

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWPOA No.4026 of 2020

Decided on: 19th August, 2026

Avneet Sirkeck and others

...Petitioners

versus

State of H.P. and others

...Respondents

Coram

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

Whether approved for reporting?¹

For the petitioners:

Mr. Sanjeev Bhushan, Senior Advocate with Mr. Sparsh Bhushan, Advocate.

For the respondents:

Mr. Hemant Kumar Verma, Deputy Advocate General.

Jiya Lal Bhardwaj, Judge(Oral)

The petitioners by way of present petition have prayed for many reliefs, but learned senior counsel representing the petitioners prays that he is only pressing for the relief claimed in relief clause 7 (g), which is reproduced hereunder:-

“g). *That period, which the applicants have served on contract basis may kindly be counted for the purpose of seniority and pay fixation.*”

2. The facts as emerge from the pleadings are that the petitioners, who were having the qualification and

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

eligibility to be appointed as Post Graduate Teacher (I.P.) were recruited as per the process undertaken by the Himachal Pradesh Staff Selection Board in the year 2014. Their appointments have been made as per the Recruitment and Promotion Rules, framed under Article 309 of the Constitution of India, whereunder the Recruitment and Promotion Rules called as Himachal Pradesh Higher Education Department, Post Graduate Teacher, Class-III (Non-Gazetted), Recruitment and Promotion Rules, 2010 have been framed. It has been averred that as per the Recruitment and Promotion Rules, the respondent-State had also kept a provision for making appointment to the post on contract basis.

3. The petitioners, who were appointed as Post Graduate Teacher (I.P.) on contract basis were paid consolidated fixed contractual amount @ of Rs.14,500/- per month. It has further been averred that later on their services were regularized as per office order dated 04.10.2017 (Annexure A/6) on completion of three years' continuous service as on 30.09.2017 in the pay band of Rs.10,300-34,800+Grade Pay of Rs.4200 and other allowances admissible from time to time. The petitioners were entitled for the pay scale provided for the regular incumbents on the

initial date of their appointment, once a proper procedure was followed while making their appointment. It has also been averred that there is disparity among the employees, inasmuch as once the petitioners were possessing the eligibility criteria/qualification at the time of their appointment on contract basis to be appointed on regular basis and the proper procedure has been followed, the period rendered by them on contract basis may be counted for the purpose of seniority and pay fixation.

4. Respondents No.1 to 3 filed reply to the petition and in preliminary submissions, it is averred that the State of Himachal Pradesh is not bound to follow the rules and regulations as are applicable to the employees of the State of Punjab or any other State, and if it has adopted the same rules and regulations, it is not bound to follow every change brought in the rules and regulations in other States. Reliance has been placed upon the judgment passed by the Hon'ble Supreme Court in ***State of Himachal Pradesh versus P.D. Attri and others***, (1999) 3 SCC 217 and the other judgments of the Hon'ble Supreme Court. It has further been averred that granting of pay scale is the prerogative of the Government as per the judgment of the Hon'ble Supreme Court in ***P.U. Joshi and others vs. Accountant General***,

Ahmedabad and others (2003) 2 SCC 632. On merits, it has been averred that the petitioners were entitled for the basic pay i.e. pay band of Rs.10,300+ Rs.4200 Grade Pay, whereas they were allowed the initial start of Rs.16,290/- from the date of regularization inadvertently and the mistake has been rectified, clarifying the correct position that the petitioners shall be entitled for pay band of Rs.10,300+Grade Pay of Rs.4200 plus admissible allowances.It has further been averred that as per the Notification of the Government dated 24.09.2012, the petitioners are entitled for the basic pay i.e. pay band of Rs.10300+Rs.4200 Grade Pay, whereas they were allowed the initial start of Rs.16,290/- from the date of regularization inadvertently, and as such prayed for dismissal of the petition.

4. I have heard the learned counsel for the parties and also perused the record carefully.

5. It is not in dispute that when the petitioners were offered appointment to the post of Post Graduate Teacher (I.P.), they were not possessing the requisite qualification to hold the post. It is also not in dispute that the proper procedure as envisaged under the Recruitment and Promotion Rules was followed, as required for the purpose of appointment on regular basis when the petitioners were

offered the appointment, though on contract basis, when the petitioners were offered appointment on contract basis. It is also not in dispute that the regularization of the petitioners is after following the contract service rendered by them and they were initially appointed against the sanctioned posts on contract basis and furthermore, their services were regularized after completion of three years' continuous service as on 31.09.2017.

6. It is by now settled in catena of judgments of the Hon'ble Supreme Court that once the proper procedure has been followed for the purpose of making selection and that too against the sanctioned post, the service rendered on contract basis has to be counted for the purpose of seniority and other service benefits. In case of the petitioners, they were possessing the requisite qualification to hold the post and further they were appointed after following the due process and against the sanctioned posts. Thus, the period of service rendered by them has to be counted for the purpose of seniority, increments, promotion and other pensionary benefits. The Constitution Bench of the Hon'ble Supreme Court in **Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra and others**, (1990) 2 SCC 715 has held that if the appointment is made against the

sanctioned post after following the proper procedure, the period of officiating service will be counted. The relevant para of the judgment reads as under:-

“47. To sum up, we hold that:

- (A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

- (B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules, the period of officiating service will be counted.
- (C) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly.
- (D) If it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down.
- (E) Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date.

- (F) Where the rules permit the authorities to relax the provisions relating to the quota, ordinarily a presumption should be raised that there was such relaxation when there is a deviation from the quota rule.
- (G) The quota for recruitment from the different sources may be prescribed by executive instructions, if the rules are silent on the subject.
- (H) If the quota rule is prescribed by an executive instruction, and is not followed continuously for a number of years, the inference is that the executive instruction has ceased to remain operative.
- (I) The posts held by the permanent Deputy Engineers as well as the officiating Deputy Engineers under the State of Maharashtra belonged to the single cadre of Deputy Engineers.
- (J) The decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinised for finding out any possible error. It is not in the interest of Service to unsettle a settled position.”

7. A similar issue had come up before the Division Bench of this Court in CWP No.3361 of 2025, titled, **Devinder Kumar & Ors vs State of H.P & Anr.**, wherein, too, the Hon’ble Division Bench has come to the conclusion that in case the appointment is as per the Recruitment and Promotion Rules, after advertising the post and undergoing the rigour of the said process by competing in open market in the test/interview conducted by the prescribed agency, as adopted for regular appointment, the entire period of service has to be counted for the purpose of seniority and other

service benefits, but after regularization. This judgment has been affirmed by the Hon'ble Supreme Court in SLP (C) No(s). 24885 of 2026, titled, **State of Himachal Pradesh and another vs. Devinder Kumar and others.**

8. In the present case, the same procedure as required for appointment, on regular basis, has been followed and thereafter the services of the petitioner have been regularized, as such, the judgment passed by the Division Bench in **Devinder Kumar's** case (supra) is applicable in all four.

9. Consequently, the present petition is allowed and the respondents are directed to count the entire service rendered by the petitioners on contract basis for the purpose of seniority, increments, pay fixation, promotion and pensionary benefits. However, it is made clear that the petitioners shall not be paid the monetary benefits from the initial date of their appointment, but from the date of the institution of the present petition. In case the arrears are not paid to the petitioners within a period of three months from today, the respondents shall pay the interest at the rate of 6% per annum from today till actual payment to them.

9. The writ petition is disposed of in the aforesaid terms. No order as to costs. Pending applications, if any, also stand disposed of.

19th August, 2026
(naveen)

(Jiya Lal Bhardwaj)
Judge