

HIMACHAL PRADESH
IPH&PH DEPARTMENT

No:-IPH-ES-III-DW-Court Case- Re- engagement Vol.- I /2013-

Dated- 9-4-13

To,

All the Chief Engineers
All the Superintending Engineers
IPH Department H.P.

297-372

Rax

Subject:-

CWP No. 8598/2012- Khub Singh Vs State of H.P.

(connected matter with CWP No. 9440/2012 decided on 20.12.2012).

Enclosed please find herewith a photocopy of judgment dated 20.12.2012 passed by the Hon'ble High Court of H.P. for information and necessary action.

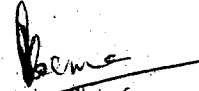
In this connection, the Principal Secretary(IPH) to the Govt. of H.P. Shimla-2 has directed to take note of the directions passed by the Hon'ble High Court of H.P. and follow them strictly, any representation made in future by the daily wages Beldar (retrenched or those who have left of their ^{own} will) and action taken report in the matter may be intimated to Government immediately.

The judgement has been examined in this office and it is found that through the CWP of petitioner has been rejected, however, directions have been issued to give preference to those workers in preference to fresh hands, if they were retrenched and there is work / post available then the Department will notify the vacancy.

Therefore, you are requested to take note of the judgement and ensure that no field officer shall engage any fresh person, and incase of availability of work and fresh workers are needed, then the post/ vacancy be given wide publicity and incase the petitioner or any retrenched worker applies they may be given preference over fresh hands. Any violation shall rest with the officer making such engagement, not only in this case but as a general principle.

Keeping in view the above, you are also requested to prepare the list of workers, who have been dis- engaged (retrenched or those who have left of their ^{own} will) till date and ensure that same is taken note by the all concerned Executive Engineer for further action in future.

Please acknowledge receipt of this communication.


Engineer-in-Chief
IPH Department,
US Club Shimla-I

Copy to the Principal Secretary (IPH) to the Govt. of H.P. Shimla-2
for information.

Copy to the Ld. Advocate General State of H.P. Shimla -1 for
information.

Copy to All Executive Engineers in I&PH Department for information
and similar necessary action.

Copy to DD(L) of this office w.r.t letter No. 6042-46 dated
23.03.2013 for information.

Engineer-in-Chief
IPH Department,
US Club Shimla-I

Copy of Order/Judgment/Statement/parsec/delivered/recorded
on 20-12-2012 by the Division Bench consisting of
Hon'ble Mr. Justice Kurian Joseph, CJ.
Hon'ble Mr. Justice Rajiv Sharma, Judge

in CWP No. Titled as:-

259 of 2012

FOR GENERAL
Section Officer (Judicial)
High Court of Himachal Pradesh
Dated: 20/12/12

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. 9440/2012
a/w connected matters
Decided on 20.12.2012

1. **CWP No. 9440 of 2012-D**

Bitu Ram son of late Shri Gurdass, resident of village Ketu,
P.O. Taklech, Tehsil Rampur, District Shimla, H.P.

.....Petitioner

Versus

1. State of Himachal Pradesh through its Principal Secretary (Forests) to the Government of Himachal Pradesh, Shimla-171 002.
2. Division Forest Officer Rampur, Tehsil Rampur, District Shimla, H.P.
3. Range Officer Rampur, Tehsil Rampur, District Shimla, H.P.
4. Shri Liaq Ram
5. Shri Parma Nand
6. Shri Laiq Ram Negi
All are working as Beldar in Forest Division Rampur, Tehsil Rampur, District Shimla, H.P.

.....Respondents

2. **CWP No. 7863 of 2012-G**

Fatch Ram, S/o Sh. Rup Dass R/o Village Uba P.O.
Shivabadar, Tehsil Sadar District Mandi, H.P.

.....Petitioner

Versus

1. H.P. State Electricity Board, through its Secretary Vidyut Bhawan, Shimla-4.
2. Executive Engineer, HPSEB Division Gohar, District Mandi, H.P.
3. Sub Divisional Officer, HPSEB Sub Division Pandoh, District Mandi, H.P.
4. Relu Ram, S/o Shri Chamara Ram Village Haton, Post Office Devri, Tehsil Sadar, District Mandi, H.P.
5. Tikem Ram, S/o Shri Parma Ram Village Masad, Tehsil Sadar, District Mandi, H.P.

3. **CWP No. 9545 of 2012-E**

Chhope Ram son of Shri Dayalu Ram, resident of Village

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3. Sub Divisional Officer, I & PH Sub Division Panarsa, District Mandi, H.P.

4. Shri Hem Singh son of Shri Dole Ram

5. Shri Tej Ram son of Shri Dagnu

7. Shri Nihal Singh son of Shri Mangtu

8. Shri Tara Chand son of Shri Shobhe Ram

9. Shri Bal Krishan son of Shri Led Ram

10. Shri Mahender Singh son of Shri Moti Ram

11. Shri Tilak Raj son of Shri Dahal

12. Shri Tara Chand son of Shri Kesru

All are working as Beldar in I & PH Division Mandi, District Mandi, H.P.

..Respondents

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CWP No. 8880 of 2013-H

Mohinder Singh son of late Shri Kundan Lal, resident of Village Theda, P.O. Takdech, Tehsil Rampur, District Shimla, H.P.

..Petitioner

Versus

1. State of Himachal Pradesh through its Secretary (Public Works) to the Government of Himachal Pradesh, Shimla- 171 002.

2. Executive Engineer, HP PWD Division Rampur, Tehsil Rampur, District Shimla, H.P.

3. Shri Chuni Lal

4. Shri Roop Singh

5. Hiu Dassi

All are working as Beldar in HP PWD Division Rampur, Tehsil Rampur, District Shimla, H.P.

..Respondents

**Civil Writ Petitions under Article 226 of
Constitution of India**

Coram

Hon'ble Mr. Justice Kurian Joseph, Chief Justice

Hon'ble Mr. Justice Rajiv Sharma, Judge

TESTED

Secretary (Judicial)
High Court of Himachal Pradesh

Whether approved for reporting?

For the Petitioner(s) : M/s R.L. Chaudhary, D.S. Kaith, Neel Kamal Sood, Vinod Thakur, H.S. Rangra, V.D. Khidta, N.K. Tomar, Vijay Dhatia, Rajesh Kumar, Naresh Kaul, Virender Ball, A.K. Gupta, Om Prakash Sharma, Lalit K. Sharma, Naresh Verma, Tek Chand Sharma, for the respective petitioners.

For the Respondents : M/s Ankush Dass Addl. A.G. With Mr. J.K. Verma, Deputy A.G. and Shashi Shirshoo, for the respective respondents.

Justice Kurian Joseph, C.J. (oral):

Petitioner(s), in all these cases, have approached this Court praying for direction for reinstatement in service. All of them have been working either in HPPWD/ I & PH or under HPSEB. According to them, after retrenching them, the respondents have engaged fresh hands without considering their claim under Section 25-H of the Industrial Disputes Act, 1947. There is also a grievance that the procedure for retrenchment under Section 25-G of the Industrial Disputes Act had also been violated.

2. Learned Deputy Advocate General, appearing for the State of H.P. and learned standing counsel appearing for the Electricity Board submitted that all the petitioners have actually abandoned their engagement and they have come after long delay. In the case of those, who approached the Labour Commissioner, their cases have been rejected rightly by the said authority on account of inordinate delay, following the Full Bench Decision of this Court in Liaq Ram versus State of H.P. and others, in CWP No. 1486 of 2007.

NOTED

Section Officer (Judicial) 66
High Court of Himachal Pradesh

3. All that apart, as far as Electricity Board is concerned, written instruction from the Executive Director (Personnel) on 18.12.2012 has been made available which reads as follows:

" I am directed to refer to your office letter dated 07.12.2012 and to inform that most of the Civil/Electrical projects are being executed on turn key basis where no work force of HPSEB Ltd. is required or being used. Even for distribution operation of maintenance of electricity lines, works are being executed on outsourcing basis which is a cost effective method of under taking the company's normal operation & Mtc. Works. Apart from this, the company is not doing any fresh recruitment of unskilled workers/beldars/T-Mates because of financial constraints lack of justification and limited requirement. Only existing T-Mates/beldars services are being used in view of committed wage/salary expenditure on them."

4. As far as State is concerned, learned Deputy Advocate General, on instruction, submits that in all the divisions whether under I & PH or under PWD in the daily wagers' category, they are having workforce in excess of the requirement and hence, some of them are being deployed in the other departments and if not, in the adjoining divisions. Thus, it is the submission of the learned Deputy Advocate General and learned Standing Counsel appearing for the Electricity Board that there is no vacancy at all and there is no likelihood of any vacancy for the daily wagers.

5. Section 25-H of the Industrial Disputes Act reads as follows:

TESTED

Section Officer (Judicial)
High Court of Himachal Pradesh

"25-H: - Re-employment of retrenched workmen:- Where any workmen are retrenched, and the employer proposes to take into his employ any person, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons."

6. Learned counsel for the petitioner(s) have also invited the attention of this Court to the Industrial Disputes Rules, 1974 under which the employer is to maintain the seniority list.

7. A close reading of 25-H of the Industrial Disputes Act, 1947 would show that in case the employer is to engage fresh hands, an opportunity be given to those, who offer themselves for re-employment. But that is available only in the case of those, who have been retrenched. Whether there is retrenchment in the case of these petitioners, is itself a disputed question and that can be decided only by the appropriate authority under the Industrial Disputes Act, 1947. However, as rightly pointed out by the learned Deputy Advocate General and learned standing counsel for the Electricity Board, even if such attempt is made at this belated stage, the Labour Commissioner is bound to reject such petitions on the ground of delay, being bound by the decision of the Full Bench of this Court in Liaq Ram's case (supra).

8. However, in view of the submissions made by the learned Deputy Advocate General appearing for the state and learned standing counsel appearing for the Electricity Board

TESTED

Section Officer (Judicial)
High Court of Orissa, Bhubaneswar

concerned, we do not think it necessary to go into these questions, since there is no scope for any engagement of any daily waged worker, as of now.

9. Therefore, these writ petitions are disposed of as follows:

In case any of the petitioners has a case that he has been retrenched without following the procedure under the Industrial Disputes Act and in case the employer requires additional manpower on account of additional work requiring the engagement of fresh hands, he may make an appropriate representation offering himself for engagement, subject to verification of the factual position regarding the retrenchment, the additional work, requirement of fresh hands etc., appropriate action shall be taken by the employer concerned for considering the case of the petitioners, subject to their fitness and being within the cut off age for such engagement. However, we make it clear that in view of the submissions made by the learned Deputy Advocate General that they are already having surplus manpower and in view of the submissions made by the learned standing counsel appearing for the Electricity Board that they do not require any fresh hands, any such fresh engagement shall be made only after getting approval from the Executive Director (Personnel) of the Electricity Board and Engineer-in-Chief/Head of the Department as far as PWD/I & PH department as the case may be. We also

REGISTERED

make it clear that this judgment shall not stand in the case of any of the petitioners, if so desire, taking recourse to the remedy, if any, under the Industrial Disputes Act.

10. Learned counsel for the petitioner(s) have expressed an apprehension that it is difficult for the poor workmen to get to know of the vacancies and hence, it may not be possible for them to offer themselves for re-engagement. We make it clear that the respondents shall not take recourse to engagement of any fresh daily wager without duly notifying such vacancies.

11. With these observations, the present writ petitions are disposed of, so also the pending application(s), if any. No costs.

J. J.
(Justice Kurian Joseph),
Chief Justice

December 20, 2012
(Bhupender/Kalpana)

J. J.
(Justice Rajiv Sharma),
Judge

J. J.
17/01/13
TESTED
17.1.2013
Section Officer (Judicial)
High Court of Jharkhand Pradeshi