



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No. 1745 of 2020.

Date of Decision: 28.09.2023

Chaman Lal & others	Petitioners.
	Versus	
State of H.P. & others	Respondents.

Coram

Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Hon'ble Mr. Justice Bipin Chander Negi, Judge.

*Whether approved for reporting?*¹ Yes

For the petitioners: Mr. Ajay Kumar Dhiman, Advocate.

For the respondents: Mr. Anup Rattan, Advocate General with
Mr. Ramakant Sharma, Additional
Advocate General.

Vivek Singh Thakur, Judge (oral)

Petitioners have approached this Court seeking various reliefs with respect to fixation and protection of pay, granting of Grade Pay, consequential benefits flowing from fixation/protection of pay and grant of Grade Pay, arrears thereof and also grant of seniority from the year 2008 when 50% quota of posts of Tehsil Welfare Officer became available, however, learned counsel, under instructions, submits that petitioners are not pressing all reliefs but shall be satisfied for counting of their contract service for the purpose of annual increment, seniority, pensionary benefit from the date of their initial appointment i.e. May, 2010 as also prayed in alternative because service period counted for granting seniority shall have to be counted for annual increment as well as pensionary benefit and it shall redress the grievances of the petitioners.

2. Though petitioners have restricted their claim for seniority from the date of initial appointment i.e. May, 2010 instead of

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

date of creation of 50% quota for direct recruitment, however, otherwise also the claim of granting them seniority from the date of advertisement/ or creation of quota was not permissible under law in view of the authoritative pronouncement of a Bench of three Judges of the Supreme Court in **K. Meghachandra Singh and others vs. Ningam Siro & others, reported in (2020) 5 SCC 689**, wherein it has been held as under:

“ Having regard to the similar provisions, the Court approved the view that seniority is to be reckoned not from the date when vacancy arose but from the date on which the appointment is made to the post. The Court particularly held that retrospective seniority should not be granted from a day when an employee is not even borne in the cadre so as to adversely impact those who were validly appointed in the meantime.”

3. Admittedly, petitioners were appointed as Tehsil Welfare Officer in the Department of Social Justice and Empowerment to the Government of H.P, in May, 2010 on contract basis in the Pay Band of Rs. 10,300-34,800/-+4200 (GP) as per terms and conditions of R & P Rules applicable to the recruitment for the said post. Services of the petitioners were regularized on 03.05.2016 after completion of requisite 05 years continuous contractual service, in accordance with the instructions issued by the Department of Personnel, Government of Himachal Pradesh, vide Communication No. PER(AP)C-B-(2)-2/2015 dated 22.04.2016. On regularization, petitioners were placed at the minimum of the time scale of the post.

4. It is also undisputed that initial recruitment of the petitioners against the post of Tehsil Welfare Officer in the year 2010 though on contract basis, but was made following procedure

prescribed under R & P Rules framed by the Department, under the Proviso to Article 309 of the Constitution of India, and the process was undertaken by the Himachal Pradesh Public Service Commission, the prescribed recruitment agency.

5. The petitioners were included in the select list on the basis of merit and were recommended to the Department for appointment by the Commission, after participating in the process by way of open competition alongwith other eligible candidates, who had applied and participated in the said process.

6. Undoubtedly, the contract appointment of the petitioners was not back door entry, but was made following R & P Rules framed by the respondents for direct recruitment against the said post. The appointment of the petitioners on contract basis was a fortuitous circumstance because the department took a decision not to grant regular appointment at initial stage.

7. In the aforesaid facts and circumstances, it is evident that initial appointment of the petitioners on contract basis, followed by regularization, was made by following Rules in force and was substantive appointment against the sanctioned post through a process undertaken by the prescribed agency for recruitment under the Rules through a competitive process, wherein all eligible candidates were considered and evaluated.

8. There is no justifiable and plausible reason available on record for not offering regular appointment at initial stage but to offer appointment on contract basis, for initial five years, followed by

regularization, despite availability of sanctioned posts and work and assignment and performance of identical nature of work and duties by the contract appointees as well as regular appointees. It appears, in order to avoid its liability to pay salary attached to the post and to deprive the employees from lawful service benefits available to them, exploitative policy of contract appointment for initial five years has been/ and is being adopted and practiced. It is not a case where, for sudden temporary increase in workload, employees were required and necessitated to be engaged to cope with emergent situation for a limited period but recruitment was for permanent sanctioned post created for performance of ever existing work.

9. Omissions and commissions on the part of the State are arbitrary and such conduct is antithesis the mandates of Article 14 of the Constitution of the India, which does not behove to the State, being a Model Employer and protector of rights of people. State cannot and cannot be permitted to act as an exploitative master by cleverly devising a method under the garb of provisions of R & P Rules, by providing contractual appointment at initial stage but depriving service benefits. It is not expected from the State to deprive the employees from their lawful and just benefits emanating from the services rendered by them.

10. Recently Principal Division bench of this High Court referring and relying pronouncements of the Supreme Court and this Court in **Registrar General of India and Another vs. V. Thipa Setty and Others, (1998) 8 Supreme Court Cases 690; R.K. Mobisana**

*Singh vs. Kh. Temba Singh and Others, (2008) 1 Supreme Court Cases 747; Surendra Kumar and Others Vs. Greater Noida Industrial Development Authority and Others, (2015) 14, Supreme Court Cases 382; Direct Recruit Class II Engineering Officer's Association Versus State of Maharashtra and Others, (1990) 2 Supreme Court Cases 715; State of West Bengal and Others Versus Aghore Nath Dey and Others, (1993) 3 Supreme Court Cases 371; Siraj Ahmad Versus State of Uttar Pradesh and Another, (2020) 19 Supreme Court Cases 480; CWPT No.6785 of 2008, titled as Narender Singh Naik Versus State of Himachal Pradesh and Others, decided on 14.09.2010; Letters Patent Appeal No.271 of 2011, titled as State of Himachal Pradesh and others Versus Narender Singh Naik, decided on 09.04.2013; Special Leave to Appeal (C) No(s). 34038 of 2012, titled as Surender Singh Versus State of H.P. Ors has pronounced judgment dated 03.08.2023 in CWP No. 2004 of 2017, titled as Sh. Taj Mohammad and others vs. State of H.P. and others alongwith **connected matter**, wherein in the identical circumstances petitioners therein have been held entitled for seniority from initial date of appointment on contract basis with all consequential benefits.*

11. The claim of petitioners for counting their contract service is squarely covered by aforesaid judgment in **Taj Mohammad's** case and judgments referred and relied therein. Therefore, the reasons and the grounds assigned for deciding the

aforesaid CWP No. 2004 of 2017 shall be applicable *mutatis mutandis* in the present case for all intents and purposes.

12. Accordingly, petitioners are held entitled for counting their services from date of initial appointment on contract basis for the purpose of seniority and all consequential benefits as initial appointment of the petitioners on contract basis after following a procedure prescribed in R & P Rules. In sequel to entitlement for counting contract service for seniority, petitioners shall also be entitled for counting the said contract service for the purposes of granting annual increments and pensionary benefits.

13. Judgments passed by Supreme Court and various Benches of this Court, in numerous cases including **CWP No.850 of 2010**, titled **Paras Ram vs. State of HP and others**, latest HLJ 2009 (HP) 887; **LPA No.36 of 2010**, titled **Sita Ram vs. State of H.P.**, decided on 15.07.2010; **CWP No.4550 of 2010**, titled **Ravi Kumar vs. State of HP and another alongwith connected matters**, on **16.12.2010**; **CWP No.5400 of 2014**, titled as **Veena Devi vs. Himachal Pradesh State Electricity Board Ltd & another**, decided on **21.11.2014**; **Special Leave to Appeal CC No(s) 18898 of 2015**, titled as **H.P. State Electricity Board Ltd. and another vs. Veena Devi**; **CWP No. 8953 of 2013**, titled as **Joga Singh and others vs. State of Himachal Pradesh and others** and connected matters; **SLP(C)No. 183 of 2016** titled **State of H.P. & others vs. Joga Singh and others**, **Review Petition (Civil) No. 274 of 2017**; **CWPOA No.195 of 2019**, titled as **Sheela Devi vs. State of H.P. & others**,

decided on 26.12.2019; Jagdish Chand vs. State of Himachal Pradesh & others, decided on 10.01.2020, alongwith connected matters; SLP (Civil) No. 10399 of 2020, titled **State of Himachal Pradesh & another vs. Sheela Devi; SLP(C) Nos.8012-8013 of 2021, in State of Himachal Pradesh vs. Jagdish Chand; CWPOA No. 5507 of 2020 titled Oma Wati & another vs. State of Himachal Pradesh and others; and CWPOA No. 5187 of 2020, titled Sunil Dutt & others vs. State of Himachal Pradesh** alongwith connected matters, decided on 29.08.2003, are also relevant wherein it has been held that contract service shall be counted for the purpose of annual increment and pensionary benefits. Petitioners therein, who were appointed on contract basis by following the Policy adopted by the State, but *dehors* the R & P Rules, have been held entitled for counting of contract service for the purpose of pension and annual increments, whereas petitioners herein are on better footing than the petitioners in those petitions, who have been appointed by following prescribed procedure provided under R & P Rules. Therefore, petitioners herein are also entitled for counting of their contract service from their initial date of appointment for the purpose of pension as well as annual increments alongwith all consequential benefits.

14. Learned Additional Advocate General has submitted that, in terms of judgment passed in **Jai Dev Gupta vs. State of H.P.** reported in **AIR 1998 SCC 2819**, actual monetary benefits be

restricted for three years prior to filing of the petition as the petitioners have approached the Court at belated stage.

15. The above contention of learned Additional Advocate General is not sustainable, as petitioners were regularized in May 2016, but without giving benefit of their contractual service and they have approached the Court in April, 2017 and, therefore, we do not find any delay on the part of petitioners approaching the Court for redressal of their grievances. Therefore, they shall be entitled for all consequential benefits from the date of their initial appointment.

16. Petition is allowed and disposed of in aforesaid terms with direction to the respondents to undertake entire exercise and extend consequential benefits to the petitioners. All benefits including seniority shall be settled and extended to the petitioners on or before **31st December, 2023** and payment of arrears of monetary benefits may be disbursed by the respondents in terms of instructions of Finance Department including instructions dated 07.01.2012 and 17.09.2022.

Pending miscellaneous application(s), if any, shall also stand disposed of.

(Vivek Singh Thakur)
Judge

(Bipin Chander Negi)
Judge

September 28, 2023 (Nisha)