



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWPOA No.714 of 2020
Decided on: 29th July, 2026

Kathu Ram

...Petitioner

versus

State of H.P. and others

...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge.

Whether approved for reporting?¹

For the petitioner: Mr. Nishant Khidtta, Advocate.

**For the respondents: Mr. Amandeep Sharma,
Additional Advocate General.**

Jiya Lal Bhardwaj, Judge (Oral)

By way of present petition, the petitioner has prayed for the following substantive relief:-

“(i) That the respondents may kindly be directed to consider the case of the applicant for grant of work charge status w.e.f. 1.1.1994 or at least regularization w.e.f. 01.04.1998 on which date juniors have been regularized, with all consequential benefits.”

2. Shorn of unnecessary details, the key facts of the case are that the petitioner was initially engaged as Conductor in the year 1980 on daily wage basis and worked as such for three years. Thereafter, he was appointed as

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



Compressor Driver during the year 1983 against the vacant post on daily wage basis. During the year 1986, he was transferred from Rampur to Karcham Division in District Kinnaur. Later on, his services were disengaged in the month of July, 1991 without complying with the mandatory provisions of the Industrial Disputes Act, 1947.

3. The petitioner feeling aggrieved by the oral termination of his services along with other employees, had approached the erstwhile H.P. Administrative Tribunal (in short 'Tribunal') by way of **O.A. No. 1324 of 1991**, which came to be disposed of on 31.07.1995 noticing that the petitioners were dis-engaged and subsequently re-engaged by the order of the Court and are continuously working. The break that occurred in the meanwhile due to impugned termination order shall be taken into account for the purpose of counting service for regularization. However, the petitioner and other persons shall not be paid wages on the principle of 'no work no pay', but, the respondents were directed to pay them enhanced wages w.e.f. 01.01.1994, as per the judgment of Hon'ble Supreme Court in **Mool Raj Upadhyaya vs. State of H.P. and others**, 1994 (2), SLR. 377= 1994 Supp. (2) SCC 316.



4. After the direction given by the Tribunal, when the services of the petitioner were not regularized, he made a representation on 03.05.1999, however, despite receipt of the same, no action was taken by the respondents. Again, he made a representation on 17.07.2003 (Annexure A-4), to regularize his services and thereafter, another representation dated 28.06.2004, (Annexure A-5), was made to confer work charge status/regularization of his services, since juniors to him were given all benefits.

5. The petitioner was regularized as per office order dated 20.03.2007 (Annexure A-6), in the pay scale of Rs.3120-5160. The petitioner for not filing the original application within time has averred that he had lost his 3 years daughter about 9 to 10 years back, wife about 8 years back, elder son met with an accident about 9 to 10 years back, his 11 years son died during the year 2014, three times he fell ill and remained under medical treatment for long time and during the year 2015, his second wife fell ill and she is a cancer patient.

6. The petitioner has filed the present petition *inter alia* on the grounds that the respondents were to confer work charge status on him as per the judgment in **Mool Raj**



Upadhyaya's case w.e.f. 01.01.1994 or at least regularization w.e.f. 01.04.1998, from which date, his juniors were given the said benefits. The action on the part of the respondents in not giving the petitioner similar treatment, as granted to his junior w.e.f. 01.04.1998, is arbitrary and illegal, and as such sought direction to the respondents to confer work charge status on him 01.01.1994 or at least regularize his services w.e.f. 01.04.1998, on which date, his juniors were regularized with all consequential benefits. The petitioner has also placed on record a communication dated 17.07.2003 issued by respondent No.4, wherein it has been mentioned that the petitioner was working as daily waged AC Operator under Karcham Division from 1987 to 1994.

7. The respondents-State filed reply to the petition and raised preliminary submissions that neither legal nor fundamental right of the petitioner has been infringed in any manner. The petition is not maintainable and deserves to be dismissed. It has further been averred that the petitioner has mainly sought relief to the extent that his representation may be considered for granting work charge status to him w.e.f. 01.01.1994 or at least regularize his services w.e.f. 01.04.1998. The claim of the petitioner is totally baseless and



not maintainable. It has also been averred that the services of the petitioner were utilized in the respondent-Department as daily wage Operator Grade-II from the year 1991 in HP PWD Karcham Division. However, he left the job at his own and had instituted the joint original application along with other workmen bearing **O.A. No. 1324 of 1991**, which was finally disposed of in July 1995, with a direction to the respondents that the breaks occurred in the meanwhile due to the impugned termination order shall, be taken into consideration for the purpose of counting service for regularization. Pursuant to the decision, the petitioner was engaged afresh w.e.f. the year 1995. The services of the petitioner were counted w.e.f. the year 1995 as the record with respect to working of the petitioner was available only w.e.f. the year 1995. The services of the petitioner were regularized as Operator Grade-II vide order dated 20.03.2007 as per regularization policy of the State Government dated 09.06.2006, which provides regularization on completion of eight years of service with cut off date as 31.03.2004. It has further been averred that the petitioner after receipt of all regularization benefits remained silent for number of years and in the year 2016, filed the original application before the



Tribunal, claiming work charge status w.e.f. 01.01.1994 without any basis. After verifying the record, specifically the working days details, it transpires that the petitioner remained in continuous service w.e.f. the year 1995 as daily wage Operator Grade-II, but he failed to complete eight years of continuous service on or before the cut off date of application of work charge status in respect of Class-III categories in Public Works Department i.e. 01.04.2001. The question of conferment of work charge status does not arise in case the work charge establishment ceases to be a work charge establishment. The claim of the petitioner to grant him work charge status w.e.f. 01.01.1994 is also not tenable and as such has prayed for dismissal of the petition.

8. The petitioner filed rejoinder to the reply and controverted the averments made in the reply.

9. I have heard the learned counsel for the parties and also perused the record carefully.

10. Before proceeding further in the matter, it would be relevant to reproduce the order dated 31.07.1995, passed by the learned Tribunal in O.A. No. 1324 of 1991:-

“52 applicants have been engaged on different dates and have worked for different period. Some may and others may not be entitled for regularization. In these circumstances the respondents are directed to consider



the case of the applicants on merits in accordance with law and in the light of judgment of the apex court in Mool Raj Upadhaya Vs State of Himachal Pradesh and Others, 1994(2) S.L.R. 377 within a period of six months with liberty reserved to the applicants to approach this Tribunal again on the same cause of action by an independent and separate application should any of them is still aggrieved.

2. It is clarified that the applicants who were dis-engaged and were subsequently re-engaged in the present application by the order of the court are continuously working. The break that occurred in the meanwhile due to the impugned termination order shall be taken into consideration for the purpose of counting service for regularization. However, they shall not be paid back wages on the basis of no work no pay.

3. The respondents are directed to pay the applicants enhanced wages w.e.f. January 1, 1994 as per judgment of the apex court referred to above.

4. The copy of this order be placed in each case connected with OA-61/90 and all these connected cases also stand disposed of with this common order.

The application is finally disposed of in above referred to terms."

11. A perusal of the aforesaid order clearly reveals that the Tribunal had specifically ordered that the delay that had occurred in the meanwhile, due to impugned termination order shall be taken into consideration for the purpose of counting service for regularization. However, the petitioner shall not be paid back wages on the basis of 'no work no pay'. Once the Tribunal had given the specific direction to count service from the date of termination of services without



following the due process of law, which was in the month of July, 1991, the respondents cannot deny the benefit of work charge status to the petitioner either on the ground that record prior to 1995 is not available with them or the work charge establishment was not there in the respondent Department w.e.f. 01.04.1991. It is not in dispute that the respondents have not challenged the order dated 31.07.1995, passed by the learned Tribunal.

12. The plea taken by the respondents that the work-charge establishment is not available with the respondent-Department cannot be countenanced, in view of the law laid down by the Hon'ble Supreme Court in **Civil Appeal No. 1595 of 2025**, titled, **The State of Himachal Pradesh and others versus Surajmani and another**, wherein it has been held that irrespective of the fact whether the work charged establishment is there in the department or not, the employee is entitled to confer the work charge status after completion of eight years of continuous service with 240 days. If the period is taken from the month of July, 1991, the petitioner had completed eight years continuous service as on 31.07.1999 and thus, he was entitled to confer work charge status,



especially when the respondents-State did not assail the order passed by the Tribunal.

13. Learned counsel for the petitioner has vehemently argued that the persons junior to the petitioner were regularized in the year 1998, and, therefore, the respondent-State, being a model employer, had to treat the petitioner similarly, and he ought to have been granted the same relief. The said contention cannot be accepted for two reasons, firstly, when the junior to the petitioner were regularized in the year 1998, the cause of action had accrued to him during that period and once he did not come to the Court at that juncture, the said relief cannot be granted to him at this belated stage and secondly, even when the services of the petitioner were regularized as per office order dated 20.03.2007 (Annexure A-6), as Operator Grade-II, he did not approach the Court. Therefore, at this belated stage, the relief regarding regularization cannot be considered and granted to him and thus, the said relief is declined.

14. Learned Additional Advocate General has vehemently argued that so far as grant of work charge status is concerned, even that relief cannot be granted to the petitioner because he did not come to the Court within time.



However, the said contention is rejected, in view of the authoritative pronouncement of the Hon'ble Supreme Court in **Surajmani's** case (supra), wherein it has been held that the work charge status has to be conferred after completion of eight years of continuous service with 240 days. The respondents while contesting the claim of the petitioner to confer work charge status, have contented that there is no record available prior to 1995 and further the work charge establishment is not with the Department. However, the said contention cannot be accepted in view of the order passed by the learned Tribunal, wherein it was clearly mentioned in unequivocal words that the break that has occurred due to termination of the service of the petitioner shall be taken into consideration for the purpose of counting service for regularization. Had the petitioner come immediately after the requisite number of years seeking regularization, as per the policy of the State Government, he would have been granted the said relief, but keeping in view the fact that the petitioner remained satisfied for so many years, though made an attempt to seek indulgence of the Court that he had bad days in between, this Court cannot consider the said prayer for the purpose of regularization. However, the prayer of the



petitioner to confer work charge status is considered and he is held entitled to get the same after completion of eight years' service. Needless to say that after conferring work charge status, the consequential benefits shall be released in favour of the petitioner.

15. Consequently, the present petition is disposed of with the direction to the respondents to confer work charge status on the petitioner after completion of eight years service with taking his appointment from July, 1991 strictly as per the mandate contained in the judgment passed in **Surajmani's** case supra. Since the petitioner is not keeping good health and further has retired from service, the respondents are directed to release the consequential benefits in his favour after conferring the work charge status on him within three months from today. There shall be no order as to costs. Pending applications, if any, also stand disposed of.

29th July, 2026
(naveen)

(**Jiya Lal Bhardwaj**)
Judge