

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

ON THE 29th DAY OF JULY, 2022

BEFORE

HON'BLE MR. JUSTICE AJAY MOHAN GOEL

CIVIL WRIT PETITION (ORIGINAL APPLICATION)
No. 7186 of 2020

Between:-

1. SMT. SANTOSH, WIDOW OF
LATE SH. JAGAT RAM
2. RAMESH KUMAR, SON OF
LATE SH. JAGAT RAM
3. REENA DEVI
4. VEENA DEVI

BOTH DAUGHTERS OF LATE
SH. JAGAT RAM.

ALL RESIDENTS OF VILLAGE
LOHGARH, P.O. HARIPUR,
KHOL, TEHSIL PAONTA SAHIB,
DISTRICT SIRMAUR (HP).

...PETITIONERS

(BY SHRI PRAKASH SHARMA,
ADVOCATE)

AND

1. STATE OF HIMACHAL
PRADESH THROUGH
ADDITIONAL SECRETARY
(FORESTS) TO THE
GOVERNMENT OF HIMACHAL
PRADESH, SHIMLA-2.

2. **PRINCIPAL CHIEF
CONSERVATOR OF FORESTS
(HoFF), HP, SHIMLA-171001.**
3. **CONSERVATOR OF FORESTS,
NAHAN CIRCLE, NAHAN,
DISTRICT SIRMAUR (HP)-
173001.**

...RESPONDENTS

**(M/S SUMESH RAJ, DINESH THAKUR
& SANJEEV SOOD, ADDITIONAL
ADVOCATE GENERALS, WITH MR.
AMIT KUMAR DHUMAL, DEPUTY
ADVOCATE GENERAL AND MR.
MANOJ BAGGA, ASSISTANT
ADVOCATE GENERAL).**

Whether approved for reporting? No.

*This petition coming on for hearing this day, the Court passed the
following:-*

ORDER

CMP-T No. 703 of 2022

In view of the averments made in the application, the same is
allowed. The application stands disposed of.

CIVIL WRIT PETITION (ORIGINAL APPLICATION) No. 7186 of 2020

2. On the request of learned counsel for the parties, the case is
taken up for consideration today itself.
3. By way of this petition, the petitioners have, *inter alia*, prayed
for the following reliefs:-

“(i) *That the impugned retirement order
dated 31.3.2016 at Annexure A-4 and rejection order*

dated 21.1.2019, Annexure A-6, may kindly be quashed and set aside, with all consequential benefits.

(ii) That the respondents may kindly be directed to treat late Sh. Jagat Ram deemed to have continued in service till his death or at the age of 60 years and arrears of salary alongwith interest on delayed payment at market rate be released to the applicants.”

4. The case of the petitioners is that husband of petitioner No. 1 and father of respondents No. 2 to 4, namely, Sh. Jagat Ram was initially engaged on daily wage basis as a Beldar on 01.01.1990 in the Forest Department. His services were regularized as a Beldar on 22.03.2003. Thereafter, he was superannuated on 30.06.2016 on attaining the age of 58 years, without appreciating that as late Sh. Jagat Ram was a Class-IV employee, therefore, he had right to be superannuated at the age of 60 years.

5. I have heard learned counsel for the parties and also gone through the pleadings on record.

6. The issue as to whether an employee like the predecessor-in-interest of the petitioners was to superannuate at the age of 58 years or 60 years is no more *res integra* in view of the judgment dated 22nd February, 2022, passed by the Full Bench of this Court in CWP No. 2711 of 2017, titled as *Baldev Vs. State of Himachal Pradesh and others* and

connected matter. While answering the reference before it, Hon'ble Full Bench of this Court has been pleased to hold as under:-

“(i) There is an apparent inconsistency or conflict between the decisions referred to in the reference order dated 28.12.2019, which lies in a very narrow compass, as noticed in para 6(1) above. In Chuni Lal's case, the decision rendered in Bar Chand's case was held to be per incuriam. The decision in Chuni Lal's case was based upon interpretation of F.R. 56(e) as it existed in the State at that time. But the judgment delivered in Tara Chand's case did not notice the decision in Chuni Lal's case. The judgment in Gian Singh's case in respect of continuation in service was based upon the verdict in Tara Chand's case. In both these judgments, learned Single Judges did not notice the judgment delivered in Chuni Lal's case. In Letters patent appeal, the Division Bench while affirming the judgment passed by the Id. Single Judge in Gian Singh's case though did not notice the judgment rendered in Chuni Lal's case however the amendment dated 10.5.2001 reducing the superannuation age from 60 to 58 years was held to be not applicable to the writ petitioner, who was held entitled for regularization prior to 10.5.2001.

(ii). Inconsistency between Bar Chand and Chuni Lal now stands, not just resolved. but rather dissolved, in view of notification dated 21.02.2018

amending F.R. 56(e), issued by the State, which has now reinforced and reiterated what was held in Bar Chand's case, i.e, date of regularization of a class IV daily wager whether prior or after 10.05.2001, will make no difference to the age of his continuing in service. It is the date of engagement, which is the decisive factor. If date of engagement/appointment is prior to 10.05.2001, the Class-IV employee will continue to serve till 60 years of age. In case, it is later than 10.05.2001, then restriction in age upto 58 years will apply.

(iii). There cannot be any discrimination amongst similarly situated Class-IV employees belonging to one homogenous class. Therefore the retirement date, of such of those employees, who had been engaged on daily wage basis prior to 10.05.2001, but regularized after 10.05.2001 and have actually been retired prior to the issuance of notification dated 21.02.2018 at the age of 58 years, shall be deemed to be the date when they otherwise attained the age of 60 years. Since these employees have not actually worked beyond the age of 58 years, therefore, they will not be entitled to the actual monetary benefits of wages/salary etc. for the period of service from the date of their actual retirement till deemed dates of their retirement. However, they will be entitled to notional fixation of their pay for the period in question for working out their payable

pension and payment of consequential arrears of pension accordingly.

Reference is accordingly answered. The writ petitions be now placed appropriately before the respective Benches.”

7. As late Sh. Jagat Ram admittedly was engaged on daily wage basis before 10.05.2001, therefore, obviously, he had the right to continue serving the Department till the age of 60 years. Accordingly, the act of the respondent-Department of superannuating him at the age of 58 years is held to be bad in law. However, taking into consideration the fact that late Shri Jagat Ram has not actually worked after the age of 58 years, therefore, in terms of the judgment of the Hon'ble Full Bench (*supra*), late Shri Jagat Ram is held not entitled to the actual monetary benefits of wages/salary etc. for the period of service from the date of his actual retirement till deemed date of his retirement, i.e., 60 years or till the date of his death, whichever is earlier, as the Court has been informed that Shri Jagat Ram had expired after superannuation but before attaining the age of 60 years. However, there shall be notional fixation of his pay for the period in question for working out his payable pension and payment of consequential arrears of pension accordingly, in case after superannuation, the deceased employee was entitled for pension and after his death, the petitioners are entitled for family pension.

With the above directions, the petition stands disposed of, so also pending miscellaneous applications, if any.

(Ajay Mohan Goel)
Judge

July 29, 2022
(bhupender)