IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 1469 of 2019
Date of decision: 24.02.2020

Satish Kumar .....*Petitioner*

Versus

Union of India & others ...*Respondents*

Coram:
The Hon'ble Mr. Justice L. Narayana Swamy, Chief Justice
The Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge.
Whether approved for reporting?[1]

For the petitioner : Mr. V.D. Khidtta, Advocate.

For the respondents: Mr. Rajesh Kumar Sharma, Assistant Solicitor General of India, for respondent No. 1.

Mr. Rajiv Jiwan, Senior Advocate with Mr. Ajeet Sharma, Advocate, for respondents No. 2 to 4.

L. Narayana Swamy, Chief Justice *(Oral)*

CMP No. 11634 of 2019

The petitioner has moved this application under order 1 Rule 10 read with Section 151 of the Code of Civil Procedure for deletion of the name of respondent No. 1-Union of India. In view of the order to be passed in the main writ petition, this application is rendered infructuous.

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[1] *Whether the reporters of Local Papers may be allowedto see the judgment?*

CWP No. 1469 of 2019

2. By way of this writ petition, the petitioner challenges impugned order dated 13.02.2019 (Annexure P-2), passed by the respondents, whereby the claim of the petitioner for regularization was rejected by the respondents and order dated 23.04.2019, passed by the Central Administrative Tribunal, Chandigarh Bench, (for short 'the Tribunal), whereby Original Application No. 063/-00376/2019 filed by him was dismissed.

3. The facts of the case, in brief, are that the petitioner was engaged as Chowkidar on daily wage basis at Microwave Station, Solan in December, 1993. The further case of the petitioner is that on 01.01.1998, his services were terminated by the respondents without following the mandatory provisions of the Industrial Disputes Act. It is alleged in the petition that on 01.01.2000, Bharat Sanchar Nigam Limited was created. Thereafter, in the year 2003, after raising an industrial dispute, reference was sent to the Central Government Administrative Tribunal-cum-Labour Court Chandigarh (for short 'the Labour Court') by the Central Government. The Tribunal passed award dated 27.01.2011 in Case ID No. 61 of 2003, whereby the termination of the petitioner was held null and void and the petitioner was ordered

to be reinstated with full back wages and the respondent-Management were also directed to consider the case of the petitioner for regularization of his service.

4. Thereafter, the respondent-Management assailed the award passed by the Tribunal by filing CWP No.5498 of 2011. The same was partly allowed by the learned Single Judge of this Court vide order dated 20th December, 2011, whereby the direction passed by the Tribunal for regularization of the petitioner was set aside and rest of the award was upheld.

5. Thereafter, the respondent-Management challenged the aforesaid order passed by the learned Single Judge of this Court by way of LPA No. 100 of 2012. The said appeal was dismissed by this Court vide judgment dated 19.04.2012. Thereafter, the respondent-Management filed Special Leave Petition before the Hon'ble Supreme Court, which was also dismissed.

6. It is alleged in the petition that the petitioner filed an Execution Petition before this Court and during the pendency of the said Execution Petition, the petitioner was reinstated in service. It is further alleged in the petition that on 31.01.2019, the petitioner filed a representation dated 31.01.2019 before the respondents for considering his case for regularization as his juniors have already

been regularized. The said representation was rejected by the respondent-Management vide impugned order dated 13.02.2019.

7. Feeling aggrieved against the aforesaid order, the petitioner preferred Original Application No. 063/-00376/2019 before the Tribunal. The said application was dismissed by the Tribunal vide order dated 23.04.2019. Hence, this writ petition.

8. Learned Counsel for the petitioner submits that it is not in dispute that some of the juniors of the petitioner have already been regularized. He further submits that the petitioner had made a request before the Tribunal for regularization of his services, which has been rejected. He prays that the impugned orders dated 13.02.2019 and 23.04.2019 be quashed and set aside.

9. Learned Senior Counsel for respondents No. 2 to 4 submits that the award passed by the Tribunal is just and proper. He further submits that the award passed by the Labour Court was the basis for adjudication by this Court in CWP No.5498 of 2011,LPA No. 100/2012 and thereafter for the Tribunal in Original Application No. 063/-00376/2019. He prays that the writ petition be dismissed.

10. We have heard learned Counsel for the parties and have gone through the entire record carefully.

11. It is not in dispute that the Tribunal vide impugned order dated 23rd April, 2019, passed in Original Application No. 063/-00376/2019 had rejected the prayer of the petitioner for regularization of his services. It is also true that the request of the petitioner for regularization of his services was rejected by this Court in CWP No.5498 of 2011 and thereafter, the LPA No. 100 of 2012, arising out of the aforesaid CWP was also dismissed. However, the petitioner has moved a separate application before the Tribunal seeking his regularization on the ground that similarly situated persons, who are juniors to him, have been regularized. The non-consideration of the prayer of the petitioner for regularization of his services is arbitrary and in violation of Article 14 of the Constitution of India. The Tribunal has failed to take into consideration the fact that similarly situated persons who are even junior to the petitioner, have been regularized. Accordingly, we deem it proper to remand this matter to the Tribunal for consideration of the case of the petitioner for regularization afresh.

12. Accordingly, the impugned orders dated 13.02.2019 and 23.04.2019 are set aside and the matter is remanded to the Tribunal with a direction to the Tribunal to consider the case of the petitioner afresh for regularization. Parties are at liberty to make their submissions before the Tribunal.

13. With these observation, the petition stands disposed of alongwith pending application(s), if any.

(L. Narayana Swamy)
Chief Justice.

February 24,2020
(hemlata)

(Jyotsna Rewal Dua)
Judge.