IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWPOA No. 1050 of 2019
Decided on: 19.11.2026.

Baldev Raj ....Petitioner

Versus

State of Himachal Pradesh and Ors.
....Respondents

Coram :
Hon'ble Mr. Justice Ranjan Sharma, Judge
[1] *Whether approved for reporting?* Yes.

For the petitioner: Ms. Nidhi Verma, Advocate,

For the respondents: Mr. Gautam Sood, Deputy Advocate General.

Ranjan Sharma, Judge

Petitioner filed a Writ Petition [CWP No 2124 of 2012] before this Court and on establishment of Learned State Administrative Tribunal; the matter was transferred to the Tribunal; and upon its abolition the same has been retransferred to this Court, as *CWPOA 1050 of 2019*, seeking the following relief:-

> (i). Respondents may kindly be directed to rectify/amend/modify Annexure P-3 i.e. Office Order No. 52/2010-2012 dated 28.03.2011 issued from the office of Respondent No.4 which is based on the

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

decision of Respondent No.1 conveyed vide letter dated 15.03.2011 relating to the work charge status w.e.f. 1.4.2003 instead of regularization w.e.f. 1.4.2001 in view of the averments made in the writ petition in para supra and his pay may kindly be ordered to be fixed w.e.f. 1.4.2001 instead of 1.4.2003.

(ii). In view of relief at (i) above, the petitioner may kindly be held entitled for the grant of pension and pensionary benefits and also the consequential benefits with further entitlement for the retirement age of 60 years instead of 58 years in view of the Government Notification dated 10.5.2001 [Annexure P-6].

FACTUAL MATRIX :

2. Case, as set up, is that petitioner was engaged as a daily wager with effect from 01.04.1993, as Beldar [Labourer] in Tara Devi Range of Shimla Forest Division. Upon completion of ten years of continuous daily wage service on 31.03.2003, the petitioner was granted work charge status w.e.f. 01.04.2003 in terms of the mandate of the Hon'ble Supreme Court in case of **Mool Raj Upadhayaya** vs. **State of Himachal Pradesh**,

1994 Suppl (2) SCC 316 and the petitioner was regularized as a Beldar on 05.09.2007.

First grievance of the petitioner is that though he has been granted work charge status after 10 years of daily wage service but due to issuance of subsequent regularization policies, the petitioner may be granted work charge status/regularization from the date of completion of eight years of continuous daily wage service w.e.f. 01.04.2001 with all consequential benefits; and the *Second* grievance is that once the petitioner was engaged before 10.05.2001, therefore, he has a right to serve upto the age of 60 years and his retirement at the age of 58 years is illegal.

STAND OF STATE AUTHORITIES IN REPLY:

3. Pursuant to issuance of notice on 18.04.2012 State Authorities have filed Reply-Affidavit ON 04.07.2011, denying the claim of the petitioner.

3(i). Stand of the State Authorities in the Reply-Affidavit is that the petitioner had rendered continuous service with 240 days w.e.f. 01.04.1993 and he was validly granted work charge status from the date of

completion of 10 years of continuous daily wage service w.e.f. 01.04.2003 as per the judgement in the case of **Mool Raj Upadhayaya.** Reply stated that the benefit of regularization/work charge status from the date of completion of 8 years of daily wage service w.e.f. 01.04.2001 cannot be granted dehors the policy of 8 years issued on 06.05.2000 and the claim is wrong, incorrect and misleading.

3(ii). Reply-Affidavit stated that claim of petitioner is not similar to the case of Som Dass as in Annexure P-1 and Annexure P-2, as the petitioner therein had completed/rendered 8 years of continuous service as on 31.03.1999 in terms of policy dated 08.07.1999, whereas, in instant case, as per material on record, the petitioner was ineligible, as he had rendered only 6-7 years of daily wage service as required by policy dated 08.07.1999 and under the subsequent policy dated 3.4.2000 and 06.05.2000 [Annexure P-4 and P-5].

3(iii). Regarding the claim for continuity upto 60 years is concerned, the stand of State Authorities is that as per notification dated 10.05.2001, the Class-IV

employees who are appointed on or after 10.05.2001 shall retire from Government service at the age of 58 years and the claim for continuity in service upto the age of 60 years was not tenable. It is averred that since the petitioner was appointed as Class-IV Employee after 10.05.2001 i.e. on 05.09.2007, therefore, as per Fundamental Rule 56(e) the petitioner was to retire at the age of 58 years and not 60 years, as claimed.

4. Ms. Nidhi Verma, Advocate, for the petitioner and Mr. Gautam Sood, Learned Deputy Advocate General, for the respondents.

5. Before proceeding to analyze the claim of the petitioner, it is necessary to have a recap of the mandate of law declared by the Hon'ble Supreme Court entitling the daily waged/muster-roll workers for work charge status from the date of completion of ten years of continuous service, in the case of **Mool Raj Upadhayaya** (supra) and the mandate of the Hon'ble Division Bench of this Court in case of **Gauri Dutt** (supra), culling out the interplay between the Scheme providing for work charge status from the date of completion of ten

years of continuous daily wage service vis-à-vis the Scheme-Policy for granting the work charge status from the date of completion of eight years of continuous service hereinunder:

MANDATE OF LAW ON WORK CHARGE STATUS AFTER TEN YEARS OF DAILY WAGE SERVICE:

5(i). While interpreting the Scheme for Betterment of Daily Wagers/Muster-Roll Workers of all departments in the State, the Hon'ble Supreme Court approved the Scheme with modification(s), entitling the daily wagers for work charge status from the date of completion of ten years of continuous daily waged service, in case of ***Mool Raj Upadhyaya*** *vs* ***State of Himachal Pradesh 1994 Suppl. (2) SCC 316***, reads as under:-

> "4. Taking into consideration the facts and circumstances of the case, **we modify the said scheme** by substituting paragraphs 1 to 4 of the same by the following paragraphs:
>
> "(1) Daily-wage/muster-roll workers, whether skilled or unskilled, who have completed 10 years or more of continuous service with a minimum of 240 days in a calendar year on31-12-1993, shall be appointed as work-charged employees with effect from 1-1-1994 and shall be put in the time-scale of pay applicable to the corresponding lowest grade in the Government;

(2) Daily-wage/muster-roll workers, whether skilled or unskilled, who have not completed 10 years of continuous service with a minimum of 240 days in a calendar year on 31-12-1993, **shall be appointed as work-charged employees** with effect from the date they complete the said period of 10 years of service and on such appointment they **shall be put in the time-scale of pay applicable to the lowest grade in the Government**;

(3) Daily-wage/muster-roll workers, whether skilled or unskilled who have not completed 10 years of service with a minimum of 240 days in a calendar year on 31-12-1993, shall be paid daily wages at the rates prescribed by the Government of Himachal Pradesh from time to time for daily-wage employees falling in Class III and Class IV till they are appointed as work-charged employees in accordance with paragraph 2;

(4) Daily-wage/muster-roll workers **shall be regularized in a phased manner** on the basis of seniority-cum-suitability including physical fitness. On regularization they shall be put in the minimum of the time-scale payable to the corresponding lowest grade applicable to the Government and would be entitled to all other benefits available to regular government servants of the corresponding grade."

MANDATE OF LAW IN CASE OF GAURI DUTT EXPLAINING THE INTERPLAY FOR GRANT OF WORK CHARGE STATUS :

5(ii). For appreciating the claim, the Interplay between the Scheme-Policy of Regularization and Work Charge Status under ten years Policy **and** under eight years Scheme-Policy needs to be recapitulated.

5(iii). The right and entitlement of daily wagers who were engaged and had rendered ten years continuous service with 240 days as on 31.12.1993 and or who rendered at-least one year's of continuous daily wage service as on 31.12.1993 were to be granted work charge status from the date of completion of 10 years of continuous daily wage service **and conversely,** daily wagers who had not rendered atleast one year's of continuous daily wage service as on 31.12.1993 and who were engaged on or after 01.01.1994 were to be granted work charge status from the date of completion of 8 years of continuous daily wage service, in terms of the mandate of the Hon'ble Supreme Court in case of ***Mool Raj Upadhyaya*** [supra], as was explained by the Hon'ble Division Bench of this Court, in the case of ***Gauri Dutt & others*** *vs.* ***State of Himachal Pradesh***, 2008 (1) Latest HLJ 368, in the following terms:-

"12. The Apex Court did not accept the scheme as proposed by the State of Himachal Pradesh and modified it. Under Clause (1) of the scheme, as modified, all the employees who had completed10 or more years of continuous service with a minimum of 240 days in a calendar year as on 31.12.1993 were to be appointed as work charged employees w.e.f. 1.1.1994.**Para 2 of the scheme, as approved by the Apex Court, provides that those who had not completed 10 years of continuous service as on 31.12.1993 shall be appointed as work charged on completion of said period of 10 years**. It is apparent from a reading of para 2 that para 2 contemplates that an employee to be covered under para 2 must have completed at least one year i.e. 240 days of service prior to 31.12.1993. Para 3 of the scheme relates to the payment of wages with which we are not concerned. **Para 4 of the scheme, as modified by the Apex Court,** provides that regularization of daily paid/Muster Roll workers shall be done in a phased manner on the basis of seniority-cum-suitability. No further direction was issued by the Apex Court for granting work charged status to any other employees.

13. We have considered **both the schemes** and find that the dispute before the Apex Court was in respect of the employees who had joined services much before 31.12.1993. None of the schemes dealt with employees engaged thereafter, except that under para 4 of the scheme as amended general directions were issued for regularization of

all daily waged muster roll workers in a phased manner. Para 1 of the approved scheme deals only with employees who had completed 10 years of service as on 31.12.1993. **Para 2 of the scheme deals with employees who had not completed 10 years of service as on 31.12.1993. However, we are of the firm opinion that para 2 relates only to employees who had at least served for one year prior to 31.12.1993. This scheme was a one-time scheme dealing with employees who had rendered sufficient service upto 31.12.1993**. We are not in agreement with the learned counsel for the employees that this scheme applies to daily waged employees engaged thereafter. The only portion of the scheme which may relate to such employees is para 4 which relates to regularization of all daily waged/muster roll workers. Paras 1 & 2 of the scheme relate to the workers specified in those paragraphs.

15. The **scheme does not deal with future contingencies.** We cannot read into the judgment of the Supreme Court or in the scheme as approved by the Supreme Court anything more than what is stated in it. As per our reading of the scheme the same only applies to employees who had either completed 10 years of continuous service as on 31.12.1993 or the employees who had rendered one or more years' of service, but had not completed 10 years of service as on 31.12.1993. **This scheme does not apply to those employees who had not completed even one year of service as on**

> **31.12.1993 or who were employed** thereafter. The first question is answered accordingly.
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> 16. **Under para 4 of the scheme the State was under an obligation to regularize all daily waged/muster roll workers whether they had joined prior to 31.12.1993 or thereafter**. The State has framed a scheme in this behalf on 6th May, 2000. In our opinion those employees who are not governed by the direction given in Mool Raj Upadhyaya's case as set out by us above, shall be governed by the scheme of 2000. The second question is answered accordingly."

ANALYSIS: CLAIM OF PETITIONER FOR RETROSPECTIVE WORK CHARGE STATUS.

6. Interplay between the applicability of the Policy -Scheme for regularization/work charged status of daily waged/muster roll service on completion of 10 years of continuous daily waged service vis-à-vis the Policy-Scheme for regularization/work charged status on completion of 8 years of continuous daily waged service was answered by the Hon'ble Supreme Court in the case of ***Mool Raj Upadhayaya*** and was explained by the Hon'ble Division Bench of this Court in the case of ***Gauri Dutt***, (supra), and based on the mandate of law, this Court is not inclined to accept the prayer of petitioner for conferring work charge status from the date of completion of eight

years of continuous service [w.e.f. 01.04.2001], when petitioner was already granted the work charge status after 10 years w.e.f. 01.04.2003, in terms of the law declared by the Hon'ble Supreme Court in the cases of ***Mool Raj Upadhayaya*** (supra), as explained in the case of ***Gauri Dutt*** (supra), *for the following reasons*:-

SCHEME -POLICY OF 8 YEARS NOT APPLICABLE:

7. Claim of the petitioner for work charge status from the date of completion of eight years of continuous service cannot be accepted so as to defeat or negate the right-benefit of work charge status granted from the date of completion of 10 years of continuous daily wage service in view of the mandate of law declared by the Hon'ble Supreme Court in the case of ***Mool Raj Upadhayaya*** (supra). Accepting the claim of the petitioner for work charge status after 8 years shall amount to seek benefit dehors the mandate of the Hon'ble Division Bench of this Court in the case of ***Gauri Dutt*** (Supra), mandating that the policy of eight years was not applicable in the case of petitioner **[**who was engaged on 01.04.1993 and had rendered at least one year of continuous service with 240 days during 1993 i.e. before 31.12.1993**]** and moreover, when, the judgement in case of Gauri Dutt [supra] has

attained finality.

ISSUANCE OF SUBSEQUENT POLICY CANNOT CONFER RIGHT DEHORS THE MANDATE OF LAW:

8. Mere issuance of subsequent policy reducing the period of daily wage service from 10 years to 8 years will not ipso-facto confer any automatic right for regularization or for work charge status, as it shall amount to rewriting the 10 years policy and will unsettle the law declared by the Hon'ble Supreme Court in the case of ***Mool Raj Upadhayaya*** (supra) as explained by the Hon'ble Division Bench of this Court in the case of ***Gauri Dutt*** (supra).

Accepting the claim of the petitioner shall amount to extending dual benefit which is impermissible. In case dual benefits have been granted to anyone, dehors the mandate of law in the case of ***Mool Raj Upadhayaya***, as explained in the case of ***Gauri Dutt*** (supra), the conferment of said benefit on others cannot be a ground to seek parity or extension of benefits to the petitioner dehors the mandate of law, in aforesaid judgements. Policy formulation lies within the domainof State Authorities. Courts are to interpret the policy and while doing do, it cannot re-write the policy so as to introduce terms

or to grant benefits dehors the extant policy, which was approved in a modified form by the Honble Supreme Court in the case of ***Mool Raj Upadhayaya*** (supra) and the inter-play in the applicability of the two policies was further explained by the Division Bench of this Court in the case of ***Gauri Dutt*** (supra), and the law dictated in the case of ***Gauri Dutt*** (supra) still holds the field.

CLAIM BASED ON SOM DUTT DISTINGUISHABLE:

9. The claim of the petitioner based on the order dated 17.05.2005 [Annexure P-1] by Learned State Administrative Tribunal in the case of Som Dass vs. State of Himachal Pradesh which was affirmed in CWP No. 420 of 2006, titled as ***State of Himachal Pradesh*** *vs.* ***Som Dass,*** decided on 04.08.2006 [Annexure P-2] cannot be of any assistance for the petitioner in view of the fact that the claim of **Som Dass** (supra) in said case was for regularization against available posts in view of his eligibility under 8 years policy dated 08.07.1999 [upon completion of 8 years of daily wage service as on 31.03.1999 [under policy dated 08.07.1999] or as on 31.03.2000 [under policy dated 03.04.2000 and 06.05.2000 Annexure P-4 and P-5] is not tenable

and therefore, the reliance placed on the judgement in the case of **Som Dass** [supra] is misplaced and the aforesaid judgement is not applicable in facts of instant case. Based on above discussion, the claim of the petitioner for ante-dating the Work Charge status/ regularization dehors the mandate of law, is *turned down*.

ANALYSIS REGARDING CLAIM FOR REGULARISATION AFTER 8 YEARS W.E.F. 01.04.2001 IMPERMISSIBLE:

10. Learned Counsel for the petitioner contends that though petitioner had completed 8 years of continuous daily wage service as Beldar with 240 days in each calendar year from 01.04.1993 and on completion of 8 years service, the petitioner was entitled for regularization w.e.f. 01.04.2001 but the State Authorities have denied the regularization to the petitioner illegally.

The above contention is misconceived, for the reason, that the petitioner was engaged on daily wage basis on 01.04.1993 and in terms of the regularization policy dated 03.04.2000 [Annexure P-4] and the policy dated 06.05.2000 [Annexure P-5] the eligibility for

regularization was available for those daily wagers who have completed 8 years continuous service as on 31.03.2000 and since the petitioner had not completed requisite 8 years as on the prescribed cut-off date [31.03.2000] in the regularization policies, therefore, the claim for regularization was not tenable. Moreover, the petitioner has not assailed the cut-off date stipulated in the regularization policies. Besides the above, the claim for regularization to the petitioner who is ineligible, cannot sustain. Even nothing has been placed on record by the petitioner that the vacant post were available for considering the petitioner for regularization subject to eligibility and seniority. Petitioner has not asserted and established that any junior incumbent in the concerned Division [being a Class-IV Divisional Establishment] and even otherwise was regularized prior to the petitioner. In these circumstances, the claim of the petitioner for regularization w.e.f. 01.04.2001 dehors the policy and by ignoring the principle of seniority-cum-merit and that too in absence of vacant posts, is untenable.

ANALYSIS ON CLAIM FOR DEEMED CONTINUATION UPTO 60 YEARS:

11. Plea of State Authorities in the Reply-Affidavit cannot sustain, for the reason, that the issue as to whether part-time or daily-wagers who were engaged prior to 10.05.2001, and/or who were regularized any time after 10.05.2001, were to be allowed to continue till the age of 60 years, stands answered by the Hon'ble Full Bench of this Court in the case of **Baldev vs. State of Himachal Pradesh** in CWP No. 2711 of 2017, decided on 22.02.2022. The operative part of the judgment in case of **Baldev** [supra] reads as under:

> 7(i) ..... Not relevant.
>
> 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 reinformed and reiterated and what was held in Bar Chand's case, i.e date of regularization of a class IV daily wager whether prior or after 0.05.2001, 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 homogeneous 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."

Factual matrix establishes that petitioner was admittedly engaged prior to May 10, 2001 i.e on 01.04.1993 and was granted work charge status

on 01.04.2003 and was regularized w.e.f. 05.09.2007. Moreover, once the State Government enhanced the date of retirement of Class IV Employees by issuing a notification on 22.02.2018, under FR 56(e) entitling the part-time/daily wagers who were engaged prior to 10.05.2001 and were regularized at any time thereafter to continue in service upto the age of 60 years. Resultantly, the petitioner, is certainly entitled to continue in service upto the age of 60 years and the action of the State Authorities in retiring the petitioner at the age of 58 years, cannot sustain and is set-aside, in view of the mandate of the Full Bench of this Court in the case of **Baldev** [supra].

DIRECTIONS:

12. In view of above discussion and for the reasons recorded hereinabove, instant petition is ***partly allowed***, in the following terms:-

(i) Impugned order dated 28.03.2011 [Annexure P-3] granting the work charge status w.e.f. 1.4.2003, does not warrant any modification or alteration;

(ii) Claim of the petitioner for regularization from the date of completion of 8 years

of continuous daily wage service w.e.f. 01.04.2001, in the absence of any established proof of availability of post and dehors the principle of seniority-cum-fitness as the post of Beldar (Class-IV) is a non-selection post and when no junior was regularized over and above petitioner; being misconceived, *is turned down*;

(iii) Claim of the petitioner for work charge status from the date of completion of 8 years of continuous daily wage service when the policy of 8 years notified on 08.07.1999 and 04/06.05.2000 [Annexure P-4 and Annexure P-5] was inapplicable; *is turned down;*

(iv) Petitioner having been granted work charge status from the date of completion of 10 years of daily wage service in terms of the judgement in the case of **Mool Raj Upadhayaya [supra]** has no right to claim work charge status from the date of completion of 8 years service, being ineligible and that too dehors the law laid down by the Hon'ble Division Bench of this Court in **Gauri Dutt [supra]**;

(v) Petitioner is held entitled for deemed continuation in service upto the age of 60 years, as per the mandate of the Full Bench of this Court in the case of **Baldev [supra]**;

(vi) Sequel to direction No.(iii) above, since the petitioner has not rendered actual service beyond 58 years till the age of 60 years then the petitioner is held entitled for deemed continuation in service upto the age of 60 years with notional benefits of such service for pay fixation and revised retiral benefits but without any past arrears upto age of 60 years;

(vii) Flowing from directions No. (iii) & (iv) above, petitioner shall be entitled for actual monetary benefits from the date of attaining the age of 60 years and thereafter;

(viii) Parties to bear respective costs.

In aforesaid terms, instant writ petition and all pending application, if any, shall accordingly, stand disposed of.

(Ranjan Sharma)
Judge

November 19, 2026
(tm)