

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 3616 of 2020.

Reserved on : 10th March, 2025.

Decided on : 20th March, 2025.

Bhima Ram

Versus

...Petitioner.

State of H.P. & Ors.

....Respondents.

Coram:

The Hon'ble Mr. Justice Satyen Vaidya, Judge.

Whether approved for reporting?¹ Yes.

For the Petitioner: Mr. P.D. Nanda, Advocate.

For the respondents: Mr. Hemant K. Verma, Dy. A.G.

Satyen Vaidya, Judge.

By way of instant petition, the petitioner has prayed for grant of following substantive reliefs:-

- "i). Respondent may be directed to produce complete service record of petitioner particularly complete muster rolls for the period from 1988 to 1995 pertaining to IPH Sub-Division where petitioner was working along with list of labourers with their initial date of appointment when services of petitioner were illegally dispensed with in 1995.*
- ii). That after perusal of record if the Court comes to a conclusion that on account of fictional breaks or breaks given due to allegedly non-availability of work by flouting the principle of last come first go, the respondents may be directed to reckon the*

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

period of service of the petitioner on daily wages from 29.08.1988, holding the petitioner entitled to work-charged status and regularization with effect from 01.01.2001 with all consequential benefits.

- iii) That if the prayer made under item (ii) does not find favour, the respondents may be directed to confer the status of work-charged/regularization from 01.01.2003 instead from 01.01.2004 as the petitioner had served the department for minimum period of 240 days in the calendar year 1995, with consequential benefits.*
- iv) That the retirement order dated 12.07.2010, Annexure P-3, may be set aside and respondents may be directed to revise the said retirement order to make the same effective from 31.01.2012 instead from 12.07.2010 with all consequential benefits.*
- v) That order dated 10.06.2015, Annexure P-7, may kindly be set aside and the respondents may be directed to prepare pension papers of the petitioner in a time bound manner as he is entitled to pension in terms of CCS Pension Rules, 1972 and pension and other retirement benefits may be paid to him from due date with interest."*

2. The petitioner was appointed as Beldar on daily wage basis in the respondent-department w.e.f. 21.09.1988. The services of petitioner were terminated on 01.11.1993. Petitioner assailed his termination by way of O.A.(M) No. 403/94 before the erstwhile H.P. State Administrative Tribunal. O.A. (M) No.403/94 filed by the petitioner was disposed of vide order dated 21.11.1994 with direction to the

Chief Engineer (North) Dharamshala to consider and decide the case of the petitioner in accordance with law.

3. The representation of the petitioner was decided by the Chief Engineer (North) Dharamshala vide communication dated 20.02.1995. It was observed that notwithstanding the merits of the case, the petitioner had already been engaged by the Executive Engineer, IPH Division Sundernagar.

4. Petitioner was retired from service vide office order dated 12.07.2010. Post his retirement, the petitioner filed CWP No. 8395 of 1994 before this Court seeking the relief with respect to grant of work charge status/regularization on completion of stipulated number of years. CWP No. 8395 of 1994 was decided on 28.11.2014 by a Division Bench of this Court with liberty to petitioner to approach the respondents and the respondents were directed to decide the case of the petitioner on its merits in accordance with law. Consequently, office order dated 23.07.2015 was passed by the Executive Engineer, IPH Division Sundernagar. It was observed that the petitioner did not complete 240 days continuous service from the years 1993 to 1995, though his date of engagement was 01.03.1993. He was found to have completed eight years of continuous daily wage service on 31.12.2003. He was

accordingly granted work charge status w.e.f. 01.01.2004 and regularization w.e.f. 12.12.2005.

5. Petitioner thereafter filed another Original Application being O.A. No. 4349 of 2015 before the erstwhile H.P. State Administrative Tribunal seeking pensionary benefits besides other reliefs. He sought the benefit of judgment passed by Hon'ble Supreme Court in Civil Appeal No. 6309 of 2017, titled Sunder Singh vs. State of H.P. & Ors. O.A. No. 4349 of 2015 was decided by the H.P. State Administrative Tribunal on 14.03.2019 in following terms:-

*"4. In view of the above, the original application is disposed of in terms of the aforementioned order in **Civil Appeal No. 6309 of 2017 and the connected matters** with a direction to the respondents/competent authority that subject to the above verification and on finding the applicant to be similarly situate as above, benefit of the said order shall also be extended to him alongwith consequential benefits, if any, as per law, within three months from the date of production of certified copy of this order along with copy of the aforesaid order in Civil Appeal No. 6309 of 2017 and the connected matters, before the said authority by the applicant."*

6. In compliance to the order passed by the H.P. State Administrative Tribunal in O.A. No. 4349 of 2015, the Executive Engineer, IPH Division Sundernagar passed office order dated 10.06.2019 denying to the petitioner benefit of

pension. It was held that the petitioner had regular service of 6 years, 6 months and 12 days calculated w.e.f. 01.01.2004 to 12.07.2010 and by granting the benefit of judgment in **Sunder Singh's case** (supra) the petitioner was held entitled to addition of one year on the basis of daily wage service of 8 years rendered by him. Thus, the total service of 7 years, 6 months and 12 days was credited to the petitioner, which fell short of the requisite qualifying service of ten years.

7. The petitioner has assailed the office order dated 10.06.2019 (though wrongly mentioned as 10.06.2015) by way of instant petition. According to the petitioner, he had completed 240 days of daily wage service in the year 1995 also. Reliance has been placed on the information received by the petitioner under Right to Information Act in the shape of copies of muster rolls for the year 1995. It is also alleged that the petitioner had wrongly been superannuated at the age 58 years. On such premise, petitioner claims to have completed the qualifying service making him entitled for pensionary benefits.

8. The respondents have filed reply and have reiterated their stand. Objection has been raised that the petition is barred by principle of constructive res judicata as also under Order 2 Rule 2 of the CPC. It is submitted that the

petitioner was superannuated in the year 2010 and he had filed CWP No.8395 of 2014 and O.A. No. 4349 of 2015 before filing the instant petition without making any claim for pensionary benefits therein. The period of daily wage service and regular service rendered by the petitioner is stated to have been correctly calculated. The retirement of petitioner at the age of 58 years has also been stated to be in accordance with the Rules. It has further been stated that the petitioner was not entitled to pensionary benefits as his appointment was subsequent to the Government Notification dated 15.05.2003 when the CCS Pension Rules were made inapplicable to the State Government employees.

9. I have heard learned counsel for the parties and have also gone through the entire record carefully.

10. The impugned office order (Annexure P-7) dated 10.06.2019 (though wrongly mentioned as 10.06.2-15) reveals the admission on the part of the respondents that the petitioner had rendered continuous daily wage service for 8 years w.e.f. 01.01.1996 to 01.12.2003 and thereafter regular service for six years, 6 months and 12 days from 01.01.2004 to 12.07.2010. Thus, according to the respondents, petitioner had rendered total eligible regular service of 7 years, 6 months and 12 days by granting him the benefit of judgment

passed by the Hon'ble Supreme Court in Civil Appeal No. 6309 of 2017, titled Sunder Singh vs. State of H.P. & Ors.

11. Indisputably, the petitioner was engaged on daily wage basis prior to 10.05.2001 and his services were regularized thereafter. The State Government vide notification dated 21.02.2018 has amended the fundamental Rule 56 by adding 3rd proviso thereto in following manner:-

“Provided further that a Class-IV Government servant appointed on part-time/daily wages basis prior to 10.05.2001 and regularized on or after 10.05.2001 shall retire from service on the afternoon of the last day of the month in which he attains the age of 60 years.”

12. A Full Bench of this Court vide judgment dated 22.02.2022 in **CWP No.2711 of 2017, titled as Baldev vs. State of Himachal Pradesh as under** has held as under:-

“7. There is now no confusion regarding employees falling in para 6(ii)(a) above. These employees can continue to serve till they attain the age of 60 years. However, an anomalous situation has developed amongst the employees falling in para 6(ii)(b) & 6(ii)(c). The employees falling in above para 6(ii)(b) and 6(ii)(c) for all practical purposes belong to the same category and are similarly situated. Both sets of employees were engaged on daily wage basis prior to 10.05.2001 and regularized after 10.05.2001. Such of the employees engaged on daily wage basis prior to 10.05.2001 and regularized after 10.05.2001, if were in service on 21.02.2018, will continue to serve till they attain the age of 60 years. On the other hand, such of the employees, who were engaged on daily wage basis

prior to 10.05.2001 and regularized after 10.05.2001, but have retired before the issuance of notification dated 21.02.2018, will not get the benefit of notification dated 21.02.2018. This to our mind is wholly discriminatory. Similarly situated employees are being treated differently. The employees, who were engaged on daily wage basis prior to 10.05.2001 and regularized after 10.05.2001, constitute one homogenous class. Differential treatment to the employees falling in same homogenous class is impermissible. In fact, amendment carried out in F.R. 56(e) on 21.02.2018 suggests that the date of regularization will have no impact upon the superannuation age. Date of engagement is the determinative factor. If a daily wager is engaged prior to 10.05.2021, then he is entitled to serve till 60 years of age irrespective of date of his regularization. This was held so in Bar Chand's case, decided on 21.10.2010. However, at the time of decision in Bar Chand's case, the amendment dated 21.02.2018 had not been carried out in F.R. 56(e). Therefore, though later judgment in Chuni Lal's case dated 22.11.2011, holding the decision in Bar Chand's case as per incuriam cannot be faulted as it was based upon strict interpretation of F.R. 56(e) as amended by the State at that time. However, in view of subsequent amendment of F.R. 56(e) on 21.02.2018 in the interregnum, situation has undergone further change. Reference made to the larger Bench is not only to decide about the inconsistency in the decisions referred therein, but also to put at rest related issues coming or likely to arise before different benches. Therefore, we hold that:

(i). *There is an apparent inconsistency or conflict between the decisions referred to in the reference order dated 28.12.2019, which lies in a very narrow compass, as noticed in para 6(i) above. In Chuni Lal's case, the decision rendered in Bar Chand's case was held to be per incuriam. The decision in Chuni Lal's case was based upon interpretation of F.R. 56(e) as it existed in the State at that time. But the judgment delivered in Tara Chand's case did not notice the decision in Chuni Lal's case. The judgment in Gian Singh's case in respect of continuation in service was based upon the verdict in Tara Chand's case. In both these judgments, learned Single Judges did not notice the judgment delivered in Chuni Lal's case. In Letters patent appeal, the Division Bench while affirming the judgment passed by the Id. Single Judge in Gian Singh's case though did not notice the judgment rendered in Chuni Lal's case however the amendment dated 10.5.2001 reducing the superannuation age from 60 to 58 years was held to be not applicable to the writ petitioner, who was held entitled for regularisation prior to 10.5.2001.*

(ii). *Inconsistency between Bar Chand and Chuni Lal now stands, not just resolved, but rather dissolved, in view of notification dated 21.02.2018 amending F.R. 56(e), issued by the State, which has now reinforced and reiterated what was held in Bar Chand's case, i.e. date of regularization of a class IV daily wager whether prior or after 10.05.2001, will make no difference to the age of his continuing in service. It is the date of engagement, which is the decisive factor. If date of engagement/appointment is prior to 10.05.2001, the Class IV employee will continue to serve till 60 years of age. In case, it is*

later than 10.05.2001, then restriction in age upto 58 years will apply.

(iii). There cannot be any discrimination amongst similarly situated ClassIV employees belonging to one homogenous class. Therefore the retirement date, of such of those employees, who had been engaged on daily wage basis prior to 10.05.2001, but regularized after 10.05.2001 and have actually been retired prior to the issuance of notification dated 21.02.2018 at the age of 58 years, shall be deemed to be the date when they otherwise attained the age of 60 years. Since these employees have not actually worked beyond the age of 58 years, therefore, they will not be entitled to the actual monetary benefits of wages/salary etc. for the period of service from the date of their actual retirement till deemed dates of their retirement. However, they will be entitled to notional fixation of their pay for the period in question for working out their payable pension and payment of consequential arrears of pension accordingly.

Reference is accordingly answered. The writ petitions be now placed appropriately before the respective Benches."

13. Thus applying the dictum of Baldev Singh's case (supra) to the case of petitioner, he shall be deemed to have retired on attaining the age of 60 years i.e. w.e.f. 12.07.2012. In this manner, a period of two years is to be added towards the qualifying service of petitioner to the period of 7 years 6 months and 12 days calculated by the respondent vide annexure Annexure P-7, dated 10.06.2019. In this manner,

the petitioner has rendered total eligible regular service of 9 years, 6 months and 12 days.

14. A Full Bench of this Court vide judgment dated 28.09.2021 rendered in **CWP No. 3598 of 2019, titled as Balo Devi vs. State of H.P & Ors.**, while interpreting the dictum in Sunder Singh's case (supra) bearing Civil Appeal No. 6309 of 2016 held that even after granting the benefit of one year regular service for every five years on daily wage service, the employee should have completed 10 years of service.

15. The aforesaid judgment rendered by the Hon'ble Full Bench in **Balo Devi's case (supra)** was assailed before the Hon'ble Supreme Court in **Civil Appeal No. 4792 of 2022, titled as Balo Devi vs. State of H.P. & Ors.** The Hon'ble Supreme Court while disagreeing with the interpretation given by the Hon'ble Full Bench of this Court has held as under:-

"On the other hand, according to Mr. P.S. Patwalia, learned Senior Advocate appear for the state, if after giving benefit of one year of regular service for every completed five years as a daily wager, the resultant component were to cross ten years, only in such circumstances, the benefit as extended by this Court in its order could be made available.

We find it difficult to accept the submission of Mr. Patwalia. If the submission is accepted, the last line of paragraph 6 would lose any significance or meaning.

The intent of this Court was quite clear that:-

(a) The services rendered as a regular employee may first be computed.

(b) To the service as rendered to above, the component at the rate of one year of regular service of every five years of service as a daily wager, be added.

(c) If both the components as detailed in Paras A & b hereinabove, take the length of service to a level of more than eight years but less than ten years, in terms of last sentence of paragraph 6 of the Order, the services shall be reckoned as ten years."

16. By applying the ratio of the aforesaid judgment to the facts at hand, it is clearly evident that the petitioner has rendered more than 8 years of service though less than 10 years of service and for such reason his service is to be reckoned as 10 years, which makes him qualified for pensionary benefits.

17. The objection of the respondents that the appointment of the petitioner was to be reckoned from the date of his regularization i.e. 01.01.2004, which was after issuance of notification dated 15.05.2003 from which date CCS Pension Rules were made inapplicable to the State employees also deserves to be rejected. Firstly, for the

reason that it has been upheld by a Division Bench of this Court vide judgment dated 18.12.2028 passed in **CWP No. 2384 of 2018, State of H.P. & Ors. vs. Matwar Singh & Anr.**, that the work charge service followed by regularization was liable to be counted as component of qualifying service and secondly, now the State Government has made the provisions of CCS Pension Rules applicable to all its employees.

18. Another objection of the respondents that the petition is barred by principle of constructive res judicata and Order 2, Rule 2 of the CPC also cannot be sustained. The petitioner had retired in July, 2010 without benefit of conferment of work charge status or regularization in terms of the policy adopted by the State Government. Petitioner had approached the Court in the year 2014 for grant of benefit of work charge/regularization. His petition was not decided on merits and directions were issued to the competent authority to consider the case of the petitioner. It was on such consideration that the benefit of work charge and regularization was granted to the petitioner. Once the petitioner got such benefit, he immediately made a claim for pensionary benefits in the year 2015 which was finally rejected by the respondents in the year 2019. Thus, the

petition cannot be said to suffer from principle of constructive res judicata or Order 2, Rule 2 of the CPC as the petitioner had sought the relief of pensionary benefits at the first available opportunity.

19. In result, the petition is allowed and the respondents are directed to grant of pensionary benefits to the petitioner from the date of his retirement i.e. 12.07.2012. The arrears, however, shall be restricted to the period of three years immediately prior to the date of filing of this petition.

20. Pending applications, if any, also stand disposed of.

(Satyen Vaidya)
Judge

20th March, 2025.
(jai)