

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 2886 of 2020
Date of Decision: 31.3.2021

Hira Singh

.....*Petitioner.*

Versus

State of HP and Ors.

....*Respondents.*

Coram

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting¹?

For the petitioner: Mr. C.N. Singh, Advocate.

For the respondents: Mr. Kunal Thakur and Ms. Svaneel Jaswal,
Deputy Advocates General, for the State.

Sandeep Sharma, J. (Oral)

By way of instant petition filed under Article 226 of the Constitution of India, petitioners have prayed for following reliefs:-

"i. Issue a writ of Mandamus Or other appropriate writ or direction, directing the respondents department to grant the whole time/daily wage status to the petitioner immediately after completion of eight years of service i.e. w.e.f. 1.06.2015 with all consequential benefits and arrear on account of retrospective grant of daily wage status may kindly be ordered to be released in favour of the petitioner along with 12% interest.

ii. Issue a writ of Mandamus Or other appropriate writ or direction, directing the respondents department to regularize the service of the petitioner after completion of 5 years of service i.e. 2.6.2020 (Or 13 years of total length of service part time as well as daily wage basis) with all consequential benefits and arrear on account of retrospective regularization may kindly be ordered to be released in favour of petitioner along with 12% interest. Or

in alternative, issue a writ of Mandamus Or other appropriate writ or direction for directing the respondents department to convert the service of the petitioner on contract basis w.e.f. the date Sh. Thakur Dass and other similar situated persons part time service were coveted into Contractual appointment with all consequential benefits.

iii) Issue a writ of Mandamus Or other appropriate writ or direction, directing the respondents department to pay the salary/remuneration to petitioner at par with at least daily wage employee for work done

Whether reporters of the Local papers are allowed to see the judgment?

by the petitioner w.e.f. the initial date of engagement till date along with 12% interest."

2. Learned counsel for the parties are ad-idem that case of the petitioners is squarely covered with judgment dated 24.12.2014, passed by Division Bench of this court in case titled ***Kamal Chand V. State of HP and Ors, in CWP No. 5098 of 2014*** and judgment dated 7.9.2020 passed by this Court in case titled ***Swami Raj v. State of H.P.*** in CWPOA No. 5015 of 2019.

3. Reply having been filed by respondents No. 1 to 4 clearly reveals that keeping in view the persistent representations and demands of Jal Rakshaks (water guards), respondent-State has decided to induct water guards from Panchayti Raj Institutions (PRIs) by inserting a provision in the R&P Rules of Pump Attendant and in this regard, approval to fill up 1025 new posts of pump attendants was conveyed to all the Superintending Engineers. An approval to fill up 105 posts was conveyed to the Superintending Engineer, Sundernagar Circle vide Engineer in Chief, IPH Department Shimla, letter No. IPH-ES-III-PRI's Water Guard Vol.-XI/20199-2740-62 dated 25.7.2019. R&P Rules for the post of pump attendants were framed vide notification No.IPH(A) 3(1)-4/2017 dated 12.10.2017, wherein provision has been provided for induction of water guards from PRI's as Jal Rakshak (water guards) after completion of 12 years of his service with three years experience of working with pump, motors and electric accessories. Since the petitioner completed only 11 years' service upto 31.12.2018, his name could not be sent by respondent No.4 for consideration by screening committee, which met in November, 2019. However, now petitioner has completed 12 years requisite service as water guard, but since he does not

possess the requisite qualification i.e. 8th Class, as per R&P Rules (R-1), case of the petitioner could not be considered by screening committee for induction amongst Jail Rakshak (water guards). It is quite apparent from the reply filed by the respondent that case of the petitioner has been not considered till date on account of petitioner's having not possessed requisite qualification of 8th class.

4. Since the Division Bench of this Court as well as this Court in judgments (supra) have categorically held that though initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service, ground of qualification raised by the respondent-State at the time of regularization of the petitioner is not tenable. Once the appointment was made as daily rated workers and petitioner was allowed to work for considerable length of time, it would be hard and harsh to deny him confirmation on the ground that he lacks prescribed educational qualifications. Aforesaid view taken by the Division Bench of this Court as well as this Court in aforesaid judgments is based upon the judgment rendered by the Hon'ble Apex Court in case titled ***Bhagwati Prasad v. Delhi State Mineral Development Corporation, (1990) 1 SCC 361***. Relevant para of **Swami Raj's case** is reproduced as under:

“**9.** Since the petitioner has been working continuously without there being any interruption against the post of Bhoti language teacher in tribal area of Pangi in Chamba, District, he can be said to have acquired expertise by now and as such, his case cannot be allowed to be denied on the ground that he does not possess requisite qualification and his services cannot be regularized. Hon, ble Apex

Court in **Bhagwati Prasad versus Delhi State Mineral Development Corporation (1990)**¹ **Supreme Court Cases 361** has held as under:-

"6. The main controversy centres round the question whether some petitioners are possessed of the requisite qualifications to hold the posts so as to entitle them to be confirmed in the respective posts held by them. The indisputable facts are that the petitioners were appointed between the period 1983 and 1986 and ever since, they have been working and have gained sufficient experience in the actual discharge of duties attached to the posts held by them. Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. In our view, three years' experience, ignoring artificial break in service for short period/periods created by the respondent, in the circumstances, would be sufficient for confirmation. If there is a gap of more than three months between the period of termination and re-appointment that period may be excluded in the computation of the three years period. Since the petitioners before us satisfy the requirement of three years' service as calculated above, we direct that 40 of the senior-most workmen should be regularised with immediate effect and the remaining 118 petitioners should be regularised in a phased manner, before April 1, 1991 and promoted to the next higher post according to the standing orders. All the petitioners are entitled to equal pay at par with the persons appointed on regular basis to the similar post or discharge similar duties, and are entitled to the scale of pay and all allowances revised from time to time for the said posts. We further direct that 16 of the

petitioners who are ousted from the service pending the writ petition should be reinstated immediately. Suitable promotional avenues should be created and the respondent should consider the eligible candidates for being promoted to such posts. The respondent is directed to deposit a sum of Rs. 10,000 in the Registry of this Court within four weeks to meet the remuneration of the Industrial Tribunal. The writ petitions are accordingly allowed, but without costs.

4. Since question needs to be adjudicated in the instant proceedings has been elaborately dealt with and decided by this court in Judgments (supra), this Court sees no reason to go into this question again, especially when all the facts and relief, as prayed for, in the instant petition are identical to that of aforesaid case.

5. Consequently, In view of the above, the directions contained in the aforesaid judgments are ordered to be made *mutatis mutandis* applicable in the present case for all intents and purposes. In the aforesaid terms, present petition is disposed of alongwith pending application(s), if any.

31st March, 2021

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**(Sandeep Sharma),
Judge.**