

Chandu Lal Vs State Of Himachal Pradesh And Others

Court: High Court Of Himachal Pradesh

Date of Decision: Sept. 21, 2020

Acts Referred: Constitution Of India, 1950 " Article 14, 38, 39

Hon'ble Judges: Ajay Mohan Goel, J

Bench: Single Bench

Advocate: L.N. Sharma, Somesh Raj, Dinesh Thakur, Sanjeev Sood

Final Decision: Allowed

Judgement

Ajay Mohan Goel, J

1. Learned Additional Advocate General, on instructions, submits that the Court may pass appropriate orders on the merits of the case.

2. Brief facts necessary for the adjudication of present petition are as under:

The petitioner was initially engaged as a Beldar on daily wage basis in the year 1994. His services stood regularized w.e.f. 01.01.2002. He

superannuated from service on 31.08.2011 after completion of 9 years and 8 months of total regular service with the respondents. His claim is that in

terms of the law declared by the Hon'ble Supreme Court in Sunder Singh Vs. The State of Himachal Pradesh and others, Civil Appeal No. 6309

of 2017, decided on 8th March, 2018, the services rendered by him on daily wage basis have to be taken into consideration by treating five years

service so rendered as one year service rendered on regular basis for pension to enable him to fulfill the minimum eligibility criteria of 10 years service

for the purpose of getting pension post superannuation.

3. The case of the petitioner is resisted by the State, inter alia, on the ground that the judgment which has been passed by the Hon'ble Supreme

Court in Sunder Singh's case (supra) has to be read only vis-à-vis those persons who stood regularized in terms of the decision so rendered by

the Hon'ble Supreme Court in Mool Raj Upadhyaya Vs. State of H.P. and others 1994 Supp.(2) SCC 31 6and as the petitioner is not the

beneficiary of the judgment in Mool Raj Upadhyaya's case, therefore, he is not entitled for the relief as claimed.

4. I have heard learned counsel for the parties and have also gone through the pleadings as well as the documents appended therewith.

5. It is not in dispute that the petitioner was initially appointed as a Beldar on daily wage basis in the year 1994. It is also not in dispute that his services

were regularized in the year 2007, however, the same were ordered to be regularized w.e.f. 01.01.2002. The petitioner superannuated from service of

the respondent on 31.08.2011 after completion of 9 years and 8 months service on regular basis. It is also not in dispute that had the petitioner

completed 10 years of service, then he would have been eligible for grant of pension.

6. Hon'ble Supreme Court in *Sunder Singh Vs. The State of Himachal Pradesh and others*, Civil Appeal No. 6309 of 2017, decided on 8th March,

2018 has been pleased to hold as under:

"2. The appellants represent class of Class IV employees who were recruited initially as daily wagers such as Peon/Chowkidar/

Sweeper/Farrash/Malis/Rasoia etc. Their services, thereafter, were regularized pursuant to the decision of this Court in *Mool Raj Upadhyaya Vs.*

State of H.P. and Ors. 1994 Supp(2) SCC 316 Regularization was after 10 years of service.

3. It is undisputed that the post-regularization an employee who had served for 10 years is entitled to pension for which work charge service is

counted. Earlier, in terms of O.M. dated 14.05.1998, 50% of daily wage service was also counted for pension after regularization but the rules have

undergone change.

4. Since the appellants have not rendered the requisite 10 years of service they have been denied pension.

5. Even though strictly construing the Rules, the appellants may not be entitled to pension. However, reading the rules consistent with Articles 14, 38

and 39 of the Constitution of India and applying the doctrine of proportionate equality, we are of the view that they are entitled to weightage of service

rendered as daily wagers towards regular service for the purpose of pension.

6. Accordingly, we direct that w.e.f 01.01.2018, the appellants or other similarly placed Class IV employees will be entitled to pension if they have

been duly regularized and have been completed total eligible service for more than 10 years. Daily wage service of 5 years will be treated equal to one

year of regular service for pension. If on that basis, their services are more than 8 years but less than 10 years, their service will be reckoned as ten

years.

7. The ratio of the judgment so delivered by Hon'ble Supreme Court is that the services which have been rendered by a daily wager on daily

wage basis before his regularization are not non est and in a situation where the person is not likely to receive pension after superannuation because

there is some short fall in the service which renders one eligible for receipt of pension, then the benefit of past service rendered by such a person on

daily wage basis, has to be given by treating five years service as one year of regular service for pension.

8. The contention of the State that judgment of the Hon'ble Supreme Court in Sunder Singh's case (supra) has to be read only vis-à-vis

those persons who stood regularized in terms of the decision so rendered by the Hon'ble Supreme Court in Mool Raj Upadhyaya's case

(supra), in my considered view, cannot be said to be correct interpretation of the judgment of the Hon'ble Supreme Court. Once the Hon'ble

Supreme Court has been pleased to lay down the law that services rendered for five years on daily wage basis is to be treated as one year of regular

service for calculating the service for grant of pension, then the same cannot be confined to the beneficiaries of the judgment in Mool Raj

Upadhyaya's case.

9. The things can be perceived from another perspective also. The judgment of the Hon'ble Supreme Court in Mool Raj Upadhyaya's case is

to the extent that the Policy of the State Government with regard to regularization of the employees in various Departments of the State stood

approved by the Hon'ble Supreme Court in terms of the said judgment with modification and the effect of the said judgment was that once a daily

wager completed 10 years of service with at least 240 days in each calendar year, then the same confers upon such an employee the right of

regularization. Subsequently, what the State has done is that it has come up with different regularization Policies at different time and the period of

service on daily wages stands reduced from 10 years to 8 years etc. In this view of the matter also, it cannot be said that the judgment of the

Hon'ble Supreme Court in Sunder Singh's case (supra) will not be applicable to persons like the petitioner, because the petitioner is also the

beneficiary of the Policy of the State Government, wherein, his services were regularized post completion of requisite number of years service.

10. Accordingly, this petition is allowed and the respondents are directed to treat five years service rendered by the petitioner on daily wage basis as

one year regular service for the purpose of conferring the benefit of pension to him. Pensionary benefits be released to the petitioner within a period of

three months from today. In the event of the same being done within the said period, the State shall not be liable to pay any interest upon the arrears,

however, in case the arrears of pension are not paid within a period of three months from today, then the arrears shall entail interest @6% per annum

as from the date of filing of the petition. Miscellaneous applications, if any, also stand disposed of.