

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.6444 of 2020

Decided on: 16th September, 2026

Bir Singh (through his LRs) Mansara 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. Manohar Lal Sharma, Advocate.

For the respondents: Mr. Rupinder Singh Thakur, Additional Advocate General, for respondent No.1-State.

Mr. Amit Singh Chandel, Advocate, for respondents No.2 to 4.

Jiya Lal Bhardwaj, Judge (Oral)

By way of present petition, the original petitioner

had prayed for the following substantive relief:-

"(i). That the respondents may kindly be directed to pay the interest on retrial benefits i.e. gratuity i.e. w.e.f. 31.01.2013 to 07.12.2016 and leave encashment of 300 days instead of 60 days with interest @ 9% per annum, till the date of realization to the applicant with interest @ 12% per annum w.e.f. 31.01.2013 to till the date of its realization as per judgment passed by the Hon'ble High Court in CWP No.3050/2014 titled as Nek Ram versus State of HP."

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

2. During the pendency of the present petition, the original petitioner has died and his legal representatives have been brought on record, vide order dated 25.09.2024.

3. For the purpose of adjudicating the claim in the present petition, the parties are referred to as they were originally referred at the time of institution of the petition.

4. The petitioner was initially engaged as a Beldar on daily wage basis with the respondent-Department in the year 1984 and worked as such up to 31.01.2013, when he retired from service on attaining the age of superannuation. During the service of the petitioner, he was not conferred the work charge status. After his retirement, the petitioner had approached the erstwhile Himachal Pradesh Administrative Tribunal (in short "the Tribunal") by way of O.A. No. 4144 of 2015, titled, ***Bir Singh versus State of Himachal Pradesh and others***, for conferment of work charge status. The same was disposed of on 23.11.2016 with a direction to the respondents to consider the case of the petitioner strictly in

view of the earlier decision passed by the Tribunal in T.A. No.4075 of 2015, titled, ***Seti Ram versus State of Himachal Pradesh and others***, decided on 17.12.2015 and the judgment rendered by this Court in CWP No.2735 of 2010, titled, ***Rakesh Kumar versus State of H.P. and others***, within a period of three months from the date of production of a certified copy of the order as well as the judgment/order referred above.

5. In sequel to the direction given by the Tribunal, respondent No.2 had passed an office order dated 19.06.2017 (Annexure A-2), whereby the petitioner was granted work charge status w.e.f. 01.01.2003 on notional basis and was held entitled for arrear of financial benefits on actual basis w.e.f. the date of decision of the court case, titled, ***Rakesh Kumar versus State of H.P. and others*** i.e. 28.07.2010.

6. Before passing the aforesaid order by respondent No.2, the retiral benefits of the petitioner were calculated as per the communication dated 07.12.2016 (Annexure A-3) and the earned leave of the petitioner was taken only 60 days and further, he was granted the benefit of gratuity by taking his

date of appointment w.e.f. 01.01.2006.

7. The petitioner, feeling aggrieved by non-grant of the retiral benefits to him and not taking the date w.e.f. 01.01.2003, made a representation dated 16.12.2018 (Annexure A-5) requesting therein that he was entitled to the pension and leave encashment on the basis of his regularization w.e.f. 01.01.2003. Further, he was retired from service on 31.01.2013 and he is entitled for payment of the amount of leave encashment of 300 days instead of 60 days with interest @9% w.e.f. 31.01.2013 till the date of realization, as per the judgment passed by this Court in CWP No. 3050 of 2014, titled, ***Nek Ram versus State of H.P. and others.*** Since no action was taken by the respondents, he has approached this Court seeking directions to the respondents to pay him the interest on the retiral benefits i.e. gratuity w.e.f. 31.01.2013 to 07.12.2016 and further also pay leave encashment of 300 days instead of 60 days with interest @9% per annum till the date of realization. It has been averred that the inaction on the part of the respondents in not granting

the interest as well as not paying the amount of leave encashment of 300 days is in violation of Articles 14, 16 and 21 of the Constitution of India.

8. Respondents No.2 to 4 filed reply to the petition and did not deny the facts as stated above. It was, however, submitted that the petitioner was allowed all the retiral benefits w.e.f. 31.01.2013, vide office order dated 03.05.2019. Thereafter, the petitioner was requested to surrender employer share of his CPF amount i.e. Rs.53,650/- to respondent No.2 along with interest at the rate applicable in CPF, if he agrees to opt, then he should submit consent letter to process the matter further, but no response was received from the petitioner.

9. The petitioner filed rejoinder to the reply and also placed on record the instructions dated 10.02.2011, issued by respondent No.2, in which, it was stated that a formal order of increase in the ceiling of accumulation of earned leave from 240 days to 300 days had not been issued by the Government in the case of work charge employees at the

time of revision of pay scale w.e.f. 01.01.1996. A clarification was sought from the Government in this regard. The admissibility of earned leave to work charge staff was to the effect that the Work Charge (Regular) will have earned leave of 240 days and Work Charge (Temporary) of 60 days.

10. The petitioner has also placed on record the copy of the judgment passed by a coordinate Bench of this Court in CWPOA No.5290 of 2019, titled ***Mansara Devi versus State of Himachal Pradesh and others***, wherein the Court had held that the work charge regular employee will get leave encashment for 240 days.

11. As per order dated 04.12.2024, passed by this Court, respondent No.2 was directed to file a supplementary affidavit, which has been filed regarding the nomenclature of Work Charge Status (Regular) vis-a-vis Work Charge Status (Temporary).

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

13. It is not in dispute that after the direction issued by the Tribunal, vide order dated 23.11.2016 (Annexure A-1), respondent No.2 had passed an office order dated 19.06.2017 (Annexure A-2), whereby the petitioner was conferred work charge status w.e.f. 01.01.2003 on notional basis and he was held entitled for arrear of financial benefits on actual basis w.e.f. the date of decision of the Court case in **Rakesh Kumar's** case (supra) i.e. 28.07.2010. It is also not in dispute that the petitioner had retired from service on attaining the age of superannuation on 31.01.2013. The petitioner has been paid the retiral benefits before passing the office order dated 19.06.2017 (Annexure A-2).

14. As per the communication dated 07.12.2016 (Annexure A-3), the petitioner has been granted the benefit of earned leave of only 60 days, which was based on the instructions dated 10.02.2011, construing the petitioner as a Work Charge (Temporary) employee. Once the petitioner as per the office order dated 19.06.2017 (Annexure A-2) passed

by respondent No.2 has been granted work charge status w.e.f. 01.01.2003 and there is no mention that he is a Work Charge (Temporary) employee, the petitioner is entitled to leave encashment of 240 days taking his service w.e.f. 01.01.2003 till 31.01.2013. Respondent No.2 had calculated the retiral benefits of the petitioner prior to passing the office order dated 19.06.2017 (Annexure A-2) as evident from the calculation made by the Executive Engineer of respondent No.2 in its letter dated 07.12.2016 (Annexure A-3). The petitioner had been granted work charge status w.e.f. 01.01.2003 on notional basis and on actual basis w.e.f. 28.07.2010 and thus, he is entitled to the leave encashment of 240 days, since he was conferred the work charge status w.e.f. 01.01.2003 and it cannot be construed that the petitioner was conferred the Work Charge Status (Temporary). When the calculation was made earlier, it was rightly done for the reason that the petitioner was not conferred the work charge status, which has been conferred subsequently as per office order dated 19.06.2017 (Annexure

A-2). But after passing the office order on 19.06.2017 (Annexure A-2), the petitioner is entitled to leave encashment of 240 days as per instructions dated 10.02.2011 (Annexure A-6) placed on record by the petitioner, and not of 60 days, as has been done before passing the office order dated 19.06.2017.

15. Learned counsel for the petitioner vehemently argued that since the petitioner has been granted the gratuity amount after making calculation, vide communication dated 07.12.2016, he is entitled to interest on the said amount from date of his retirement on 31.01.2013. However, the petitioner is not held entitled to the interest for the reason that the petitioner did not rake up the issue and he approached the Tribunal only in the year 2015, when a direction was given by the Tribunal on 23.11.2016 to consider his claim strictly as per the judgments referred in the order and thereafter respondent No.2 had passed an office order dated 19.06.2017 (Annexure A-2), when the petitioner has

been granted the work charge status w.e.f. 01.01.2003. It is only after passing the aforesaid order dated 19.06.2017, the petitioner had made the representation on 16.12.2018 (Annexure A-5), claiming the interest on the amount of gratuity and also the payment of leave encashment of 300 days instead of 60 days along with interest @9% w.e.f. 31.01.2013. Thus, the petitioner is not held entitled to the interest on the gratuity amount.

16. So far as the claim of the petitioner for grant of leave encashment of 240 days is concerned, as already observed above, once the petitioner was conferred the work charge status w.e.f. 01.01.2003, he is held entitled to the amount of leave encashment, taking into account 240 days from the date of conferring the work charge status upon him w.e.f. 01.01.2003.

17. A coordinate Bench of this Court had the occasion to consider a similar issue, wherein too, respondent No.2 was party and the similar instructions dated 10.02.2011 were

considered and the contention raised by respondent No.2 that petitioner-Mansara Devi was Work Charge (Temporary) was belied and she was held entitled to the benefit of leave encashment of 240 days. Since in the present case too, there is no material placed on record by respondents No.2 to 4 that the petitioner was engaged as Work Charge (Temporary), he too is entitled to the benefit of leave encashment of 240 days instead of 300 days as prayed in the petition.

18. Consequently, the present petition is partly allowed and the respondents are directed to grant the benefit of 240 days of leave encashment to the original petitioner. Mansara Devi being wife of Bir Singh original-petitioner shall be paid the amount of leave encashment within a period of three months from today along with interest @6% per annum w.e.f. 01.02.2013 and in case, the amount of leave encashment is not paid within the aforementioned period, the respondents shall pay the interest on the arrears @9% per annum w.e.f. 01.02.2013 till actual payment. The amount of

interest on arrears after three months shall be recovered from the erring officers/officials.

19. The petition is accordingly disposed of. No order as to costs. Pending application(s), if any, shall also stand disposed of.

16th September, 2026

(ankit)

**(Jiya Lal Bhardwaj)
Judge**