

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

LPA No.39 of 2021

Reserved on : 22.08.2026

Decided on : 27.08.2026

Uploaded on : 27.08.2026

Dhani Ram (deceased) through LR.

..... Appellants

Versus

State of Himachal Pradesh and others

..... Respondents

Coram:

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

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

Whether approved for reporting?¹

For the appellants : Mr. Vivek Singh Attri, Advocate.

For the respondents : Mr. Rakesh Dhaulta, Additional Advocate General, for the respondents-State.

Ms. Ruchika Khachi, Advocate, for respondent No.4.

None for respondent No.5.

Bipin Chander Negi, Judge

By way of the present appeal, challenge has been laid to the judgment dated 05.10.2020 passed in **CWP No. 3616 of 2019**, titled **Dhani Ram v. State of H.P. & Others**, whereby the writ petition filed by the original appellant has been dismissed.

2. In the writ petition filed by the appellants it has been averred that the original appellant was initially appointed as a peon/chowkidar in the H.P. State Handicrafts and Handloom Corporation, Office at Arki, in the year 1979. The appellant's (writ petitioner) service were regularized in the H.P. State Handicrafts and Handloom Corporation on 23-03-1985.

3. However, from reply filed it is evident that the Department of Social, Women and Scheduled Castes Welfare, Himachal Pradesh, had invited applications for filling up 33 posts of Clerks on secondment basis from amongst desirous government employees working under different Government Departments/ Corporations, etc., through proper channel on their existing pay scales.

4. In pursuance thereto, it has been mentioned in the reply that the original appellant in the case at hand, who was working as a Clerk in the H.P. State Handicrafts and Handloom Corporation, Office at Arki, had submitted his application through proper channel for being considered for appointment to the post of Clerk in the Department of Social, Women and Scheduled Castes Welfare on secondment basis.

5. Further, it has been mentioned in the reply that the original appellant, vide order dated 08.01.2003, was selected for the post of a Clerk on secondment basis, initially for one year, along with other candidates, on the pay scale which the original appellant was getting in his parent corporation.

6. Subsequent thereto, the State Government formulated a policy for permanent absorption of surplus staff taken on secondment

basis in various departments vide Office Memorandum dated 11.05.2012. The said policy, i.e., Office Memorandum dated 11.05.2012, is placed on record of the appeal (Annexure R-1 at Page 76). The aforesaid facts detailed in the reply are conspicuous by absence in the writ petition filed by the original appellant.

7. For the purpose of adjudication of the present appeal, it would be appropriate to refer to the relevant clauses of the aforesaid policy dated 11.05.2012 pertaining to permanent absorption of surplus staff taken on secondment basis. The relevant extract reads as under:-

“7. The pensionary benefits to the officials will be regulated as per the instructions of the State Government issued vide FD's letter No:Fin(Pen)A(3)-1/96, dated 15-05-2003 and as per provision of H.P. Civil Services Contributory Pension Rules 2006 notified by the Department of Finance (Pension) vide Notification No:Fin(Pen)A(3)-1/96, dated 17-08-2006.

8. In the case of those employees who were appointed on or before 14-05-2003 on regular basis and were governed by the CCS (Pension) Rules, 1972 in their parent organization then the above Condition No.7 will not be applicable as they shall continue to be governed under aforesaid Rules for pensionary benefits.”

8. In pursuance to the aforesaid, it has been categorically averred in the reply filed to the writ petition that the original appellant gave his consent for being absorbed. The requisite “No Objection Certificate”

from the lending office/organization, i.e., H.P. State Handicrafts and Handloom Corporation, for absorption of the original appellant was also obtained. Requisite permission for permanent absorption was received from the Government vide letter dated 28.03.2013. As a result, the original appellant was absorbed as a Clerk in the Department vide Office Order dated 04.06.2013. The absorption was on the terms and conditions as detailed in the Office Memorandum dated 11.05.2012 (Annexure R-1, Page 76 of the paper book of the appeal).

9. The original appellant thereafter retired as a Junior Assistant from the Office of the District Welfare Officer, Bilaspur, on attaining the age of superannuation on 31.03.2015. Post-retirement, pension was sanctioned in favour of the original appellant.

10. The respondents, on realizing that pension had wrongly been granted in favour of the original appellant, withdrew the same with effect from 01.05.2018. It is in the aforesaid facts and attending circumstances that the appellant had approached the Writ Court seeking a mandamus with respect to the release of pension withheld with effect from 01.05.2018. As stated supra the writ petition filed was shorn of details qua initial secondment and subsequent absorption.

11. Heard learned counsel for the parties and perused the pleadings.

12. Admittedly, in the case at hand, absorption of the original appellant vide Office Order dated 04.06.2013 had taken place in accordance with the terms and conditions detailed in the Office

Memorandum dated 11.05.2012 (Annexure R-1, Page 76 of the appeal paper book), i.e., Policy regarding permanent absorption of surplus staff taken on secondment basis by the State Government.

13. The original appellant, in his parent Department, i.e., H.P. State Handicrafts and Handloom Corporation, was governed by the EPF/New Pension Scheme notified by the State Government vide notification dated 17.08.2006, and not by the Central Civil Services (Pension) Rules, 1972.

14. Hence, in the aforesaid backdrop, the case of the original appellant was squarely covered by Condition No. 7 contained in the absorption policy, i.e., Office Memorandum dated 11.05.2012 (Annexure R-1, relevant conditions stand reproduced supra).

15. The findings returned in this respect by the learned Single Judge holding the original appellant to be covered under the EPF/New Pension Scheme notified by the State Government vide notification dated 17.08.2006 cannot, thus, be faulted with. The initial grant of pension, post-retirement, was therefore rightly withdrawn with effect from 01.05.2018. However, the benefit wrongly granted has been correctly protected by the learned Single Judge by placing reliance on the judgment of the Hon'ble Apex Court in ***State of Punjab and Others v. Rafiq Masih (White Washer) and Others*, (2015) 14 SCC 334**. As in the case at hand in the grant of pension there was no mis-representation attributable to the original appellant.

16. In support of his case, the learned counsel appearing on behalf of the appellants has placed reliance upon the judgment rendered by the Co-ordinate Bench of this Court, in **CWP No. 4579 of 2023**, decided on 09.07.2024, titled **Paras Ram v. State of Himachal Pradesh & Others**. The said case is clearly distinguishable on facts as in the said case, though the employee alongwith eleven others had been taken on secondment basis with effect from 15.01.2003 in the Health Department from the erstwhile Nurpur silk mills, however his appointment in the Health Department was shown as 01.01.1998, i.e., the date of regularization of the employee in his parent department. Based on the aforesaid, the employee therein was promoted as a Clerk on 16.04.2018 and he retired from the said post on 31.03.2019. The decision to absorb all twelve employees was taken after the retirement of **Paras Ram** on 07-04-2022. The court held that the delayed implementation of the absorption for procedural reasons could not be used against **Paras Ram**.

17. In the aforesaid facts and attending circumstances, the Court in **Paras Ram's** case held that since the employee had been working in the Health Department since 15.01.2003, before issuance of notification dated 15.05.2003, whereby the State Government restricted the applicability of the CCS (Pension) Rules to persons appointed on or before 14.05.2003 on regular basis and his appointment date in the Health Department was shown as 01.01.1998 (date of regularization in erstwhile Nurpur Silk Mills), therefore, the employee was held entitled to benefits under the CCS (Pension) Rules. The said case has no

applicability to the facts of the case at hand. Moreover, as has already been stated earlier the pleaded case of the original appellant was only qua withdrawal of pension previously granted.

18. In view of the above discussion, we find no merit in the present appeal, and the same is accordingly dismissed, so also, the pending miscellaneous application(s), if any.

(G.S. Sandhawalia)
Chief Justice

(Bipin Chander Negi)
Judge

August 27, 2026 (KS)