

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWPOA No.6029 of 2020

Decided on: 31st August, 2026

Shyam Lal

...Petitioner

versus

State of H.P. and others

...Respondents

Coram

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

Whether approved for reporting?¹

For the petitioner:

**Mr. Piyush Mehta and Mr.
Anshul Jairath, Advocates.**

For the respondents:

**Mr. Amit Kumar Chaudhary,
Deputy Advocate General.**

Jiya Lal Bhardwaj, Judge (Oral)

The petitioner by way of present petition has
prayed for the following substantive reliefs:-

- “I) That, the respondents be directed to execute the contract of service with the applicant in terms of the Notification date 03.10.2015(Ann A-1), the benefits of which should be extended to the applicant.
- II) Costs of this application, along with any other appropriate order or direction, which this Hon'ble Tribunal may deem fit, just and proper in the facts and circumstances of the present case, may kindly be issued/passed in the interest of justice and fair play.”
2. Shorn of unnecessary details, the key facts of the case are that the petitioner was engaged as Sweeper on daily

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

wage basis by respondent No.3 on 27.04.2012, and his salary/remuneration was being paid from the Students Welfare Fund like other teaching and non-teaching employees of respondent No.3. As per Notification dated 03.10.2015, respondent No.1 had taken policy decision to take over the services of all the teaching and non-teaching staff of respondent No.3 on contract basis after completion of 7 years or 9600 hours of duty, whichever is earlier. It has been averred that the petitioner had put in more than 9600 hours of regular service under respondent No.3, since his initial engagement/employment with effect from 27.04.2012, however, despite this, the respondents did not execute the contract of service with him, though he had made several requests to the respondents in this regard. As such, he has prayed for direction to the respondents to execute the contract of service with him in terms of the Notification dated 03.10.2015.

3. The respondents filed reply to the petition and raised preliminary submissions that as per instructions dated 21.07.2011, the cadre of Sweepers has been declared as dying cadre in Government Departments and decided that henceforth, the posts of Sweepers be filled up by outsourcing.

Therefore, henceforth no Sweeper can be engaged on contract/daily wage basis. It has further been averred that the institute was shifted to newly constructed building at Bechandhar, Sundernagar, District Mandi, Himachal Pradesh in February, 2012. Only one Sweeper on regular basis was available with the institute at that time. Since the area of the building to be cleaned was very large and it was not possible for one Sweeper to clean all the area daily, it was decided by the institute to engage more Sweepers on outsource basis, as per the direction of the Government. Accordingly, tender/quotations from outsource agencies were invited. It was also decided in the Students Welfare Committee meeting that process of handing over cleanliness of campus to outsource agency may take some time because of tendering process and, therefore, being a stop-gap arrangement, Sweepers on daily wage basis from Students Welfare Fund for a shorter period be engaged till persons are not recruited by the outsource agency. The petitioner was engaged as Sweeper on daily wage basis by respondent No.3 with effect from 27.04.2012 to 31.07.2012 as a daily paid worker without following any formality, being a stop-gap arrangement for a short period till manpower is being not engaged from

outsource agency. In response to the tender notice dated 14.04.2012, M/s Nuvision Commercial & Escort Services, Shimla was awarded the contract of outsourcing for cleanliness of campus, being the lowest bidder and the said agency started working with effect from 01.08.2012. The petitioner was engaged as a daily wage Sweeper up to 31.07.2012 and was paid remuneration/daily out of Students Welfare Fund available with the institute. The petitioner started working with M/s Nuvision Commercial & Escort Services on 01.08.2012 as a Sweeper and was deputed in the institute with effect from 01.08.2012 to 31.01.2015. After termination of the contract with the M/s Nuvision Commercial & Escort Services, Shimla, a new tender was invited and the contract of cleanliness of campus was awarded to M/s Ranker Security Services with effect from 01.02.2015 to 31.03.2018 and the petitioner was deputed for duties in the institute. Thus, he was an employee of M/s Ranker Security Services with effect from 01.02.2015 to 31.03.2018. After termination of the contract with M/s Ranker Security Services, new tender was invited by the institute and the contract of cleanliness of campus was awarded to M/s Skylight Manpower Services with effect from

04.04.2018 to 03.04.2019. The petitioner now started working with the said firm with effect from 04.04.2018 till date as Sweeper and deputed for duty in the institute.

4. It has also been averred that the petitioner had been an employee of different agencies and is not covered under the Notification dated 03.10.2015 being the employee of private firm/agency. As per instructions dated 21.07.2011, the cadre of Sweepers has been declared as dying cadre in the Himachal Pradesh Government Departments and as such prayed for dismissal of the petition.

5. The petitioner filed rejoinder to the reply and controverted the facts.

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

7. From a perusal of the reply filed by the respondents, one thing is very clear that the petitioner was engaged as Sweeper-cum-Peon by the respondents on 27.04.2012. Later on, as per the tender process initiated by the respondents to award the contract to the agency on outsource basis, his services were taken over by the said agency, but the petitioner had been working with the respondents since 27.04.2012. As per Notification dated

03.10.2015 (Annexure A-1), the State Government had taken a policy decision to take over the services of all the teaching and non-teaching employees engaged on hourly/period/lecture basis through Students Welfare Fund/Management Committees and under other Schemes after 31.07.2015 (i.e. date of closing of academic year 2014-2015) in Government Engineering College/Polytechnic and Industrial Training Institute of Department of Technical Education, Vocational and Industrial Training on contract basis after completion of 7 years or 9600 hours, whichever is earlier, as one-time measure, in the public interest with immediate effect, subject to the condition that no litigation is subsisting and an undertaking to this effect shall be taken from all the employees. As per this policy decision, the services of the persons who were engaged on hourly or period or lecture basis through Students Welfare Fund were to be taken over by the Government on contract basis who had completed 7 years or 9600 hours, whichever is earlier and the petitioner admittedly was engaged by respondent No.3 as Sweeper on 27.04.2012 and thereafter his services have been utilized by the respondents through various agencies to whom the contract was awarded for cleaning, etc., but at the same time,

he has discharged his duties with respondent No.3. Had the respondents not taken policy decision and issued the Notification dated 03.10.2015 (Annexure A-1), this Court could not have considered the claim of the petitioner for taking over his services by the respondents on contract basis. But once the respondents had taken the policy decision to take over the services of even those persons, who were engaged on hourly or period or lecture basis through Students Welfare Fund, the petitioner, who was also engaged on the basis of Students Welfare Fund, cannot be denied the benefit of the policy decision notified on 03.10.2015. It is not even the case of the respondents that they had not acted upon the policy decision dated 03.10.2015. The petitioner, who was appointed as Sweeper had no other option, but to serve the respondents through outsourced agencies, which otherwise has been specifically denied by the petitioner in the rejoinder. At the same time, it can't be ignored that the petitioner has ultimately served the respondents, who being a Class-IV employee, had no bargaining power and the respondents taking advantage of his position, had utilized his services, but through outsourced agencies.

8. As per the reply filed by the respondents, every time whenever there was a change of the outsourced agency, the petitioner was allowed to continue since the respondents had requirement of the Sweepers to keep the place clean. It is even the case of the respondents that when the institute was shifted to newly constructed building, the area of the building to be cleaned was very large and it was not possible for one Sweeper to clean all the area daily and hence engaged the petitioner, who is discharging his duties continuously from the year 2012 till date.

9. The Hon'ble Supreme Court has held in **Central Inland Water Transport Corporation Limited and another vs. Brojo Nath Ganguly and Another**, (1986) 3 SCC 156 that an employee is not having a bargaining power at the time of offering him appointment. The relevant para of the judgment reads as under:-

"89. Should then our courts not advance with the times? Should they still continue to cling to outmoded concepts and outworn ideologies? Should we not adjust our thinking caps to match the fashion of the day? Should all jurisprudential development pass us by, leaving us floundering in the sloughs of 19th century theories? Should the strong be permitted to push the weak to the wall? Should they be allowed to ride roughshod over the weak? Should the courts sit back and watch supinely

while the strong trample under-foot the rights of the weak? We have a Constitution for our country. Our judges are bound by their oath to "uphold the Constitution and the laws". The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article 14. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to

accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infra-structural organizations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances.”

10. As per the judgment, it is clear that the Court has the jurisdictional power to strike or set aside the unfair terms of contract of employment, which purports to be, in fact, through unreasonable bargain, violating Article 14 of the Constitution of India. In the present case, the respondents are extracting work from the petitioner, but have not adhered to the terms and conditions of the policy decision dated 03.10.2015, whereby they had even taken over the services of the persons on contract basis, who had completed seven

years or 9600 hours, but in the case of the petitioner, a strange plea has been taken that his services were being utilized through outsource agency though he is continuously discharging his duties in the institute of the respondents.

11. The Hon'ble Supreme Court in ***Jaggo vs. Union of India and Others***, AIR 2025 SC 296 has held that the temporary employees, particularly in Government institutions, often face multifaceted forms of exploitation. While the foundational purpose of temporary contracts may have been to address short-term or seasonal needs, they have increasingly become a mechanism to evade long-term obligations owed to employees. Further, the institutions have now started resorting to outsourcing roles performed by temporary employees, effectively replacing one set of exploited workers with another.

12. In the present case, the petitioner is continuously discharging his duties with the respondents for the purpose of cleanliness, which duties are very arduous and the people have now started not performing such duties. The plea taken by the respondents that the petitioner was discharging his duties through outsource agency cannot be accepted in view

of the pronouncements laid down by the Hon'ble Supreme Court in the aforesaid case.

13. Similarly, the Hon'ble Supreme Court has again reiterated the same view in ***Bhola Nath vs. The State of Jharkhand and Others***, 2026 LiveLaw (SC) 95 and in recent judgment in ***Rupesh R. Gaonkar and others vs. State of Goa and others***, 2026 INSC 792, after following the aforementioned judgment passed in ***Jaggo's*** case, as well as the judgment of the Hon'ble Supreme Court in ***Central Inland Water Transport Corporation's*** case (supra), and gave directions that the action on the part of the State is not justifiable in continuing the employees on sanctioned vacant posts for over a decade under the nomenclature of contractual engagement and thereafter denying them consideration for regularization.

14. The Hon'ble Supreme Court in the judgment passed in ***Dharam Singh and Others vs. State of U.P. and Another***, AIR 2025 SC 3897, has followed the same view as taken in aforementioned ruling in ***Jaggo's*** case and gave directions to regularize the services of the appellants with effect from 24.04.2002, the date on which, they had received the fresh recommendations by the Commission.

15. In the present case, as per the stand taken by the respondents, the petitioner has been discharging his duties with the respondents since 27.04.2012, which fact has not been disputed by the respondents and furthermore, once the respondents had taken policy decision as per Notification dated 03.10.2015, his services ought to have been taken over on contract basis after completion of seven years or 9600 hours, whichever is earlier and thereafter, he ought to have been granted the other benefits which have been granted to other similarly situated employees who were also being paid from the Students Welfare Fund etc.

16. Consequently, the present petition is allowed and the respondents are directed to, firstly, convert the services of the petitioner on contract basis strictly in terms of the Notification dated 03.10.2015 (Annexure A-1), and thereafter regularize his services as has been done in respect of other employees, who were also engaged on Students Welfare Fund with all consequential benefits. However, it is made clear that the petitioner shall be entitled to monetary benefits from the date of the institution of the present petition. In case the arrears are not paid to the petitioner within three months

from today, the respondents shall pay interest @ 6% per annum to him after expiry of three months from today.

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

31st August, 2026
(naveen)

(Jiya Lal Bhardwaj)
Judge