

**BEFORE THE UTTARAKHAND PUBLIC SERVICES
TRIBUNAL, DEHRADUN**

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K. Kotia

----- Vice Chairman (A)

CLAIM PETITION NO.19/2010

Vijay Kumar Sharma, S/o Sri Bishen Singh, R/o PI-4, Yamuna Colony, Dehradun (Presently working as Carpenter in the office of the Executive Engineer, Lakhwar Bridge, Construction Division 4th, Dehradun)

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Department of Irrigation, Govt. of Uttarakhand, Subhash Road, Dehradun,
2. Chief Engineer and Head of the Department, Irrigation Department, Dehradun,
3. Superintending Engineer, (Construction Division,) Department of Irrigation. Govt of Uttarakhand, Dehradun.

.....Respondents

Present: Sri J.P.Kansal, Counsel
for the petitioner

Sri Umesh Dhaundiyal, A.P.O
for the respondents

JUDGMENT**DATE: MARCH 04, 2015****DELIVERED BY SRI V.K. MAHESHWARI, VICE CHAIRMAN (J)**

1. The petitioner has claimed for the appointment in regular establishment to the post of Carpenter in the pay scale of Rs. 3050-4590 w.e.f June 1st 2000 with consequential benefits. The petitioner has also claimed the protection of his last drawn salary.

2. The facts in brief are that the petitioner was appointed as work charged carpenter in the department of Irrigation in the erstwhile State of U.P. in the year 1974. The petitioner is continuously working in that department even after creation of the State of Uttarakhand. The petitioner was regularized on the post of Carpenter w.e.f. 19.06.2008. The petitioner has further claimed that the Govt. of U.P. had issued several Govt. Orders for making regular appointment to those employees who are working on work charged basis. Some of the Govt. Orders mentioned by the petitioner are as follows:

- i. G.O. No.7143/AN/80-23-सि०-७-८८-७-८० dated 07.02.1981
- ii. O.M. No. 3881/का०प्र०अ०प्र०/१३२ मिस dated 18.10.1984
- iii. G.O. No. 1010/86-23-सि०-७-८८(१)/८० dated 06.05.1986
- iv. G.O. No. 762/93-सि०-७-८८ (६०)/८९ dated 01.03.1993

Apart from the above Govt. Orders, the Chief Engineer, U.P. Irrigation Department had also issued several letters regarding the regularization of work charged employees, but of no avail. Whereas, another Carpenter named as Omprakash was regularized on 17.09.1997, but he had refused to join. The petitioner had requested for regularization at that time also, but nothing was done. Later on, a vacancy of the post of Carpenter accrued consequent to retirement of Phool Singh on 01.06.2000. The petitioner again made a representation on 05.06.2000, but went futile.

3. The Chief Engineer and Head of the Department, Irrigation Department for the first time forwarded a seniority list of all the work charged employees on 31.3.2004, wherein the petitioner was shown at Sl. No. 34, which was not correct and petitioner again made a representation for correcting his seniority. It has also been stated that petitioner had also completed the academic qualification and practical test of Carpenter. Thus, since 1991, and more particularly on accruing the vacancy of cancellation of appointment of Omprakash and on 17.09.1997 and thereafter, after retirement of another Carpenter Phool Singh on 31.5.2000, the petitioner was eligible for regularization, but he was not regularized at that time. Therefore, the petitioner has prayed for the following relief:

- i. Regularization w.e.f. 01.06.2000;
- ii. The regularization in the scale of 3050-4590 with protection of his last drawn salary along with all consequential benefits.

4. The petition has been opposed on behalf of the respondents and it has been stated that the petitioner has been regularized after the creation of the State of Uttarakhand. It is further stated that no junior to the petitioner has been regularized prior to the petitioner. It is also stated that regularization is done after creation of vacancies subject to fulfilment of eligibility criteria and the petitioner was regularized along with other work charged employees on 17.06.2008 in the pay scale of 2610-3540. The entitlement of the petitioner for regularization w.e.f. 01.06.2000 has specifically been denied. The petition has also been opposed on the ground of non-impleadment of Irrigation Department, U.P. as well as on the basis of delay in filing the petition. However, it is admitted that petitioner had made a representation on 28.04.2004 in which he has requested to enter his qualification in his service record, which was recorded. Consequently, the petition is devoid of merit and is liable to be dismissed.

5. A rejoinder affidavit has been filed on behalf of the petitioner. In the rejoinder affidavit, it has been stated that the petitioner had the requisite qualification for appointment in regular establishment and his seniority was also determined on 31.07.2000. It is further stated that one Dinesh Prasad Joshi who was second in the order of seniority, was regularized in the pay scale of 2750-4400. Whereas, the petitioner has not been regularized in this scale rather the petitioner has been regularized in the pay scale of 2610-3540.

A copy of order dated 04.09.2004 has also been filed along with the rejoinder affidavit.

6. We have heard both the parties and perused the evidence on record carefully. It is admitted to the petitioner that his pay has been protected, so now there is no point to deal with the question of protection of the pay of the petitioner.

7. The first question, which needs adjudication as to whether the petitioner is entitled for regularization and if so to which date. In the petition, the petitioner has claimed regularization from the year 1997, but he is not able to make out any definite claim for regularization for which the onus was on the petitioner and in the absence of any definite claim, the petitioner is not entitled to claim regularization from the year 1997. In the alternative, and it is prayed in the prayer clause also, that he should be regularised w.e.f. 01.06.2000 i.e. against the vacancy accrued on retirement of one Sri Phool Singh who was working on the post of carpenter. In support of this claim a copy of information sought by the petitioner under Right to Information Act has been filed as Annexure- 15, which reveals that an employee named Phool Singh in the Yamuna Construction Division-I, Dehradun had retired on 31.05.2000. By this document, it becomes clear beyond any doubt that Phool Singh, Carpenter retired on 31.05.2000 and a vacancy in the cadre of Carpenter had accrued consequent to his retirement. It has further been pleaded on behalf of the petitioner that no appointment was made against this vacancy and petitioner is entitled to be regularized against this vacancy since the date of its accrual.

Now we have to see as to whether the petitioner is entitled to claim regularization against this vacancy. In our opinion, no person is entitled to claim recruitment, appointment or regularization since the date of accrual of the vacancies. It is the right of the employer as to which date, the employer wants to employ any employee. So, we are of the considered opinion that the petitioner is not entitled for regularization on 01.06.2000 irrespective of the fact as to whether any appointment was made to that post or not. The petitioner has relied upon the following principles laid down by Hon'ble Supreme Court in State of Haryana Vs. Piara Singh, (1992) AIR (SCW) 2315. In this case, Hon'ble Apex Court has laid down as follows:

“25. Before parting with this case, we think it appropriate to say a few words concerning the issue of regularisation of adhoc/temporary employees in government service.

The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an adhoc or temporary appointment to be made. In such a situation, effort should always be to replace such an adhoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept

in abeyance for the sake of such an adhoc/temporary employee.

Secondly, an adhoc or temporary employee should not be replaced by another adhoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.

Thirdly, even where an adhoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay in which case the pressing cause must be stated on the file. If no candidate is available or is not sponsored by the employment exchange, some appropriate method consistent with the requirements of Article 16 should be followed. In other words, there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly.

An unqualified person ought to be appointed only when qualified persons are not available through the above processes.

If for any reason, an adhoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State.

The proper course would be that each State prepares a scheme, if one is not already in vogue, for regularisation of such employees consistent with its reservation policy and if a scheme is already framed, the same may be made consistent without our observations herein so as to reduce avoidable litigation in this behalf. If and when such person is regularised he should be placed immediately below the last regularly appointed employee in that category, class or service, as the case may be.

So far as the work-charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell - say two or three years- a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the concerned authority to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this Court, security of tenure is necessary for an employee to give his best to the job. In this behalf, we do commend the orders of the Government of Haryana (contained in its letter dated 6.4.90 referred to hereinbefore) both in relation to work-charged employees as well as casual labour.”

We have given our considered thought to the principle laid down by the Hon'ble Apex Court in the above noted case, but in our opinion, the above principle is not applicable in the

present case because it was a clear direction to the State of Haryana and under the rules applicable in that State. Apart from it, after this judgment, the Hon'ble Apex Court had laid down clear guidelines regarding the regularization of those employees who were working as adhoc, temporary, dailywager or on work charge basis in *Secretary, State of Karnataka and others Vs. Umadevi and others, (2006)4 SCC 1*. According to principle laid down in the above noted case, now the work charged employees have no right to claim regularization. So, the claim of the petitioner for regularization w.e.f. 01.06.2000 is not made out and no relief can be given to him in this regard. It will however, be pertinent to mention that the petitioner has already been regularized but on subsequent date.

8. It has further been contended on behalf of the petitioner that one Dinesh Prasad Joshi was junior to him and he has been regularized prior to the petitioner and at least petitioner is entitled to be regularized from the date when his junior was regularized and in the same pay scale in which his junior was regularized. It is further stated that Sri Dinesh Prasad Joshi was regularized w.e.f. 04.09.2004 in the pay scale of 2750-4400/- whereas, the petitioner was working in the pay scale of 3050-4590/-. The petitioner was senior to Mr. Dinesh Prasad Joshi even than the petitioner was regularized on 26.05.2008 i.e. after the regularization of Mr. Dinesh Prasad Joshi and that too in the lower scale of Rs. 2610-3540/-. To prove this fact, an affidavit has been filed on 12.08.2014 on behalf of the

petitioner. In paragraph 4 of the affidavit, it has clearly been pleaded:

“That in the unrevised scale of pay of Rs. 3050-4590/- the deponent was the senior most Carpenter in Work Charge Establishment whereas Shri Dinesh Prasad Joshi was 2nd in order of seniority as Carpenter in the pre-revised lower scale of pay of Rs. 2750-4400/-. Even then the respondents had discriminately appointed the said Dinesh Prasad Joshi in the Regular Establishment as Carpenter in the pre-revised scale of pay of Rs. 2750-4400/- vide OM dated 04.09.2004.”

9. No reply has been filed on behalf of the respondents of this affidavit. In the affidavit, there is a clear assertion of the petitioner regarding the fact of regularization of Mr. Dinesh Prasad Joshi. Even in the absence of any reply, we have to see as to whether the petitioner is senior to Mr. Dinesh Prasad Joshi or not and secondly as to whether the petitioner was working on the higher pay scale. In this regard, the petitioner has filed the copy of the seniority list of the employees as paper no. 51-78. This reveals that the petitioner was placed at sl. No. 34 and in the pay scale of 3050-4590/- Whereas, Dinesh Prasad Joshi was placed at sl. No. 41 and his pay scale was Rs. 2750-4400/- This reveals that prior to regularization, the petitioner was definitely senior to Dinesh Prasad Joshi and was also working in a higher pay scale, but Dinesh Prasad Joshi was regularized w.e.f. 04.09.2004 and that too in the pay scale of 2750-4400/- whereas, the petitioner has been regularized w.e.f. 26.05.2008 and that too in the pay scale of 2610-3540/- This cannot be said to be fair and justified. The

petitioner being senior is entitled to be regularized prior to Dinesh Prasad Joshi or at least from the date when his junior was regularized and in the same scale of pay in which the junior was regularized. It is also on record that the petitioner was qualified to hold the post of carpenter. So, we are of the view that petitioner is entitled for regularization w.e.f. 04.09.2004, when Dinesh Prasad Joshi who was junior to the petitioner was regularized. The petitioner is further entitled to regularize in the pay scale in which Dinesh Prasad Joshi was regularized.

10. On the basis of the above discussion, the petition deserves to be partly allowed and petitioner is entitled for regularization w.e.f. 04.09.2004 and in pay scale of 2740-4400/-.

ORDER

The claim petition is allowed. The respondents are directed to regularize the petitioner w.e.f. 04.09.2004 in the pay scale of Rs. 2740-4400/-. The petitioner will also be entitled for arrears of pay, if any. No order as to costs.

Sd/-

D.K.KOTIA
VICE CHAIRMAN (A)

Sd/-

V.K.MAHESHWARI
VICE CHAIRMAN (J)

DATED: MARCH 04, 2015
DEHRADUN

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