

HIMACHAL PRADESH
PUBLIC WORKS DEPARTMENT

No. PW-LC-(4)OA No.264/2016-Bhoop Singh-2986-3085 Dated:-18-8-16
From:-

Engineer-in Chief
H.P.PWD, Shimla-2

To

1. All Chief Engineer(s), HPPWD.
2. All Superintending Engineers, HPPWD,
3. All Executive Engineers, HPPWD.
4. Deputy District Attorneys, HPPWD, Dharamshala, Mandi and Hamirpur.
5. Both Deputy District Attorneys, Labour Court at Judicial Complex, Chakkar, Shimla and O/o District Attorney, Dharamshala.

Subject: - Supply of copy of order passed in OA NO. 264/2016 titled as Bhoop Singh vs State of HP, dated 21.7.2016.

Sir,

In the above cited subject, I am to enclose herewith a copy of order dated 21.7.2016 passed by Hon'ble HP Administrative Tribunal in OA No. 264/2016 titled Bhoop Singh vs State of HP. As per this verdict the Hon'ble Tribunal has upheld the amended provisions of FR 56 dated 10.5.2001 and rejected the claim of applicant to retire him at the age of 60 years instead of 58 years, operative part of this order is reproduced as under:-

“...3. The amendment in Rule 56 of the Fundamental Rules that the employees appointed after 10.5.2001 were to continue upto the age of 58 years, had been notified on 10.5.2001. The applicant is not entitled to the benefit of circular dated 22.2.2010, Annexure A-4, to continue in service upto the age of 60 years and the decision in LPA No. 196 of 2010, titled Bar Chand vs State of HP & Ors. decided on 21.10.2010, by the Hon'ble High Court of Himachal Pradesh, had been distinguished as one rendered per incurium since the position under law was not considered in the case.

4. Their Lordships of Hon'ble Supreme Court in Petition(s) for Special Leave to Appeal (Civil) CC 20314 of 2011, State of HP & Ors. versus Bar Chand, decided on 12.12.2011, while upholding the decision held in Bar Chand's case has kept the question of law open. The circular dated 22.2.2010 would not nullify the effect of FR 56.

(2)

5. The applicant had been regularized on 23.12.2006. The applicant is to continue upto the age of 58 years under FR 56. He is not entitled to continue upto the age of 60 years on account of his appointment as daily wager prior to 20.5.2001.

6. In view of the analysis made hereinabove, the age of superannuation of the applicant is 58 years and he is not entitled to continue upto the age of 60 years. As such, the original application is dismissed.

7. The pending miscellaneous application(s), if any, also stands disposed of."

Therefore, being a strategic pronouncement of Hon'ble HP Administrative Tribunal on the issue of retirement at the age of 60 years instead of 58 years, if raised by any workmen of PWD again, upon receipt of new case, by any workmen Class-IV this judgment may be relied in the reply of department for opposing such claims.

This is for information and necessary action as the case may be.

Encls: as above

17/8
Jt. Director(Law)
For Engineer-in-Chief
HPPWD Shimla-2

Copy forwarded for information and necessary action to the:-

1. The Addl. Chief Secretary (PW) to the Government of HP alongwith copy of order dated 21.7.2016.
2. The Executive Engineer, HPPWD NH Division Solan alongwith copy of this order with further direction to retire the applicant / workman with immediate effect, if already not retired and still continuing.
3. The In-charge IT Cell in this office alongwith copy of this order with the request to kindly upload this strategic order on departmental official portal.
4. Guard file.

Encls: as above

Jt. Director(Law)
For Engineer-in-Chief
HPPWD, Shimla-2

②

No. 16-/2016-I Addl.A.G 28080
Office of Advocate General,
Tribunal Section, Shimla-2.

Dated:- 7-8-16

To

✓ The Engineer-in-Chief, HPPWD,
Nirman Bhawan, Shimla-2

Subject: - O.A 264/2016 -Bhop Singh Vs. State of H.P

Sir,

I am enclosing herewith certified copy of order/judgment delivered by the Administrative Tribunal on 21-7-2016 in the above mentioned case for information/ necessary action at your end.

The copy of the above order/judgment be also supplied to other concerned respondents/authorities, at your own level, at the earliest.

Yours faithfully,

Sanjay Singh Chauhan
(Sanjay Singh Chauhan)
Addl Advocate General,
Himachal Pradesh. Shimla.
(Mb:94184-00033)

Encls:-As Above

Ends: No. 16-/2016-I Addl.A.G -

Dated:-

Copy for information is forwarded to:-

1. The Pr. Secretary (HPPWD) to the Govt. of Himachal Pradesh, Shimla-2.
2. The Superintending Engineer National Highway, Solan, Distt Solan H.P
3. The Executive Engineer NH Division HPPWD, Solan, Distt Solan H.P
4. The Assistant Engineer NH Sub Division, HPPWD Kafota, Distt Sirmour,

HP
with
New Govt. of H.P

(Sanjay Singh Chauhan)
Addl. Advocate General,
Himachal Pradesh. Shimla

2
H. Dir
Sh. Simla

2743
9-8-16

(4)

Copy of Order/ Judgment/ Statement / passed/ delivered/ recorded
on 21.7.16 by the Division Bench consisting of
Hon'ble Mr. D.K. Sharma, Member(Judl.);
Hon'ble Ms. Prem Kumar, Member(Admn.)
In SA-264/16 Titled:-

Bhop Singh son of Shri Deiya Ram, resident of Village
Dhamroli, P.O. Baur, Tehsil Chopal, District Shimla, H.P.
presently working as Beldar, under the office of National
Highway, Sub Division, HPPWD, Kafota, District Sirmour, H.P.

.....Applicant

Versus

1. State of Himachal Pradesh through Principal Secretary
(PW) to the Government of Himachal Pradesh, Shimla-2.
2. The Engineer-in-Chief, HPPWD, Nirman Bhawan,
Nigam Vihar, Shimla-2
3. The Superintending Engineer, National Highway, Solan,
District Solan, H.P.
4. The Executive Engineer, HPPWD, National Highway
Division, HPPWD, Solan, District Solan, H.P.
5. The Assistant Engineer, National Highway, Sub Division,
HPPWD, Kafota, District Sirmour, H.P.

.....Respondents

HIMACHAL PRADESH ADMINISTRATIVE TRIBUNAL AT SHIMLA-2

COPY OF ORDER/JUDGMENT ENCLOSED

ATTESTED


Section Officer (Judicial)
H.P. Administrative Tribunal
Shimla-171002

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**IN THE HIMACHAL PRADESH ADMINISTRATIVE TRIBUNAL
SHIMLA**

O.A. No.264 of 2016

Reserved on: 11.07.2016

Date of Decision: 21.07.2016

Bhop Singh son of Shri Deiya Ram, resident of Village Dhamroli, P.O. Baur, Tehsil Chopal, District Shimla, H.P. presently working as Beldar, under the office of National Highway, Sub Division, HPPWD, Kafota, District Sirmour, H.P.

.....Applicant

Versus

1. State of Himachal Pradesh through Principal Secretary (PW) to the Government of Himachal Pradesh, Shimla-2.
2. The Engineer-in-Chief, HPPWD, Nirman Bhawan, Nigam Vihar, Shimla-2
3. The Superintending Engineer, National Highway, Solan, District Solan, H.P.
4. The Executive Engineer, HPPWD, National Highway Division, HPPWD, Solan, District Solan, H.P.
5. The Assistant Engineer, National Highway, Sub Division, HPPWD, Kafota, District Sirmour, H.P.

.....Respondents

Coram

The Hon'ble Mr. D.K. Sharma, Member(Judicial)

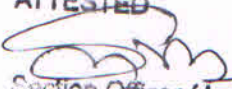
The Hon'ble Mr. Prem Kumar, Member (Administrative)

Whether approved for reporting?¹

For the Applicant Mr. Sandeep K. Pandey, Advocate.

¹ Whether reporters of print and electronic media may be allowed to see the order?

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Section Officer (Judicial)
H.P. Administrative Tribunal
Shimla-171002

For the Respondents Mr. H.K.S.Thakur and Mr. Sanjay
Singh Chauhan, Addl. AGs

D K. Sharma, Member(Judicial)

The applicant seeks directions to the respondents that he should be continued in service till he attains the age of 60 years since he had been engaged prior to 10.5.2001. There is no dispute that all those who have been appointed in regular service as class IV employees prior to 10.5.2001, they are entitled to continue upto the age of 60 years. As per amendment in Rule 56 of the Fundamental Rules, those who have been regularized after 10.5.2001, they will be entitled to continue upto the age of 58 years.

2. Their Lordships of Hon'ble High Court of Himachal Pradesh in LPA No. 298 of 2011, State of H.P. & others versus Chuni Lal Beldar, decided on 22.11.2011, have held that a Class IV employee entered into service after 10.5.2001 is entitled to continue upto the age of 58 years. Their Lordships have held as under:-

"The State has come up in appeal against the judgment dated 24th February, 2011. The issue pertains to continuance of Class IV employee upto the age of 60 years. There is no dispute on the question of law that all those who have been

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Section Officer (Judicial)
H.P. Administrative Tribunal
Shimla-171002

appointed in regular service as Class IV employee prior to 10.5.2011, they are entitled to continue upto the age of 60 years. In LPA No.196 of 2010 titled as Bar Chand vs. State of H.P. and others decided on 21st October, 2010, this Court had observed that all those, who have been appointed even if on daily waged service prior to 10.5.2001 would be entitled to continue upto the age of 60 years. That judgment has been later distinguished as one rendered per incurium since the position under the Rules was not considered in that case. What was considered in that case was the Notification issued by the Government. As per the amendment in FR 56, only those who have been regularly appointed/regularized in service prior to 10.5.2001, they alone will be entitled to continue upto 60 years.

2. Learned Single Judge in the judgment under appeal has followed LPA No.196 of 2010, which is no more a good law in view of the position under law that being a judgment rendered per incurium it has no precedential value and it is no more binding. As far as the facts of the case of the petitioner are concerned, it is an admitted fact that he had entered regular service only in the year 2007, though he was on daily waged service prior to 2001. Only in case the writ petitioner entered regular service before 10.5.2001, he would be entitled to continue upto the age of 60 years."

3. The amendment in Rule 56 of the Fundamental Rules that the employees appointed after 10.5.2001 were to continue upto the age of 58 years, had been notified on 10.5.2001. The applicant is not entitled to the benefit of circular

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Section Officer (Judicial)
H.P. Administrative Tribunal
Shimla-171002

dated 22.2.2010, Annexure A-4, to continue in service upto the age of 60 years and the decision in LPA No. 196 of 2010, titled Bar Chand Versus State of H.P. & Ors., decided on 21.10.2010, by the Hon'ble High Court of Himachal Pradesh, had been distinguished as one rendered per incurium since the position under law was not considered in the case.

4. Their Lordships of Hon'ble Supreme Court in Petition(s) for Special Leave to Appeal (Civil) CC 20314 of 2011, State of H.P. & Ors. Versus Bar Chand, decided on 12.12.2011, while upholding the decision held in Bar Chand's case has kept the question of law open. The circular dated 22.2.2010 would not nullify the effect of FR 56.

5. The applicant had been regularized on 23.12.2006. The applicant is to continue upto the age of 58 years under FR 56. He is not entitled to continue upto the age of 60 years on account of his appointment as daily wager prior to 10.5.2001.

6. In view of the analysis made hereinabove, the age of superannuation of the applicant is 58 years and he is not entitled to continue upto the age of 60 years. As such, the original application is dismissed.

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Section Officer (Judicial)
H.P. Administrative Tribunal
Shimla-171002

7. The pending miscellaneous application(s), if any,
also stands disposed of.



July 21, 2016
uttam

Sd/-

(D.K. Sharma)
Member(J)

Sd/-

(Prem Kumar)
Member (A)

28/7/16

- Serial Number of the Application
Name of the applicant
Date of presentation of 22-7-16
Application for copy
Number of pages 6
Copying fee charged deposited/Nil
Date deposit of copying fee
Urgent fee if any charged
Date of receipt or record for copy 22-7-16
Date of preparation of copy 28-7-16
Date of delivery of copy to the applicant

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Section Officer (Judicial)
H.P. Administrative Tribunal
Shimla-171002