be paid.



14. The petition stands disposed of. Pending miscellaneous application(s), if any also stand disposed of accordingly.

(Ajay Mohan Goel)
Judge

April 25, 2024
(Rishi)

