



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA  
ON THE 10<sup>th</sup> DAY OF AUGUST, 2022

BEFORE

HON'BLE MR. JUSTICE VIVEK SINGH THAKUR

CIVIL WRIT PETITION (ORIGINAL APPLICATION) NO.771 OF

2019

Between

1. OM PARKASH  
S/O SHRI HANS RAJ  
R/O OF VILLAGE KANGER KOTLI,  
POST OFFICE ROPARI,  
TEHSIL SARKAGHAT, DISTRICT MANDI,  
HIMACHAL PRADESH.
2. SHRI AMAR SINGH  
S/O SHRI LEKH RAM,  
R/O VILLAGE THARU, POST OFFICE GOPALPUR,  
TEHSIL SARKAGHAT, DISTRICT MANDI,  
HIMACHAL PRADESH  
  
AT PRESENT WORKING AS FIELD KANOONGO LANGNA,  
TEHSIL DHARAMPUR, DISTRICT MANDI,  
HIMACHAL PRADESH.
3. OM CHAND  
S/O SHRI HIMMAT RAM,  
R/O VPO CHOUNI THANA  
TEHSIL SARKAGHAT, DISTRICT MANDI,  
HIMACHAL PRADESH  
  
AT PRESENT FIELD KANOONGO, BALDWARA,  
TEHSIL SARKAGHAT, DISTRICT MANDI,  
HIMACHAL PRADESH

.....PETITIONERS

(BY SH. SURINDER SAKLANI, ADVOCATE)

AND

1. STATE OF HIMACHAL PRADESH  
THROUGH SECRETARY (REVENUE)  
TO THE GOVERNMENT OF HIMACHAL PRADESH  
SHIMLA-2
2. DIVISIONAL COMMISSIONER,  
MANDI DIVISION,

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HIMACHAL PRADESH.

3. DEPUTY COMMISSIONER-CUM-COLLECTOR,  
MANDI, DISTRICT MANDI,  
HIMACHAL PRADESH
4. SHRI SHYAM LAL,  
NAIB TEHSILDAR SADAR,  
DISTRICT MANDI,  
HIMACHAL PRADESH.
5. HEM SINGH, NAIB TEHSILDAR,  
LAO, HP PWD MANDI,  
DISTRICT MANDI,  
HIMACHAL PRADESH.
6. TULSI RAM,  
FIELD KANOONGO SAINJ,  
TEHSIL CHACHYOT, DISTRICT MANDI,  
HIMACHAL PRADESH.
7. GOPAL SINGH,  
NAIB TEHSILDAR,  
TEHSIL SARKAGHAT, DISTRICT MANDI,  
HIMACHAL PRADESH

....RESPONDENTS

BY

MS DIVYA SOOD, DEPUTY ADVOCATE GENERAL,  
FOR RESPONDENTS NO.1 TO 3.

MR. NIMISH GUPTA, ADVOCATE, FOR  
RESPONDENTS NO.4, 5 & 7.

NONE FOR RESPONDENT NO.6 (EX-PARTE)

Whether approved for reporting? Yes.

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*This petition coming on for pronouncement this day, the  
Court passed the following:*

### ORDER

Petitioners have approached this Court,  
seeking direction to redraw the Seniority List of Kanungos  
in District Mandi, by assigning seniority to petitioners by

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counting their service since their initial appointment, i.e. w.e.f. 31.1.1987, instead of counting their service, for the purpose of seniority, from completion of Settlement/ Revenue Training and passing of Departmental Examination.

2. Petitioners were appointed as Kanungos in the Revenue Department in District Mandi, Himachal Pradesh, on the basis of recommendations of Sub Regional Employment (Ex-servicemen Cell), Shimla and the H.P. Public Service Commission, vide Office Order dated 31.1.1987 (Annexure P-1). In final Seniority List, as existed on 31.12.1988, petitioners' seniority was decided on the basis of their date of appointment, i.e. 31.1.1987. They completed their Settlement Training, Revenue Training and passed Departmental Examination of Kanungo in the year 1991. Lateron, they were placed in the Seniority List of Kanungos of District Mandi, on the basis of date of completion of training and passing of Departmental Examination, w.e.f. 8.10.1991.

3. In the final Seniority List of Kanungos of District Mandi, as it stood on 30.6.2000, to assign seniority to petitioners, date of appointment of petitioners was reflected as 8.10.1991. Petitioners

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submitted representation, dated 10.6.2005, for assigning them seniority from the date of appointment, i.e. 31.1.1987, as, on the basis of Rules related to assigning seniority of the candidates selected through H.P. Public Service Commission, seniority of such candidates is assigned from the date of appointment.

4. During intervening period, identical issue was raised by some Kanungos appointed in District Shimla, by filing OA No.572 of 1989 before Erstwhile H.P. State Administrative Tribunal, seeking direction to assign them seniority from the date of appointment, instead of completion of training/passing the Departmental Examination. The said OA was dismissed by the Erstwhile H.P. State Administrative, Tribunal vide order dated 29.9.1999.

5. The aforesaid order dated 29.9.1999 was assailed by aggrieved person by filing CWP No.238 of 2000, titled as Devinder Singh Kalta versus State of Himachal Pradesh. A Division Bench of this Court, vide order dated 15.12.2006, allowed the said petition and Office Order assigning seniority on the basis of date of completion of training/passing of Examination and order dated 29.9.1999, passed by erstwhile H.P. State

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Administrative Tribunal in OA No.572 of 1989, were quashed and set aside, with further direction to redraw the seniority of Kanungos, as per Rule 12 of the Himachal Pradesh Kanungo's Service Rules, 1951 (hereinafter referred to as 'Rules 1951'), on the basis of date of initial appointment. The said order was never assailed, rather was implemented by the Revenue Department.

6. On 20.2.2007, petitioner Om Prakash submitted a reminder to Deputy Commissioner Mandi, alongwith copy of Judgment dated 15.12.2006, passed by the Division Bench of High Court, with prayer to determine seniority from date of initial appointment, i.e. 31.1.1987.

7. Aforesaid representation was rejected by the Deputy Commissioner Mandi by passing a non-speaking order, dated 19.2.2007 (Annexure P-5). Before that, the Deputy Commissioner Mandi issued Tentative Seniority List of Kanungos, as it stood on 31.12.2006 (Annexure P-6), which was circulated on 15.2.2007, wherein petitioners were reflected to have been appointed on 8.10.1991.

8. Being aggrieved, petitioners, alongwith another person Ved Prakash, filed Original Application

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(OA) No.752 of 2007 before the Erstwhile H.P. State Administrative Tribunal. The said OA, on abolition of Erstwhile H.P. State Administrative Tribunal, was transferred to this High Court and was numbered as CWP(T) No.2148 of 2008. Vide order dated 31.8.2009, passed in this petition (CWP(T) No.2148 of 2008), rejection of representation dated 10.6.2005, vide order dated 19.2.2007 (Annexure P-5), was quashed and set aside and the Deputy Commissioner, Mandi was directed to decide the representation of the petitioners afresh by self-contained order, within a period of four weeks from that date.

9. In sequel to order dated 31.8.2009, passed in CWP(T) No.2148 of 2008, the Deputy Commissioner, Mandi, decided the representation of petitioners vide order dated 14.12.2009/6.1.2010, rejecting the claim of petitioners, by referring Rule 12 of Rules 1951 providing for determination of seniority of Kanungos on the basis of date of their substantive appointment and instructions issued by the Financial Commissioner-cum-Secretary (Revenue) to the Government of Himachal Pradesh, vide No.Rev.A(B)7-4/2005, dated 20.2.2006 as well as Para

6(ii) of Letter No.Rev-A(B)7-4/2005, dated 21.6.2006.

Para 6(ii) of the instructions reads as follows:

“Seniority of a person shall be determined from the date of substantive appointment, which means that seniority can not be reckoned prior to appointment in service i.e. service rendered during training period and also prior to passing the examination shall not be reckoned for seniority.”

10. Feeling aggrieved by the aforesaid rejection of representation, petitioners have approached this Court.

11. In response to the petition, order passed by the Deputy Commissioner, Mandi, has been justified, by stating that the Seniority List, as it stood on 30.6.2000, was issued in the light of order passed by the erstwhile H.P. State Administrative Tribunal in OA No.409 of 1988 and further that this High Court, vide order dated 1.4.2003, passed in CWP No.869 of 2002, titled as State of Himachal Pradesh v. Sunder Dass, directed to follow the Seniority List dated 4.8.2002 and subsequent Seniority List has been issued accordingly and order dated 14.12.2009/6.1.2010, deciding the representation dated 10.6.2005 has been passed, keeping in view the aforesaid facts. Further that, judgment dated 15.12.2006, passed by this High Court in CWP No.238 of 2000, pertained to a Kanungo of District Shimla, whereas

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petitioners have been appointed in District Mandi and by referring to instructions and communications, mentioned in order of rejection of representation, it has been stated that assigning of seniority to the petitioners from 8.10.1991 is legal, valid and justified.

12. Rule 12 of Rules 1951, reads as under:

"12. The seniority of the members of the service shall be determined by the date of their substantive appointment provided that if two or more members are appointed substantively on the same date, their seniority shall be determined according to the orders in which their names are entered by the Director of Land Records in the list of Kanungo candidates maintained in his office."

13. In OA No.572 of 1989 as well as in CWP No.238 of 2000, it was stand of the respondents-State that Seniority List of direct Kanungo candidates was drawn in accordance with relevant Rules, assigning seniority after completion of training/qualifying the Kanungo examination and obtaining Efficiency Certificate from the Director of Land Records from such date and, thus, assigning the seniority on the basis of merit, after satisfactory performance of duties and training/passing of examination from the date of passing of the examination was justified claiming that interse seniority was not to be



determined on the basis of initial appointment. Stand of the State, approved by the erstwhile H.P. State Administrative Tribunal by dismissing OA NO.572 of 1989, was quashed and set aside by the Division Bench of this High Court in CWP No.238 of 2000.

14. Considering the submissions of the parties on the aforesaid issue, the Division Bench of this Court, vide judgment dated 15.12.2006, passed in CWP No.238 of 2000, has observed and held as under:

“We have given our thoughtful considerations to the rival contentions of the parties. We are absolutely clear in our mind that there could not be two rules for fixing the seniority inter-se the candidates. By now it is well established that when ever there is a conflict between the Statutory Rules and the Executive Instructions, Statutory rules are to be preferred and given precedence. However, where the rules aforesaid are silent, it can be supplemented by issuing adequate Executive instructions which, of course, should not be contradictory or in conflict and opposed to the statutory rules or the rules of natural justice. In the instant case, admittedly, the petitioner and the private respondents are direct recruits and are similarly situated. A perusal of the rules, Annexure-P1 clearly demonstrates that the Kanungos are governed by the aforesaid rules and therefore, selection of the petitioner and private respondents being direct recruits, has been made in accordance with Rule 6 (c) (ii) of the said Rules. The method of appointment clearly provides that such appointment shall be made by selection from amongst the accepted kanungo candidates other than ‘patwaris’ who are in possession of a

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'certificate of efficiency', from the Director of Land Records. Whereas, the office order dated January 23, 1984 regarding the appointment of the petitioner, inter alia, contained the following conditions:

"8. The inter seniority of the candidate shall be fixed on the basis of their merits and satisfactory performance of their duties training.

9. On successful completion of training and qualifying departmental examination he shall be eligible for appointment as Kanungo anywhere in any government department/ semi government organization./public undertakings subject to the availability of posts in the pay scale of 48-880 and may be posted in any part of Himachal Pradesh.

Provided that no candidate will be appointed as Kanungo unless he is in possession of efficiency certificate issued by the director of land records, H.P. Shimla."

Taking a cue from the above conditions, the respondents have laid stress that the petitioner was bound by these conditions as having been accepted and that the final seniority list was required to be prepared on the basis of merit and as per the above conditions. But in our considered opinion, these conditions are opposed to rule 12 which provides the method of seniority. Rule 12 of the Rules aforesaid, can be extracted as under:

"12. The seniority of the members of the service shall be determined by the date of their substantive appointment provided that if two or more members are appointed substantively on the same date, their seniority shall be determined according to the orders in which their names are entered

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by the Director of Land Records in the list of Kanungo candidates maintained in his office”.

(emphasis supplied)

As already said, there cannot be different criteria for determining the seniority in the same cadre, one as per the rules and another by applying the Executive instructions. If there is any such contradictory or contrary provision existing, that is essentially required to be ignored and the statutory rules shall have the prevalence. Therefore, we are not in agreement with the arguments advanced by the learned counsel for the respondents that conditions No. 8 and 9 would govern the seniority in the instant case more specifically when the statutory rules clearly occupies the field. The only mode to fix the seniority inter-se the petitioner and private respondents is Rule 12 ibid. Thus, keeping in view the related rules, in our opinion, the seniority of the Kanungo candidates shall be determined by the same date when the petitioner and private respondents were appointed substantively as per the orders in which their names as Kanungo candidates are entered by the Director Land Records in the list of Kanungo candidates maintained in his office. The acceptance of office order dated January 13, 1984, which lays down the conditions No. 8 and 9 above, by the petitioner will not stop him to claim seniority as per rules as applicable at that time.

Keeping in view the above discussion and reasons, we hereby quash and set aside the office order Annexure-PA dated September 3, 1988 and the order dated September 29, 1999 passed by the learned H.P. Administrative Tribunal in O.A. No. 572 of 1989, Annexure-PH, and direct the respondents No.1 and 2 to redraw the seniority of the petitioner and the private respondents as per Rule 12 above. The petition is accordingly allowed.”

15. As observed in judgment passed in CWP No.238 of 2000, in Shimla District, some Kanungos were assigned seniority from initial date of appointment, whereas others were assigned seniority from completion of training/passing of examination. Considering all these facts, the Division Bench quashed and set aside the Office Order dated 3.9.1988, assigning the seniority on the basis of completion of training/passing of examination and directed respondents No.1 and 2, i.e. State of Himachal Pradesh through Secretary (Revenue) and the Deputy Commissioner Shimla to redraw the seniority. The said judgment is equally applicable and binding in case of Kanungos of District Mandi.

16. Any instruction issued by State of Himachal Pradesh, contrary to the verdict Court, is not sustainable and is liable to be ignored and quashed. Therefore, in present case also, instruction referred to by respondents-State for rejecting the claim of petitioners or any other such instruction(s) contrary to verdict of the Division Bench in CWP No.238 of 2000, referred supra, is/are liable to be quashed and, as such, are deemed to have been quashed and set aside.

17. Employer of all Kanungos in the State, in various Districts, is Government of Himachal Pradesh, through Administrative Department, i.e. Revenue Department and State of Himachal Pradesh was respondent in all cases referred supra, including CWP No.238 of 2000. Petitioners though have been appointed Kanungos in District Mandi, but in the Revenue Department of Himachal Pradesh, like the Kanungos appointed in District Shimla. Kanungos of both the Districts are governed by one and the same Rules, i.e. Rules 1951. No separate instruction has been issued by the Revenue Department with respect to conditions of service of Kanungos serving in different Districts of the State of Himachal Pradesh.

18. The present case is squarely covered by the aforesaid judgment of the Division Bench, passed in CWP No.238 of 2000, which directs the respondents, to assign seniority to the Kanungos from their initial date of appointment. The rejection order has been passed by the Deputy Commissioner Mandi after aforesaid verdict of Division Bench of this Court but contrary to the directions passed by the Court, despite the fact that Secretary (Revenue) to the Government of Himachal Pradesh was

representing the State in both cases, i.e. CWP No.238 of 2000 and CWP(T) No.2148 of 2008, as well as also in present case and despite that stand has been taken by the respondents that judgment passed in CWP No.238 of 2000 was in a case filed by a Kanungo of District Shimla. Such plea is not sustainable being completely misconceived. All Kanungos in the State of Himachal Pradesh are to be governed by Rules 1951, referred supra, and these Rules are to be interpreted and implemented in uniform manner throughout the State of Himachal Pradesh.

19. Accordingly, Order dated 14.12.2009/6.1.2010, passed by the Deputy Commissioner Mandi, rejecting representation dated 10.6.2005, is quashed and set aside, with direction to respondents No.1 and 2 to redraw the Seniority List, in reference, of the Kanungos of District Mandi alongwith others, as per Rule 12 of Rule 1951, by assigning seniority to the Kanungos from the date of initial appointment, but definitely subject to completion of training and passing of examination.

20. Since the petitioners have not been promoted to the next higher posts(s), for no fault on their part, but on account of wrong seniority assigned to them, they

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were kept away by authorities for no fault on their part, therefore, it is not a case where petitioners remained away from the work for their own reasons despite offer to them for performing the work but he was refrained on account of act of the employer. Therefore, as also, held by the Supreme Court in **Union of India vs. K.V Janki Raman** case, reported in **(1991) 4 SCC 109**, principle of 'No Work no Pay' is not applicable. Therefore, petitioners are also held entitled for consequential financial/ monetary benefits from due date on account of their promotion(s), if any.

21. Accordingly, petitioners shall also be entitled for all consequential benefits, including monetary benefits as well as other benefits, including promotion, accruing to them on the basis of revised/ redrawn Seniority List from the respective dates from which their immediate juniors have been conferred such benefits.

22. Respondents No.1 and 2 are directed to extend all consequential benefits to petitioners within two months, latest by 15.10.2022.

Petition stands allowed and disposed of, in the aforesaid terms, so also pending application(s), if any.

August 10, 2022<sup>(sd)</sup>

( Vivek Singh Thakur )  
Judge.

High Court of H.P. ◊