**Before The Hon'ble State Administrative Tribunal At Shimla**

O. A. No :\_\_\_\_\_\_ of 2004

Applicant

Versus

Respondents

Application Under Section 19 of the Administrative Tribunals Act, 1985

Shimla Applicant

\_\_\_\_\_\_ Through, Advocate

Respectfully Sheweth:

1. Particulars of the Applicant

As given in the Memo of Parties.

2. Particulars of the Respondents

As given in the Memo of Parties.

3. Impugned Order:

That the applicant is aggrieved by the action, rather inaction of the respondents in not regularizing the service of the applicant even after \_\_\_\_\_ years of service which act on the part of the respondents is arbitrary, malafide, illegal, ultra vires of the Articles 14, 16 and 19 of the Constitution of India and against the natural justice and the law laid down by the Hon'ble Supreme Court of India and this Hon'ble Tribunal.

That the applicant is also directing this application against non-payment of salary to the applicant equivalent to regular hands on the same and similar posts under the similar circumstances and with the same and the similar working conditions on the principles of Equal Pay for Equal Work as enunciated in the Constitution of India and upheld by the Hon'ble Supreme Court of India and this Hon'ble Tribunal in the catena of cases.

4. Jurisdiction

That the applicant declares that the subject matter is within the jurisdiction of this Hon'ble Tribunal.

5. Limitation:

That the applicant further declares that the application is within the limitation.

6. Facts of the Case:

6.1 That the applicant submits that he was appointed as a part-time class IV employee in \_\_\_\_\_\_ . Ever since the applicant has been continued as such without regularizing his services despite repeated requests and representations made by the applicant to the respondents.

6.2 That such an action on the part of the respondents is unreasonable, unconscionable and unjust even when the applicant has been retained in the service as a part-time employee for such a long period.

6.3 That here it would be pertinent to mention that the applicant was registered with the Employment Exchange. The name of the applicant was struck out by the Employment Exchange as the applicant was in the part-time employment of the respondents.

6.4 That the applicant has always been working and discharging his duties with great zeal and fervour and to the entire satisfaction of his superiors. The respondents have been extracting a full-time work from the applicant even though the applicant is only a part-time worker. The respondents are thus resorting to the unfair labour practice and if the applicant would resist to do so, he would be doing so at the cost of his job. The respondents have, as a matter of fact, used the applicant as a bonded labour by paying him petty salary and extracting the full time job, which an archaic practice being adopted by the respondents to this day in our 50th year of Independence is the most reprehensible and condemnable and needs to be stopped by directing the respondents to regularise the services of the applicant.

6.5 That there is no one in the government service from the family of the applicant. The applicant belongs to a very poor family and to the Schedule caste category.

6.6 That the applicant has completed more than 240 days in every calender year right from very beginning of his service and he was in possession of requisite qualification at every stage. The applicant was well within the prescribed age limit at the time of his initial engagement in the respondent department.

GROUNDS

6.7 That feeling aggrieved by such an arbitrary, malafide, discriminatory and illegal actions of the respondents, the applicant seeks the indulgence of this Hon'ble Tribunal on the following grounds amongst others, which may be taken at the time of arguments, each one of which is without prejudice to and independent of others :-

(a) That the action, rather inaction of the respondents in not regularising the service of the applicant even after the applicant has served for such long period is arbitrary, malafide, illegal, ultra vires, against the Articles 14, 16 and 19 of the Constitution of India, dehors the rules and regulations and against the natural justice and the principles of law settled by the Hon'ble Supreme Court of India and this Hon'ble Tribunal.

(b) That reasons ascribed by the respondents for non-regularisation of the service of the applicant are unconscionable, unreasonable, unjustified and not sustainable in the eyes of law.

(c) That the respondents are estopped due to their own act, deed and conduct from denying the benefit of regularisation to the applicant, more so when they have extended such benefits to other similarly situated persons by relaxation of rules. The principle of the Promissory Estopple applies against the respondents.

(d) That the impugned action is against the well settled principles of the law as laid down by the Hon'ble Supreme Court and this Hon'ble Tribunal in catena of cases.

(e) That the service of the applicant deserves to be regularised with effect from the date of his initial appointment and the applicant deserves to be paid arrears of salary on the principle of Equal Pay for Equal Work.

(f) That it is settled law that the denial of regularisation and arrears of the salary is a recurring injury and recurring cause of action.

(g) That the respondents have created distinction amongst the applicant and the other similarly situated persons in the matter of grant of regularisation on the flimsy, unconscionable, unreasonable and unjustified grounds which does not stand the test of justice and fair play as envisaged under the Constitution of India.

(h) That the policy of nurturing nepotism and favouritism in the matter of regularisation adopted by the respondents as is amply evident from the conduct of the respondents in the present instance is highly condemnable and reprehensible. The policy of engaging on part time and extracting a full time job is a manifestation of bonded labour system in its modern form and this indigenous device has been adopted by the respondents by finding loopholes in the law settled by the Hon'ble Supreme Court and this Hon'ble Tribunal with an effort to out reach that law and defeat the legitimate and rightful claim for regularisation of the applicants.

(i) That the applicant has acquired a status with the passage of time as he has completed 240 days in each calender years and thus acquired a right to the post. The applicant was always in possession of requisite qualification. The applicant was well within the prescribed age limit at the time of his initial appointment.

7. Reliefs Sought:

That the applicant, therefore, prays that your Lordships be pleased to issue an appropriate writ, orders or directions to grant the following reliefs in favour of the applicant in the interest of justice:-

(a) Direct the respondents to regularize the services of the applicant from the back date, ie completion of 10 years of service by the applicant, with all the consequential benefits;

(b) Direct the respondents to pay the salary and arrears of the salary to the applicant equal to the regular incumbents of the same post w.e.f. date of his appointment on the principle of equal pay for equal work with interest @ 18% p.a.;

(c) Direct the respondents to produce all the relevant documents for perusal by this Hon'ble Tribunal;

(d) Allow the cost of this O.A.;

(e) Pass such other order or directions as deemed fit and proper in favour of the applicant.

AND FOR THIS ACT OF KINDNESS, THE HUMBLE APPLICANT AS IN DUTY BOUND,SHALL EVER PRAY.

8. Interim Orders, If Prayed:

At this stage no interim order is prayed for.

9. Details of Remedies Exhausted:

That the applicant submits that he has made various personal as well as written representations before the respondents but of no avail. The applicant further submits that there is no other alternative speedy and efficacious remedy available to him except to approach this Hon'ble Tribunal.

10. Matter not Pending With Any Other Courts Etc.

That the applicant further declares that the matter regarding which this application has been made, is not pending before any court of law or any other Authority or any other bench of this Hon'ble tribunal.

11. Particulars of Court Fees:

Court fees worth Rs 50/- is attached herewith.

12. Details of Index:

An index containing the details of the documents to be relied upon is enclosed herewith.

Shimla Applicant

\_\_\_\_\_\_ Through, Advocate

**BEFORE THE HON'BLE STATE ADMINISTRATIVE TRIBUNAL AT SHIMLA**

O. A. No.\_\_\_\_\_\_ of 2004

Applicant

Versus

Respondents

Affidavit in support of O.A. under Section 19 of the H.P. Administrative Tribunals Act 1985.

I,\_\_\_\_\_\_, do hereby solemnly, affirm and declare as under :-

1. That the accompanying O.A. has been prepared under my instructions.

2. That the contents of paras 1 to 13 of the accompanying application are correct and true to the best of my knowledge.

3. That I further solemnly affirm and declare that this affidavit of mine is correct and true to the best of my knowledge and no part of it is false and nothing material has been concealed therein.

Affirmed at Shimla this the\_\_\_\_\_\_ .

Deponent

**BEFORE THE HON'BLE STATE ADMINISTRATIVE TRIBUNAL AT SHIMLA**

O. A. No: \_\_\_\_\_\_ of 2004

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Shimla Applicant

\_\_\_\_\_\_ Through, Advocate

**Annexure – A**

High Court of Himachal Pradesh Shimla

Appellate Side

Receipt showing Court Fees Paid : OA No :\_\_\_\_\_\_of 2004

\_\_\_\_\_\_ Versus \_\_\_\_\_\_

|  |  |
| --- | --- |
|  Particulars | Amount |
| Court Fees stamp on Memo | 50.00 |
| Petition |   |
| Enclosures |   |
| Vakalatnama  | 2.65 |
| Process Fees |   |
| Others |   |
| Total | 52.65 |

Date :\_\_\_\_\_\_

Signature of Receiving Clerk

**BEFORE THE HON'BLE STATE ADMINISTRATIVE TRIBUNAL AT SHIMLA**

O. A. No.:\_\_\_\_\_\_ of 2004

Applicant

Versus

Respondents

Court Fees Rs. 50/-

Shimla Applicant

\_\_\_\_\_\_ Through, Advocate