

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

LPA Nos.929 & 930 of 2025

Decided on: 31st December, 2025

1. LPA No.929 of 2025

The State Election Commission ...Appellant

versus

Rameshwar Lal and others ...Respondents

2. LPA No.930 of 2025

The State Election Commission ...Appellant

versus

Ghanshyam Chauhan and others ...Respondents

Coram

The Hon’ble Mr. Justice G.S.Sandhawalia, Chief Justice.

The Hon’ble Mr.Justice Jiya Lal Bhardwaj, Judge.

Whether approved for reporting?¹

For the appellants: Mr.Surender Sharma, Advocate in both the appeals.

For the respondents: Mr.Onkar Jairath, Advocate for respondent No.1 in LPA No.929 of 2025.

Mr.Tek Ram Sharma, Advocate for respondent No.2 in LPA No.929 of 2025 and for respondent No.4 in LPA No.930 of 2025.

Mr. B. Nandan Vashisth, Advocate for respondent No.1 in LPA No.930 of 2025.

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

**Mr.Sidharth Jalta, Deputy
Advocate General for
respondent-State.**

Jiya Lal Bhardwaj, Judge

Both these appeals arise out of the common judgment dated 13.09.2024 passed in two writ petitions being CWP No. 3496 of 2020 and CWPOA No.135 of 2019 filed respectively by the petitioners/respondent No.1.

2. Since the questions of law and facts are same in both appeals, hence they are taken up together for hearing and being disposed of by this common judgment.

3. Briefly, the facts of the case are that respondent No.1 in both the appeals, hereinafter referred as writ petitioners were earlier appointed in different organizations, however, their services were taken over by the appellant-Commission initially on secondment basis against the posts of Personal Assistant and thereafter were absorbed by the common office order dated 31.05.2004, passed by the appellant-Commission.

4. The details of their appointments in the parent department and thereafter taking over their services by the appellant-Commission are mentioned in the tabulated form as under:-

<i>Sr. No.</i>	<i>Case No.</i>	<i>Petitioner</i>	<i>Parent employer</i>	<i>Date of joining of service with parent employer</i>	<i>Borrowing employer</i>	<i>Date of joining of service with borrowing employer</i>	<i>Date of absorption</i>
<i>1</i>	<i>CWPOA No. 135 of 2019</i>	<i>Rameshwar Lal</i>	<i>H.P. Agro Industries Corporation</i>	<i>01.02.1983</i>	<i>State Election Commission</i>	<i>17.10.2003</i>	<i>31.05.2004</i>
<i>2.</i>	<i>CWP No. 3496 of 2020</i>	<i>Ghanshyam Chauhan</i>	<i>H.P. State Financial Corporation</i>	<i>26.07.1989</i>	<i>State Election Commission</i>	<i>02.01.2004</i>	<i>31.05.2004.</i>

5. Both the writ-petitioners have now been retired from service, but they were denied the benefit of pension under the Old Pension Scheme as the services rendered by them in the parent department were not considered for the reason that as per the appellant-Commission after issuance of Notification dated 15.05.2003, the employees who were regularized after this date, are not entitled for pensionary benefits under the Central Civil Services(Pension) Rules, 1972, hereinafter to be referred as Pension Rules, 1972. Since the services of the writ petitioners were regularized on permanent basis with the appellant-Commission on 31.01.2004, they were held not entitled for pensionary benefits.

6. The State Government has framed the Himachal Pradesh Civil Services Contributory Pension Rules, 2006 (for short “2006 Rules”) under Article 309 of the Constitution of India, which were notified on 17.08.2006. As per these Rules, the persons who were employed in the State after 15.05.2003

would be covered under the 2006 Rules (NPS) and the Pension Rules were made inapplicable to all appointments made in the State of Himachal Pradesh on or after 15.05.2003 and since the services of the writ-petitioners were absorbed in the appellant-Commission on 31.05.2004 i.e. admittedly, after 15.05.2003, they were held not entitled to the benefit of Pension Rules, 1972.

7. Both the writ-petitioners instituted writ petitions claiming therein that once as per common office order dated 31.05.2004 issued by the appellant-Commission, their services have been ordered to be absorbed w.e.f. 01.06.2004 (F.N.), subject to certain conditions, then in that case, the past services rendered by them will be considered for all purposes. The relevant conditions of office order dated 31.05.2004 are reproduced hereunder:-

“5) They will have to deposit employer’s share of CPF into the Government Account and employees share into GPF Account with interest thereon out of the total amount at credits in their respective CPF accounts.

6) They will deposit all terminal benefits etc. to Government Account within the prescribed time limit under the rules.”

8. The writ-petitioners as per aforesaid conditions were required to deposit employer’s share of CPF into the Government account and employee’s share into GPF account

with interest thereon out of the total amount at credits, which they deposited within the prescribed time limit under the Rules and thereafter appellant-Commission issued an office order dated 02.07.2007(Annexure P-3) in CWP No. 3496 of 2020, whereby the services rendered by Ghanshyam Chauhan one of the writ-petitioners w.e.f. 27.07.1989 to 31.05.2004 were ordered to be treated as qualifying service for the purpose of pension calculation, pay protection, credit of earned leave etc. The appellant-Commission had also acknowledged the receipt of the terminal benefits. Similarly, the services rendered by another writ-petitioner namely Rameshwar Lal in the parent department were ordered to be treated as qualifying service for the purpose of pension calculation, pay protection, credit of earned leave etc.

9. After absorption of both the writ-petitioners with the appellant-Commission, they were allotted their respective GPF numbers. Both of them continued to contribute in GPF till the date of their superannuation. Both the writ-petitioners have now retired from service. Writ-petitioner Rameshwar Lal had retired on 30.09.2018 and writ-petitioner Ghanshyam Chauhan on 31.03.2019.

10. After retirement of both the writ-petitioners, they were denied the pensionary benefits under the CCS (Pension) Rules, 1972 by the appellant-Commission on the premise that the Government of Himachal Pradesh vide Notification dated 17.08.2006 has modified the Pension Rules, 1972 and has framed Rules, 2006(NPS). As per 2006, Rules, the Pension Rules, 1972 have been made inapplicable to all the appointments made in the State of Himachal Pradesh on or after 15.05.2003. Since the appointment of both the writ-petitioners with the appellant-Commission is admittedly after the said date, notified as 15.05.2003, they were held to be covered under the 2006 Rules notified on 17.08.2006 and hence they are not to be governed under Pension Rules, 1972.

11. The writ-petitioners had claimed in the writ petitions that once the appellant-Commission had issued office order dated 31.05.2004, directing the writ-petitioners to deposit employer's share of CPF into the Government Account, which they had deposited and employees share into GPF Account with interest thereon out of the total amount at credits in their respective CPF accounts within the prescribed time limit under the rules, they are entitled to be governed under the Pension Rules 1972. The appellant-Commission

had passed an office order on 02.07.2007 (Annexure P-3) in CWP No.3496/2020 filed by the writ-petitioner Ghanshyam Chauhan which reads as under:-

**“State Election Commission
Himachal Pradesh
No.SEC(5) 54/99- Dated Shimla-2 the 2nd June, 2007**

OFFICE ORDER

Consequent upon the permanent absorption of Sh. Ghanshyam Chauhan as Personal Assistant in the State Election Commission from the H.Q. Financial Corporation on dates mentioned below and as a result of remittance of the following terminal benefits by his parent organization to this Commission which were deposited by the Commission in the Capital. Treasury as detailed below and also vetted by A.G. H.P. vide its letter No. Pen-V/MISS/2007-08/1003 dated 18.5.2007 in view of instructions issued by the Finance (Regulation) Deptt. OM No. Fin. A(3)-17/76 dated 5.7.1996 the services rendered by Sh. Ghanshyam Chauhan for the period w.e.f. 27.7.89 to 31.5.04 shall be treated as qualifying service for the purpose of pension calculation, pay protection, credit of earned leave as it stood on the day prior to their absorption in the Commission (with no credit of half pay leave to be carried forward in the State Election Commission.

Sr.No.	Name of Official & Corporation/ Board	Date of Absorption	Terminal benefits	Treasury Challan No. and date	Amount
1.	Ghanshyam Chauhan Stenographer Grade-II H.P. Financial Corporation 27.7.89 to 31.5.04	01.06.2004 absorbed	(i) CPF employer share (ii) Gratuity (iii) Leave encashment	03 dt.14.10.05 10 dt.14.10.05 02 dt.14.10.05.	2,15,705.00 1,00,000.00 1,26,870.00

Since the delay in depositing of his terminal benefits, after absorption in Govt. account is not attributed to him as he has no dues to clear from Board/Corpn. The delay occurred due to delayed remittance by the parent organization, therefore, no interest has been recovered from him on his terminal benefits between the date of absorption and deposit of terminal benefits.

*(By Order)
State Election Commissioner
Himachal Pradesh*

12. Similarly in the case of another writ-petitioner namely Rameshwar Lal, whose name has been mentioned as Rameshwar Thakur, the appellant-Commission passed an office order on 26th August, 2008 (Annexure A-6) in CWPOA No.135 of 2019, which reads as under:-

***“State Election Commission
Himachal Pradesh***

File No. SEC (5) 54/99-1297-1304 Shimla-2 Dated 26th August, 2008.

OFFICE ORDER

Consequent upon the permanent absorption of Sh. R.K. Sharma as Senior Assistant and Shri Rameshwar Thakur as Personal Assistant in the State Election Commission from the H.Q. Financial Corporation on dates mentioned below and as a result of remittance of the following terminal benefits by their parent organization to this commission which were deposited by the Commission in the Govt. treasury as detailed below and also vetted A.G. H.P. vide its letter No.Pen.5/(Misc./2008-09/1822 dated 30.07.2008 in view of instructions issued by the Finance (Regulation) Deptt. O.M.

No.Fin.(c) A(3)17/76 dated 5.7.1996 the services rendered by these official for the period w.e.f. 17.7.73 to 18.5.2000 and 1.2.83 to 30.5.2004 respectively shall be treated as qualifying service for the purpose of pension calculation, pay protection, credit of earned leave as it stood on the day prior to their absorption in the Commission with no credit of half pay leave to be carried forward in the State Election Commission:-

Sr.No	Name of Official & Corporation/ Board	Date of Absorption	Terminal benefits	Treasury Challan No. and date	Amount
1.	Sh. R.K.Sharma, Sr.Asstt. H.P. Electronics Corpn. 17.7.73 to 18.5.2000	19.5.2000	(i) CPF Employer share (ii) Gratuity (iii) Leave encashment	27 dt.7.9.2k 15 dt. 7.12.07 14 dt. 7.12.07	1,09,474 1,50,903 76,934
2.	Sh. Rameshwar Thakur P.A. HP Agro Industries Corp. Ltd. 1.2.83 to 30.5.2004	31.5.2004	(i) CPF Employer share (ii) Gratuity (iii) Leave encashment	108 dt. 21.6.2006 122 dt. 21.4.2008 88 dt. 8.11.2005	1,62,574 1,79,953 1,28,370

Past service is being counted subject to the condition that if any amount will be payable to the Govt. by the officials on audit verification the same will be recovered from them or to be deposited by them in lump-sum.

Sd/-
(Secretary)
State Election Commission
Himachal Pradesh”

13. Perusal of the both the aforesaid office orders clearly reveals that the services rendered by the writ-petitioners prior to their absorption in their parent departments have been ordered to be treated as qualifying

service for the purpose of pension calculation, pay protection, credit of earned leave etc. as it stood on the date prior to their absorption in the commission (with no credit of half pay leave to be carried forward to the State Election Commission). Therefore, the action of the appellant-Commission to deny pension to the writ-petitioners on the pretext that their services have been absorbed after 15.05.2003, is not justified.

14. Once the appellant-Commission had passed the office orders thereby ordering to count the services rendered by the writ-petitioners in their respective parent departments as qualifying service for the purpose of pension calculation, pay protection, credit of earned leave etc., there is no justification to now bank upon the conditions of the Notification issued by the State Government, whereby the pension has been denied to the employees, who have been recruited on or after 15.05.2003.

15. The learned Single Judge after noticing the facts in the reply filed by the appellant-Commission has succinctly dealt with the issue and has returned the findings that the writ-petitioners are entitled to the pensionary benefits under the CCS (Pension) Rules, 1972 from the date immediately following the dates of their respective retirements and

directed the appellant-Commission to pay the entire arrears to the writ-petitioners within three months from the date of the judgment, failing which, the arrears shall entail interest @ 6% per annum.

16. The learned Single Judge has noticed that once after absorption of the services of the writ-petitioners, the appellant-Commission had ordered that the past services rendered by them in their respective parent departments are to be treated as qualifying service for the purpose of pension calculation, pay protection, credit of earned leave etc. and acknowledged the amount having deposited by them as employer's share of CPF contribution in the Government account and the employee's share into GPF account well within the prescribed limit, the action of the appellant-Commission to harp upon framing of 2006 Rules as also office memorandum dated 13.09.2006, is not justified. Once there was a clear representation from the appellant-Commission that notwithstanding framing of 2006 Rules and issuance of O.M. dated 13.09.2006, the services of the writ-petitioners with their parent employers would be counted towards qualifying service for the purpose of pension

calculation, the denial of the said benefits to the petitioners is not justified.

17. The learned Single Judge has also considered the Clause 2(i) of the office memorandum dated 13.09.2006, which reads as under:-

“i) All the employees who entered into State Government service or in the service of an Autonomous Body set up by the State Government (satisfying the conditions laid down in para-4 of Government of India OM No. 28/10/84-PU dated 20th August, 1984, adopted by the State Government vide Office Memorandum No. Fin.(C) A(3)-17/76-II dated 5th July, 1996) on or before 14.05.2003 and who were governed by the old pension scheme under Central Civil Services (Pension) Rules, 1972 will continue to be governed by the same pension scheme and same rules for the purpose of counting of their past service under the said rules or under the Government of India OM No. 28/10/84-PU, dated 29th August, 1984, adopted by the State Government vide its Office Memorandum dated 5th July 1996 as amended from time to time, if such employees submit technical resignation on or after 15.05.2003 to take up new appointment in another Department of the State Government or an Autonomous Body set up by the State Government, in which the pension scheme under Central Civil Services (Pension) Rules, 1972 already exists for the employees who entered into service on or before 14.05.2003.”

18. As per this Clause, the writ-petitioners have set up the factual foundation by making specific averments in their respective rejoinder(s) with respect to the applicability of Himachal Pradesh Corporate Sector Employees (Pension, Family Pension, Commutation of Pension and Gratuity) Scheme, 1999 (for short “1999 scheme”) in their respective parent employer w.e.f. 01.04.1999. As per the writ-

petitioners, under the 1999 Scheme {Clause 1(2)}- all pensionary benefits of the employees of the participating Corporate Sector were to be determined in accordance with the provisions laid down in Pension Rules, 1972 and the CCS (Commutation of Pension) Rules, 1981. As per this provision, it was nothing, but adoption of Pension Rules, 1972 for the Corporate Sector employees of the State of Himachal Pradesh and the said scheme had remained in force till 01.12.2004. Since the services of the writ-petitioners had already been absorbed in the appellant-Commission prior thereto w.e.f. 01.06.2004, they are even covered under the aforesaid scheme.

19. The appellant-Commission feeling aggrieved by the common judgment dated 13.09.2024 has assailed the same before this Court on the ground that once the writ-petitioners have been appointed after the cut off date fixed as 15.05.2003 in the 2006 Rules, their past services cannot be counted for the purpose of pensionary benefits under the CCS (Pension) Rules, 1972 and further the Corporate Sector Pension Scheme was repealed. It is further case of the appellant-Commission that provision of para 2(i) of the office memorandum dated 13.09.2006 is not applicable in the case

of the writ-petitioners, since they never became part of Corporate Scheme, 1999. Rather, they were the members of the Contributory Provident Fund (CPF)/Employees Provident Fund (EPF), during the period 01.04.1999 till their permanent absorption in the Government Department i.e. 31.05.2004 and thus, they fall under para 2(ii) of O.M. dated 13.09.2006, which stipulates that the employees who entered into service on or after 15.05.2003 would be governed by CPF scheme or any other pension scheme under the Central Civil Services (Pension) Rules, 1972.

20. Learned counsel representing the appellant-Commission has vehemently argued that the learned Single Judge has erred to appreciate the law and has wrongly concluded that the writ-petitioners are covered under the CCS (Pension) Rules, 1972. It is argued that once the State Government had issued the Notification, thereby discontinuing the pension Rules, 1972 to the employees, who have been appointed on or after 15.05.2003, the direction issued by the learned Single Judge to pay the arrears holding that the writ-petitioners are entitled to the pensionary benefits under the Pension Rules, 1972, is not sustainable. He further strenuously argued that once the learned Single

Judge has noticed that the services of the writ-petitioners have been absorbed after the cut-off date i.e. 15.05.2003, they were not entitled to be governed under the CCS (Pension) Rules, 1972.

21. On the other hand, the learned counsel representing the writ-petitioners have supported the reasoning given by the learned Single Judge and argued that since the judgment is well reasoned and the learned Single Judge has taken note of the fact that the appellant-Commission after acknowledging the receipt of the amount having deposited by the writ-petitioners and thereafter having issued the office orders stating in unequivocal terms that the past services rendered by the writ-petitioners shall be treated as qualifying service for the purpose of pension calculation, pay protection, credit of earned leave etc., the appellant-Commission cannot wriggle out from the conditions stipulated in the said office orders.

22. We have heard the learned counsel for the parties and carefully perused the record.

23. It is not in dispute that the writ-petitioners have been absorbed by the appellant-Commission on 31.05.2004 w.e.f. 01.06.2004. It is also not in dispute that the writ-

petitioners in compliance with the conditions in the office order dated 31.05.2004 have deposited the employer's share of CPF into the Government account and their share into GPF account with interest thereon out of the total amount at credits within the prescribed time limit under the Rules. It is also not in dispute that the appellant-Commission thereafter had issued office order(s) dated 02.07.2007 and 26.08.2008, whereby the appellant-Commission had ordered to treat the services rendered by the writ-petitioners in their respective parent departments as qualifying service for the purpose of pension calculation, pay protection, credit of earned leave etc., as it stood on the date prior to their absorption in the appellant-Commission.

24. Once the appellant-Commission had issued office orders, thereby specifically making the writ-petitioners to understand that the past services rendered by them in their respective parent departments as is evident from the perusal thereof is to be treated as qualifying service for the purpose of pension calculation, pay protection, credit of earned leave etc., it does not lie in the mouth of the appellant-Commission to contend that the writ-petitioners have been appointed after the cut-off date i.e. 15.05.2003. The writ-petitioners had

complied with the conditions as enumerated in the office order dated 31.05.2004 issued by the appellant-Commission by depositing the amount as asked from them well within time limit as per the Rules, which fact has been acknowledged by the appellant-Commission. Thereafter, the appellant-Commission had issued office orders on 02.07.2007 and 26.08.2008 as mentioned above to treat the service rendered by the writ-petitioners in their respective parent departments before their absorption in the appellant-Commission as qualifying service for the purpose of pension calculation, pay protection, credit of earned leave etc. and thus, the contention raised by the appellant-Commission that they have been appointed after cut-off date i.e. 15.05.2003 is ill founded and cannot be countenanced that too after retirement of the writ-petitioners.

25. It is also evident from the perusal of the judgment passed by the learned Single Judge that the State Government had framed the Corporate Scheme, 1999, which was made applicable w.e.f. 01.4.1999 and remained in force till 01.12.2004 and under the said scheme, employees who were working in the corporate sector were also covered. Admittedly, the services of the writ-petitioners had been

absorbed in the appellant-Commission w.e.f. 01.06.2004 and, therefore, even under the aforesaid scheme, once the writ-petitioners had deposited the employer's share of CPF into the Government account and employees share into GPF account with interest thereon out of the total amount at credits within the prescribed time limit under the Rules in terms of office order dated 31.05.2004, which fact has not been denied by the appellant-Commission as has been noticed in the judgment under challenge, there is no illegality in the judgment passed by the learned Single Judge, holding that the writ-petitioners are entitled to the pensionary benefits under the CCS (Pension) Rules, 1972 from the date of their respective retirements, after quashing the orders passed by the appellant-Commission annexed with the writ petition instituted by the writ-petitioner Ghanshyam Chauhan and thereafter directing the appellant-Commission to pay the entire arrears to the writ-petitioners.

26. The argument put forth by the learned counsel for the appellant-Commission that the Corporate Sector Pension Scheme was repealed and further order of absorption is not binding is also not acceptable for the reason that even if the Corporate Pension Scheme has been repealed, once the

appellant-Commission had acknowledged the receipt of the employer's share of CPF in Government Account deposited by the writ-petitioners and thereafter issued the office orders, whereby the services rendered by the writ-petitioners in their respective parent departments had been ordered to be treated as qualifying service for the purpose of pensionary benefits, it does not lie in the mouth of the appellant-Commission to contend that the absorption order is not binding on it.

27. The writ-petitioners at the time of their absorption had been made to understand that in case they deposit the employer's share of CPF into the Government account and employees share into GPF account with interest thereon out of the total amount at credits within the prescribed time limit under the Rules, their services rendered in parent department will be treated as qualifying service for the purpose of pension calculation, pay protection, credit of earned leave etc., which conditions have been complied with by them and this fact has been duly acknowledged by the appellant-Commission. Only thereafter, the appellant-Commission had issued office orders to count the past service rendered by the writ-petitioners in their respective parent departments as qualifying service for

pension etc. and now after their retirement, the appellant-Commission cannot say that the subsequent orders passed by them to order to count their service in the parent department as qualifying service for the purpose of pension calculation, pay protection, credit of earned leave etc., is not binding is wholly unacceptable and cannot be countenanced and hence, the said plea is rejected.

28. The learned Single Judge has succinctly dealt with each and every aspect of the matter and has returned the findings which germane from the record.

29. Resultantly, we are of the considered view that the findings returned by the learned Single Judge is neither illegal nor perverse and the same are based on record, and, therefore, we don't want to interfere with the well-reasoned judgment passed by the learned Single Judge and hence, both the appeals filed by the appellant-Commission fail and the same are dismissed. However, with no orders as to cost.

30. Pending applications, if any, also stand disposed of.

(G.S. Sandhawalia)
Chief Justice

(Jiya Lal Bhardwaj)
Judge

December 31, 2025
(naveen)