

22.09.2020 Present: Mr. Devender K. Sharma, Advocate, vice Mr.Chandernarayan Singh, Advocate, for the petitioner, through Video Conferencing.
Mr. Desh Raj Thakur, Additional Advocate General, for the respondent, through Video Conferencing.

In present case, petitioner was not regularized by the Department alongwith others and he had approached the High Court and thereafter his representation, made in sequel to the directions of High Court, was rejected, whereupon, he had filed Original Application No.5339 of 2015, which was decided on 28.06.2016 after adjudicating the claim of both sides. The erstwhile H.P. State Administrative Tribunal had returned findings that Department had regularized Hira Singh, junior to the petitioner and petitioner had been discriminated and, therefore, it was directed to the respondent(s) to reconsider the case of the petitioner for regularization from the date his junior Hira Singh had been regularized. Needful was to be done within two months.

Present Contempt Petition has been filed for disobedience and defiance of the aforesaid order passed by the erstwhile Tribunal and perusal of record reveals that in para-2 of the reply to O.A., Department had objected claim of the petitioner in Original Application, by stating as under:-

“2. That the applicant although had completed the required length of service as part time worker in the department during 1996 but his name was not sponsored by the Employment Exchange, therefore, he could not find place in category I and from Category II and III persons who were regularized were all senior to the applicant. Moreover, at that time only 58 vacancies of the peon were available against which 26 persons were taken from category (I), 15 from category (II) and 17 from category

(III/IV) mentioned in para 1 above. The applicant was appearing at Serial No. 134 of the seniority list of part time workers and at Sr. No. 35 of the list of category II from where only 15 persons were taken for regularization. Hence he could not be regularized under the one time policy of regularization followed by department in 1996. However, it is submitted that on 22.05.2004 in accordance with State Govt. Policy of conversion of part time workers to daily wagers issued by the Personnel Department of State Govt. vide letter No.Per(AP-B)B(19)-7/2002 dated 27.02.2004, the applicant has been converted to daily wager along with other part time workers. The applicant had filed CWP No.10693/2011 in the Hon'ble High Court for regularizing his services from 1996 when junior to him were regularized. The CWP was decided by Hon'ble High Court on 1.5.2014 with the direction to the Respondents to "As and when, any such request is received, the same shall be considered and decided by respondent No.2 in accordance with law after affording due opportunity of hearing to all concerned, positively within a period of two months thereafter." Accordingly, applicant was heard on 19.6.2014 and order passed which is Annexed at P-7 and has been challenged by the applicant now through present T.A. alleging that therein that his services be regularized w.e.f. 1996 when Shri Hira Singh was regularized."

On adjudication of rival contentions of the parties, erstwhile Tribunal had held that action of the Department is discriminatory. Thereafter, positive direction was issued to the Department.

In compliance of the order, competent authority had passed order dated 10.11.2016, whereby claim of the petitioner has again been rejected on the same ground, which was taken

in para-2 of the reply to the Original Application and which was basis for rejection of earlier representation of the petitioner, preferred by him, in sequel to the direction passed by the Court.

Once plea taken by the Department has been considered and rejected by the Court, and thereafter, specific direction has been given to reconsider the matter then, such direction is positive direction, where Department has no other option but either to implement the order or to assail the order. But the respondent(s) have failed to act in either way, but they have chosen the way which is definitely contemptuous in nature.

Faced with aforesaid situation, learned Additional Advocate General, seeks time to have current instructions in the light of observations made hereinabove.

On his request, matter is adjourned for 27.10.2020.

(Vivek Singh Thakur)
Judge

September 22, 2020
(Purohit)