

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.
CWPOA No.1977 of 2020
Decided on: 31.8.2020

Madan Lal	VersusPetitioner
State of Himachal Pradesh and Ors.	Respondents

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? ¹

For the Petitioner	:	Mr. A.K. Gupta, Advocate.
For the Respondents	:	Mr. Ashok Sharma, Advocate General with Sudhir Bhatnagar and Arvind Sharma, Additional Advocates General.

Sandeep Sharma, Judge (oral):

By way of instant petition, petitioner has prayed for regularization of his services from the date he completed eight years of service with all benefits incidental thereof.

2. Precisely, facts of the case as emerge from the record are that petitioner was engaged on daily wage basis in the Agricultural Department w.e.f. year 1984. However, subsequently his services were dis-engaged in the year, 1993 without following proper procedure as enshrined under the Industrial Disputes Act, 1947, and as such, dispute inter-se petitioner and respondents came to be landed before the labour Court, Shimla. Petitioner in his claim petition before the labour Court claimed that he was continuously serving with the respondent-

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

department on daily wage basis as Chawkidar w.e.f. 1984 and now his services have been terminated illegally without serving him any notice, charge sheet and conducting any inquiry and as such, his termination in violation of mandatory provisions of 25 (F) of the Industrial Disputes Act deserves to be set-aside.

3. Though respondents by way of filing pleadings and leading evidence on record made serious attempt to prove before the Tribunal below that though petitioner was initially engaged w.e.f. October, 1984, but thereafter he never worked regularly, rather he worked intermittently on seasonal basis. Besides above, respondents also claimed that petitioner was neither disengaged nor dis-allowed to work, rather he himself abandoned the job and remained absent w.e.f. 17.7.1997 voluntarily. However, Tribunal below having scanned Mandays chart/record made available for its perusal arrived at a conclusion that version put forth by the petitioner that neither any charge sheet was served upon him nor any inquiry was conducted against him and he had not left the job of his own, remains un-rebutted on record. Tribunal also found from the record/ Mandays chart that in the year, 1989, petitioner worked for 360 ½ days, in the year, 1991 for 345 ½ days and in the year, 1992 for 351 days. Tribunal also concluded from the evidence led on record by the respective parties that petitioner worked upto July 1993 and

during the preceding 12 months i.e. from August 1992 to July, 1993, the petitioner worked for more than 240 days and as such, he ought to have served with notice under Section 25 (F) of the Act prior to his termination. In the totality of evidence led on record by the respective parties, Tribunal below decided the reference in favour of the petitioner and directed the respondents to reinstate him in job with continuity and seniority w.e.f. the date of reference i.e. from 3.10.2000 with back wages to the extent of 25%.

4. Being aggrieved with aforesaid award, respondents preferred CWP No. 618 of 2005 in this Court, which was dismissed vide judgment dated 14.5.2007 (Annexure P-2). Perusal of aforesaid judgment reveals that during the course of hearing, learned counsel for the petitioner apprised the Court that petitioner is ready to give undertaking to the Court by way of a statement that in terms of the impugned award, he shall forego back wages and would be entitled for the wages only from the date of his joining, but however for the purpose of continuity in service and seniority, date of reference of the award being 20.10.2000 be considered.

5. Being aggrieved and dissatisfied with the aforesaid judgment rendered by this Court, respondents preferred SLP before the

Hon'ble Apex Court, but fact remains that same was also dismissed as is evident from order dated 8.2.2016 (Annexure P-3).

6. Since despite there being aforesaid judgments rendered by the Tribunal, this Court as well as Hon'ble Apex Court, respondents failed to regularize the services of the petitioner from the date he completed eight years of service, he was compelled to approach the Erstwhile HP State Administrative Tribunal by way of OA No. 1773 of 2017, which now stands transferred to this Court after abolishment of the same and stands re-registered as CWPOA No. 1977 of 2020, praying therein for the relief as has been taken note herein above.

7. Having heard learned counsel for the parties and perused material available on record, this Court finds that claim of the petitioner that he was initially appointed in the year, 1984 and in that capacity, he continued to work uninterruptedly w.e.f. 20.7.1993 stands duly established on record and as such, petitioner is entitled to be regularized from the date he has completed eight years of regular service. Since it stands accepted by the Tribunal below in reference petition No. 165 of 2000 that services of the petitioner, who was initially appointed in the year, 1984, were terminated illegally w.e.f. 20.7.1993, it can be safely inferred that w.e.f. 1984 till 1994, petitioner worked regularly with the respondent department and as such, he ought to have been considered for

regularization on his completion of eight years of service. Since judgment rendered by the Tribunal stands upheld up to the Hon'ble Apex Court, respondents have no option but to grant regularization of the petitioner from the date he completed eight years service. However, in the event of grant of such relief, petitioner would be entitled to actual wages from the date of joining but such date would be 14.5.2007 when CWP No. 618 of 2005 having been filed by the respondents, laying therein challenge to impugned award passed by the Tribunal came to be finally decided. Had the respondents allowed the petitioner to join the services immediately after passing of the aforesaid judgment dated 14.5.2007, petitioner would have been entitled to wages from the date of his joining, but since in the case at hand, respondents after passing of aforesaid judgment dated 14.5.2007, approached the Hon'ble Apex Court by way of SLP, which remained pending for almost nine years after passing of judgment dated 14.5.2007, by this Court in CWP No. 618 of 2005, date of joining as stands mentioned in judgment dated 14.5.2007 further upheld by the Hon'ble Apex Court, would relate back to date of passing of the judgment dated 14.5.2007.

8. Consequently, in view of the above, present petition is allowed and respondents are directed to regularize the services of the petitioner from the date he completed eight years of regular service as

has been held by the Industrial Tribunal in award dated 25.2.2005. However, it is clarified that actual benefits pursuant to regularization would be given to the petitioner from the date of his joining which for the reasons stated herein above shall be deemed to be 14.5.2007 i.e. date of passing of judgment dated 14.5.2007 in CWP No. 618 of 2005. In the aforesaid terms, present petition is disposed of so also pending application(s), if any.

31st August, 2020
manjit

(Sandeep Sharma),
Judge