

THE STATE OF HIMACHAL PRADESH & ANR. A

v.

PINJU RAM ETC.

(Civil Appeal Nos. 898-900 of 2019)

JANUARY 22, 2019

[DR. DHANANJAYA Y CHANDRACHUD AND B
HEMANT GUPTA, JJ.]

Service Law – Regularization of part time employees with consequential benefits – The High Court in Moti Singh case specifically held, while directing the consideration of daily wage status, the employee would not be entitled to any consequential monetary benefits for the past period, but this would be counted for purpose of regularization after completion of ten years – Pursuant thereto, State Government issued instructions on 22.09.2011, inter alia, governing Revenue Chowkidars – However, first respondent filed writ petition and sought grant of daily wage status with consequential benefits, which was granted by the High Court – On appeal, held: Direction of the High Court was inconsistent with the observations of the High Court itself in Moti Singh case – The policy dated 22.09.2011 essentially adopted the principle adopted in Moti Singh case by the High Court – The communication dated 22.09.2011 of the State Government in the Department of Revenue specifically spoke of the conversion of part time revenue chowkidars to daily wage status – Thus, once the State Government decided to bring part time Revenue Chowkidars on a daily wage basis with the added stipulation that while their seniority would count from the completion of ten years, this would be without any past financial benefits, this principle was required to be duly followed – In the circumstances, the High Court ought not to have issued a direction for the payment of consequential monetary benefits.

The Government decided by policy dated 27.02.2004 that part time class-IV employees who completed ten years of continuous service as on 31.12.2003 in all departments, except Education and Ayurveda, will be made daily wagers subject to certain terms and conditions. In Moti Singh case, the High Court held that the employee would not be entitled to any consequential monetary benefits for past period, but this would be counted for the purpose of regularization after completion of ten years. H

- A Pursuant to the above directions of the High Court, the State Government in the Department of Revenue issued instructions on 22.09.2011. The first respondent filed a writ petition before the High Court seeking a grant of daily wage status with consequential benefits with effect from 27.02.2004. High Court issued a direction for payment of consequential monetary benefits with effect from 01.01.2007. Hence, the present Special Leave Petition.

Allowing the appeals, the Court

- HELD:** 1. In Moti Singh case, the High Court specifically held, while directing the consideration of a representation that upon the conferment of daily wage status, the employee would not be entitled to any consequential monetary benefits for the past period, but this would be counted for the purpose of regularization after completion of ten years. [Para 15]
- 2. The policy dated 22 September 2011 essentially adopted D the principle adopted in Moti Singh case by the High Court. The communication dated 22 September 2011 of the State Government in the Department of Revenue specifically spoke of the conversion of part time revenue chowkidars to daily wage status. Such a policy statement was required since evidently they were not specifically covered by the policy decision of 27 February 2004. [Para 16][606-G-H]
 - 3. The decision which communicated on 22 September 2011 essentially granted seniority to the revenue chowkidars who were being placed on a daily wage basis. However, the payment of wages would be with effect from the date of the actual appointment and not earlier. [Para 17][607-A]
 - 4. Once the State Government decided to bring part time revenue chowkidars on a daily wage basis with the added stipulation that while their seniority would count from the completion of ten years, this would be without any past financial benefits, this principle was required to be duly followed. In the G circumstances, the High Court ought not to have issued a direction for the payment of consequential monetary benefits with effect from 1 January 2007. Such a direction in fact was inconsistent with the observations of the High Court itself in Moti Singh case which was decided on 21 April 2011. Thus, the direction of the High Court shall stand set aside. [Paras 19, 20, 21 and 22]
 - H [607-C, D, E]

Moti Singh v. State and Ors. (Judgment dated 21.04.2011 passed in CWP No.2192/2011 by the High Court of Himachal Pradesh); State of Himachal Pradesh & Anr. v. Meher Singh and Others (Judgment dated 12.04.2007 passed in CWP No.281/2007 by the High Court of Himachal Pradesh) – referred to.

A

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 898-900 of 2019

B

From the Judgment and Order dated 20.07.2017 of the High Court of Himachal Pradesh. Shimla in Civil Writ Petition Nos. 2494, 4301 and 5113 of 2012

C

Abhinav Mukerji, AAG, Mrs. Bihu Sharma, Siddharth Garg, M.T. George, Subhash Chandran K.R., Ms. M.G. Yoganaya, Biju P Raman, Anip Sachthey, Saakar Sardana, Aditya Dhawan, Ms. Kiran Dhawan, Ms. Ria Sachthey, Yash Pal Dhingra, Advs. with him for the appearing parties.

D

The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, J.

1. Leave granted.

2. On 27 February 2004, the Chief Secretary to the Government of Himachal Pradesh addressed a communication *inter alia* to all Deputy Commissioners and Heads of Departments among others, stating that the regularisation of part time employees was engaging the attention of the State for some time in the past. The Government decided that part time class-IV employees who completed ten years of continuous service as on 31 December 2003 in all departments, except Education and Ayurveda, will be made daily wagers subject to certain terms and conditions. Para 1 and 3 of the letter contained the following conditions:

E

“1. Part-time Class-IV employees who have completed ten years of continuous service as on 31.12.2003 will be made daily wager. Posts vacated by such part-time employees shall stand abolished.

F

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G

3. The conversion to daily wager status will be with prospective effect.”

H

- A 3. Some part time employees had moved the Himachal Pradesh Administrative Tribunal seeking regularisation of their services and other benefits.
- B 4. The Tribunal by its order dated 27 June 2006 observed that the State Government had framed a policy for providing daily wage employment to part time employees completing ten years of service. Hence, the State Government was directed to provide daily wage employment to those applicants before it who had completed ten years of service.
- C 5. The State Government filed a writ petition before the High Court which was dismissed, following which a special leave petition was dismissed by this Court on 21 November 2007.
- D 6. Another writ petition¹ was filed by a part time employee, Moti Singh seeking conversion to the status of a daily wage worker with effect from the date of completion of ten years of service on a part time basis. On 21 April 2011, a Division Bench of the High Court of Himachal Pradesh disposed of the writ petition with a direction to the State Government to consider the representation filed by the employee. The High Court held thus:
- E “2...We make it clear that in case the petitioner is granted daily waged status retrospectively, he shall not be entitled to any consequential monetary benefit in that regard. The period will be counted only for the purpose of his claim for regularisation after having worked as a daily wager for 10 years in that manner.”
- F 7. Pursuant to the above directions of the High Court, the State Government in the Department of Revenue issued instructions on 22 September 2011. The instructions, *inter alia*, govern Revenue Chowkidars and provided as follows:
- G “1. That the amount of wages to daily waged Revenue Chowkidars shall be paid from the date they have actually been appointed and working as full time daily wager in the department.
- H 2. Since the Revenue Chowkidars have worked as part-time prior to their conversion into daily wagers, therefore, they are not entitled to any financial benefit like arrear etc. Attention is also invited to Hon’ble High Court judgment 21.04.2011 passed in a CWP No. 2192 of 2011 titled Moti Singh vs. State and Ors. Where direction has been issued that “in case the petitioner is granted daily waged

H ¹ CWP No. 2192/2011

status retrospectively, he shall not be entitled to any consequential A monetary benefit.

3. Seniority to these daily waged Revenue Chowkidars may be granted from the date of completion of 10 years as Part Time workers.”

8. The first respondent filed a writ petition before the High Court B seeking a grant of daily wage status with consequential benefits with effect from 27 February 2004².

9. On 7 July 2012, the State Government issued further instructions C for the conferment of daily wage status on the remaining part time employees though without financial benefits in the interregnum including the arrears of pay. By its judgment dated 20 July 2012 which is impugned in these proceedings, the High Court issued a direction to the State Government to the effect that all part time Revenue Chowkidars who have been conferred daily wage status in terms of the policy dated 27 February 2004 should be granted monetary benefits with effect from 1 January 2007.

10. The High Court directed that having been conferred with daily E wage status, they shall be treated at par with all daily wagers in terms of the policy prevailing on the completion of eight years. Consequential benefits were directed to be disbursed within three months failing which interest at the rate of nine per cent will ensue. When the special leave petition came up for hearing on 2 January 2013, a statement was made before this Court on behalf of the Government of Himachal Pradesh that the appellant would confine the challenge only to the question of back wages to persons who are converted to daily wage status. While issuing notice, this Court stayed the grant of consequential benefits.

11. The submission which has been urged on behalf of the State F in support of the appeals is that the original policy dated 27 February 2004 governed part time employees of the State Government, who upon the completion of ten years of service as on 31 December 2003, were to be made daily wagers. The Revenue Chowkidars who are not appointed by the State were not governed by the above policy. The Revenue G Chowkidars are essentially engaged by the Panchayats. Hence, it was urged that in pursuance of the judgment of the High Court dated 21 April 2011, a conscious decision was taken on 22 September 2011 by the State Government in the Department of Revenue by which Revenue

² (CWP 2494/2012)

- A Chowkidars were to be granted seniority from the completion of ten years as part time workers but their wages as daily wagers would be from the date on which they were actually appointed and were working as daily wagers in the department. Similarly, on 7 July 2012, the State Government reiterated its position by directing that part time revenue chowkidars who had completed 10 years of service until 31 March 2012 will be made daily wagers from the date when they have completed ten years of service, their seniority being reckoned from the date of completion of ten years without any financial benefits of the past period. Hence, it was urged that the High Court was in error in issuing a direction for the payment of consequential benefits with effect from 1 January 2007.
- B
- C 12. On the other hand, it has been urged on behalf of the respondent employees that the High Court was justified in issuing the impugned directions, since upon the completion of ten years, the actual date on which the employees were actually placed on daily wage status, was a matter of administrative formality for which no fault can be found with the employees.
- D
- E 13. Moreover, it was urged that for all intents and purposes, the part time employees were doing the same work as those who are daily wage workmen and consequently such a direction, which the High Court issued, was sustainable in law.
- F 14. The initial policy of the State Government dated 27 February 2004 applied to part time class-IV employees in all departments of the State Government except for Education and Ayurveda. The Policy envisaged that upon the completion of ten years of continuous service as on 31 December 2003, these part time class-IV employees would be conferred daily wage status with prospective effect.
- G 15. In Moti Singh (supra), the High Court specifically held, while directing the consideration of a representation that upon the conferment of daily wage status, the employee would not be entitled to any consequential monetary benefits for the past period, but this would be counted for the purpose of regularization after completion of ten years.
- H 16. The policy dated 22 September 2011 essentially adopted the principle adopted in Moti Singh (supra) by the High Court. The communication dated 22 September 2011 of the State Government in the Department of Revenue specifically spoke of the conversion of part time revenue chowkidars to daily wage status. Such a policy statement was required since evidently they were not specifically covered by the policy decision of 27 February 2004.

17. The decision which communicated on 22 September 2011 essentially granted seniority to the revenue chowkidars who were being placed on a daily wage basis. However, the payment of wages would be with effect from the date of the actual appointment and not earlier.

18. In the meantime, there was also a decision by a Division Bench of the High Court in State of Himachal Pradesh & Anr. vs. Meher Singh and Others³ on 12 April 2007 which adverted to the decision which was taken on 27 April 2004 by the State Government.

19. Having regard to this background, we are of the view, that once the State Government decided to bring part time revenue chowkidars on a daily wage basis with the added stipulation that while their seniority would count from the completion of ten years, this would be without any past financial benefits, this principle was required to be duly followed.

20. In the circumstances, the High Court ought not to have issued a direction for the payment of consequential monetary benefits with effect from 1 January 2007.

21. Such a direction in fact was inconsistent with the observations of the High Court itself in Moti Singh (*supra*) which was decided on 21 April 2011.

22. The direction contained in the impugned order for the payment of monetary benefits with effect from 1 January 2007 shall stand set aside. We clarify that the State Government shall abide by the stipulations which are contained in the communication dated 22 September 2011 (Annexure P-5) issued by the Principal Secretary, Revenue in the Department of Revenue which have been noted in the earlier part of this judgment.

23. We, however, clarify that the seniority of the part time chowkidars who are granted daily wage status will be counted from the date of completion of ten years as part time chowkidars though without any financial benefits for the past.

24. For the above reasons, we are of the view that the present appeals should be allowed. They are accordingly allowed.

25. There shall be no order as to costs.

26. Pending application(s), if any, shall stand disposed of.

Ankit Gyan

Appeals allowed.

³ C.W.P. No. 281 of 2007