

(2002) 10 P&H CK 0042

High Court Of Punjab And Haryana At Chandigarh

Case No: C.M. No. 23456 of 2002 and C.W.P. No. 1925 of 2000

Om Bahadur

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision: Oct. 25, 2002

Acts Referred:

- Constitution of India, 1950 - Article 226, 227

Citation: (2003) 133 PLR 148

Hon'ble Judges: Viney Mittal, J

Bench: Single Bench

Advocate: Abha Rathore, for the Appellant; Ravi Dutt Sharma, A.A.G., for the Respondent

Final Decision: Allowed

Judgement

Viney Mittal, J.

C.M.No. 23456 of 2002 has been filed by the petitioner for fixing the case at an early actual date on the plea that the controversy raised in the case is duly covered by a Judgment rendered in Tek Chand and Ors. v. State of Haryana and Ors. 2001(3) R.S.J. 604.

2. I have heard Ms. Abha Rathore, learned counsel appearing for the petitioner and Sh. Ravi Dutt Sharma, Assistant Advocate General, Haryana appearing for the respondents.

3. In my considered opinion, it is in the interest of justice that the main case itself be decided at this stage. Therefore, with the consent of the parties, I take the main case on board today itself for decision.

4. The present petition under Articles 226 and 227 of the Constitution of India has been filed by the petitioner Om Bahadur for the issuance of a writ in the nature of certiorari for quashing the order dated January 13, 2000 whereby the claim of the petitioner for regularisation of the services has been declined by respondent No. 2.

A copy of the aforesaid order dated January 13, 2000 has been appended as Annexure P-4 with the petition.

5. Facts.

The petitioner states that he was appointed as Beldar by respondent No. 2 Executive Officer, Provincial Circle No. 2, Public Works Department, Roads and Buildings Branch, Sonapat on May 25, 1999. He claims that since his initial appointment with effect from the aforesaid date, he is continuing in his post and performing his duties regularly. The State Government of Haryana formulated a policy for regularisation of service of certain work charged/casual/daily rated employees vide communication dated March 7, 1996 issued by the Chief Secretary to Government of Haryana to all the Heads of Department.

The aforesaid policy was subsequently modified vide communication dated March 18, 1996. The aforesaid communication have been appended as Annexure P-I and P2, respectively with the writ petition. As per the aforesaid two policies all such incumbents, namely work charged casual or daily rated employees who had completed three years of service as on January 31, 1996 and had put in work of minimum 240 days in each year and with a break not more than one month at a time in any one year were entitled to the regularisation of their services. The petitioner claimed that his case was covered under the aforesaid policies. He made a representation for regularisation of his services. Respondent No. 2 in pursuance of a direction issued by this Court in a writ petition filed by the petitioner, earlier in this court, passed an order dated January 13, 2000, whereby the claim of the petitioner was rejected on the ground that he has not completed three years of service as on January 31, 1996.

The petitioner is aggrieved against the aforesaid rejection order and, therefore, has approached this Court through the present petition. A further claim has been made to issue directions to the respondents to regularise his services.

The respondents have put in appearance pursuant to a notice issued to them. A written statement has been filed by them. The claim of the petitioner has been contested. It is stated that the petitioner does not fulfil the condition of break of more than one month in service for the year, 1994 and therefore, his services could not be regularised.

6. I have heard Ms. Abha Rathore, learned counsel for the petitioner and Sh. Ravi Dutt Sharma, learned Assistant Advocate General, Haryana appearing for the respondents and with their assistance have also gone through the record of the case.

7. Ms. Abha Rathore submits that along with the petition the details of attendance of persons on temporary muster-roll showing the attendance of the petitioner Om Bahadur from the year 1992 till the year 1996 in a tabulated form, has been

appended as Annexure P-5 with the writ petition. The aforesaid proforma has been issued by the Sub Divisional Engineer, Provl. Sub Divn. No. 1, Sonapat. Ms. Rathore on the basis of the aforesaid details of attendance of the petitioner submits that it is apparent that from May 1992, the petitioner has been in continuous employment of the respondent No. 2. It is only for the month of August 1994 that no details have been furnished with regard to the work of the petitioner. Ms. Rathore submits that in fact that was a period when the State Government of Haryana had put a ban on muster-rolls and therefore, it was for that reason that the attendance of the petitioner could not be marked.

8. On the other hand Shri Ravi Dutt Sharma, Assistant Advocate General, Haryana submits that as per the aforesaid policies Annexure P-1 and P-2, issued by the State Government of Haryana, it was incumbent upon a person claiming regularisation to strictly fall within the parameters of the said conditions and it was only thereafter that he could claim regularisation. Sh. Sharma submits that since the petitioner was having a break of more than 30 days in the year 1994, therefore, his claim for regularisation of his services could not be entertained.

9. I have given my thoughtful consideration to the entire matter and in my considered opinion, the present writ petition deserves to succeed. The petitioner has appended an authenticated details of his attendance from the year 1992 till January 31, 1996. The aforesaid details have been duly furnished by the Sub Divisional Engineer, Provl. Sub Divn. No. 1 Sonapat himself. The respondents in their written statement merely submitted as follows:-

"Regarding Annexure P/5 it is submitted that Sub Divisional Engineer, Provl. Sub Divn. No. 1, Sonapat is not competent to appoint/dismiss the service of class IV employees, however it seems the then Sub Divisional Engineer, Provl. Sub Divn. No. 1 Sonapat inadvertently signed some statement regarding attendance of the petitioner for information to the respondent No. 2, office for scrutiny the case of petitioner in his office which should not be treated as final."

10. It is thus apparent that the details furnished by the petitioner vide document Annexure P-5 are not disputed by the respondents at all. With regard to the break in service in the month of August 1994, the explanation submitted by Ms. Rathore with regard to there being a ban Muster-rolls, is also not disputed by the respondents. As authoritative pronouncement by a Full Bench of this Court in Tek Chand and Ors. v. State of Haryana and Ors. (2001)129 P.L.R.1 (F.B.), it has been held that benefit of regularisation can be denied only in case where the break is attributable to an employee and not in a case where the employee has caused the break.

11. In view of the above discussion and the law laid down in Tek Chand's case (supra), I have no hesitation in allowing the present writ petition. Accordingly the present writ petition is allowed and while quashing the order Annexure P-4, the

respondents are directed to regularise the services of the petitioner w.e.f. February 1, 1996. The petitioner shall be entitled to all consequential benefits arising from such regularisation. The respondents are further directed to implement these directions and release all benefits to the petitioner within a period of three months from the date a certified copy of the order is received by them. No costs.