

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.1273 of 2018 a/w

CWP No.1279 of 2018

Decided on: 30.4.2019

1. CWP No.1273 of 2018

State of Himachal Pradesh & others Petitioners.

Versus

Narain Dass ...Respondent

2. CWP No.1279 of 2018

State of Himachal Pradesh & others Petitioners.

Versus

Rajesh Kumar ...Respondent

Coram

The Hon'ble Mr. Justice Surya Kant, Chief Justice.

The Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting?¹ Yes.

For the Petitioner(s): Mr. Ashok Sharma, Advocate General,
with Mr. Adarsh Sharma, Mr. Ashwani Sharma & Mr. Nand Lal Thakur, Additional Advocate Generals and Ms. Divya Sood, Deputy Advocate General.

For the Respondent(s): Mr. Parveen Chauhan, Advocate.

Sandeep Sharma, Judge (oral):

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

Since common question of law is involved in both the writ petitions, same were tagged together vide order dated 6.9.2018 and are being disposed of vide this common judgment.

2. By way of instant writ petitions filed under Article 226 of the Constitution of India, petitioners have laid challenge to the impugned judgments dated 4th September, 2017, passed by H.P. State Administrative Tribunal in OA No.4292 of 2016, titled as ***Narain Dass versus State of Himachal Pradesh and others*** and in OA No.3063 of 2015, titled as ***Rajesh Kumar versus State of Himachal Pradesh and others***, whereby the petitioners-State(***hereinafter referred to as the ‘petitioner-Department’***) have been directed to regularize the services of the respondents-original applicants (***hereinafter referred to as the ‘applicants’***) on completion of 8 years of contract service in terms of policy dated 7th May, 2010 alongwith all consequential benefits in accordance with law.

3. Succinctly, facts of the case as emerge from the record are that the applicants in both the cases were engaged as Sweeper-cum-Peon and Driver on contract basis on 25.9.2002 and 26.2.2004 in the Office of Land Acquisition Officer, Ranjit Sagar Dam Project, Dalhousie, District Chamba, Himachal Pradesh. It is not in dispute that the applicants, referred hereinabove, worked continuously without any break and completed 8 years of uninterrupted service. Since the petitioners -Department failed to regularize the services of the applicants in terms of policy/ instructions dated 7th May, 2010 (***Annexure P-3***), they approached the Himachal Pradesh State Administrative Tribunal (***hereinafter referred to as 'Tribunal'***), seeking therein direction to the petitioners-Department to regularize their services from the date when they completed the required eight years of contract services as per regularization policy prevailing at that time with all consequential benefits.

4. The petitioners-Department refuted the aforesaid claim of the applicants on the ground that an agreement was executed between the applicants and the Land Acquisition Officer, Ranjit Sagar Dam Project, Dalhousie for a period of one year or till completion of the project. The petitioners-Department also claimed that the applicants had served in the Office of Land Acquisition Officer (RSD) established for the execution of Ranjit Sagar Dam governed by the Government of Punjab and expenditure to the posts to the extent of 100% is incurred by Punjab Government and as such, at no point of time they were part of the establishment of petitioner No.2 i.e. Deputy Commissioner, Chamba. However, learned Tribunal below having taken note of the material made available to it, rejected the aforesaid contention of the petitioners-Department and arrived at a conclusion that two posts of peons and one post of Sweeper were created in the office of Land Acquisition Officer, Dalhousie and same were filled up on contract basis by the petitioners-Department and as such, mere funding by the Punjab Government cannot take away the rights of the applicants for regularization.

5. Having heard learned counsel representing the parties and perused the material adduced on record by the respective parties *vis-a-vis* reasoning assigned by the learned Tribunal while passing the impugned judgments, this Court finds no reason to interfere with the impugned judgments, which otherwise appear to be based upon the proper appreciation of facts as well as law.

6. Having carefully perused the letter No. Rav (PD) B (4)-1/95, Government of Himachal Pradesh Revenue Department (Pong Cell), issued from the Office of Finance Commissioner-cum-Secretary (Revenue) to the Government of Himachal Pradesh to petitioner No.2-Deputy Commission, Chamba, District Chamba, H.P., wherein a conscious decision was taken for creation/ filling-up the posts for Ranjit Sagar (Thein Dam), project at Dalhousie on contract basis, this Court is unable to agree with the contention of Mr. Adarsh Sharma, learned Additional Advocate General that applicants came to be appointed as Sweeper-cum-Peon and Driver respectively on the basis of the agreement allegedly executed between them and the Land Acquisition Officer, Ranjit Sagar

Dam project for a period of one year or till the completion of the project. Bare perusal of the aforesaid communication, which has been reproduced in the impugned judgment dated 4.9.2017 passed by the Tribunal in OA No.4292 of 2016, clearly reveals that State of Himachal Pradesh ordered for creation/ filling up of posts of Typist, Misc. Clerk, Peon and Sweeper on contract basis in the Office of Land Acquisition Officer, Dalhousie for the work of Thein Dam Project. The aforesaid communication, referred hereinabove, further reveals that posts, referred hereinabove, were created to give benefit to the members of oustee families. Agreement, if any, was between the State of Himachal Pradesh and Punjab Government, whereby expenditure incurred on the posts to the extent of 100% is/was to be reimbursed by the Punjab Government and as such, stand taken by the petitioners-Department that the applicants were engaged as Sweeper-cum-Peon and Driver respectively on the basis of the agreement executed between them and the Land Acquisition Officer (RSD) Dalhousie, is totally contrary to the record and as such, rightly came to be rejected by the learned Tribunal.

7. As has been taken note hereinabove, there is no dispute that both the applicants worked continuously without any break and completed eight years of uninterrupted service in the Office of Land Acquisition Officer -cum- Sub Divisional Officer © Dalhousie and as such, they rightly claimed regularization in terms of policy/instructions issued by the State of Himachal Pradesh.

8. It is also not in dispute that Government of Himachal Pradesh vide letter dated 7th May, 2010 issued directions to all the departments for regularization of daily waged/contingent paid workers, who have completed 8 years of continuous service as on 31st March, 2010 against vacant posts.

9. Mr. Adarsh Sharma, learned Additional Advocate General was unable to dispute that the post of driver had fallen vacant in the office of Land Acquisition Officer and Land Acquisition Officer-cum-Sub Divisional Officer ©, Dalhousie had recommended the case of the applicants for regularization in terms of the policy. Similarly, learned Additional Advocate General was unable to refute the contention put forth by Mr.

Parveen Chauhan, learned counsel representing the applicants that similarly situate persons have already been regularized in terms of policy framed by the State of Himachal Pradesh and as such, stand taken by the petitioners-Department in cases at hand, is wholly unjustified and untenable. Mere funding by Government of Punjab to the Office of Land Acquisition Officer, Dalhousie cannot take away the rights of the applicants for regularization, especially when they came to be appointed in the office of Land Acquisition Officer, Dalhousie, District Chamba on contract basis that too as per conscious decision taken by the State of Himachal Pradesh to create the posts in the office of Land Acquisition Officer, Dalhousie for the work of Thein Dam Project.

10. Consequently, in view of the aforesaid observation and discussion made hereinabove, the instant petitions are dismissed being devoid of any merit. The judgments passed by the learned Tribunal below are upheld. Pending application(s), if any, also stand disposed of.

(Surya Kant)
Chief Justice

(Sandeep Sharma)
Judge

30th April, 2019
(*shankar*)