

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

CWPOA No. 6491 of 2020

Date of decision: 23.09.2026.

Shakuntla Devi	...Petitioner.
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Versus

State of H.P. & others	...Respondents.
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Coram:

The Hon'ble Mr. Justice Ranjan Sharma, Judge.

Whether approved for reporting?¹ Yes.

For the petitioner	: Mr. Anshul Jairath, Advocate.
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For the respondents	: Mr. Varun Chandel, Additional Advocate General.
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Ranjan Sharma, Judge:

Petitioner, Shakuntla Devi, [a retired Drawing Teacher] had filed an Original Application No. 1166 of 2019 before Learned State Administrative Tribunal; and upon its abolition the matter has been re-transferred to this Court, as CWPOA No. 6491 of 2020 seeking the following prayers:-

- “1) That the respondents may be directed to treat the applicant as having being appointed notionally w.e.f. 01.05.2003 and consequently the pension and pensionary benefits under the CCS (Pension) Rules, 1972 alongwith all consequential benefits such as Gratuity, Leave Encashment,

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

commuted value of pension etc, alongwith arrears and interest @ 12% p.a.

- 2) That paragraph 5 of the Office Memorandum dated 18.08.2017 may kindly be struck down being unconstitutional.
- 3) That the Office Memorandum dated 18.08.2017 may kindly be made operative w.e.f. 15.05.2003 i.e. the date w.e.f. when the Notification dated 17th August, 2006 has been made operative and the respondents may kindly be directed to extend the benefits of the aforesaid Memorandum dated 18.08.2017 to the Applicant.”

FACTUAL MATRIX:

2. Case as set up by Learned Counsel is that the Respondent No. 2-Director of Elementary Education decided to fill up various posts in C&V Cadre, including the posts of Drawing Masters, in the year 2002 and though the petitioner had appeared for the Interview/Counseling on 18.04.2002 as per [Annexure A-1] but the said selection process was abandoned.

2 (i). In the year 2003, another selection process for filling posts of Drawing Teachers through batch-wise recruitment was initiated in April 2003 and the petitioner appeared in the Interview/Counseling conducted between

21.04.2003 to 26.04.2003 by the Respondents but the result of Interview/Counseling was delayed by the Respondents and it was only in the month of September 2003 that the petitioner was declared successful and she was appointed as Drawing Master in September 2003 as per [Annexure A-2]. After her selection/appointment, the petitioner joined her duties in September 2003, in GSSS Bhont, District Shimla and she retired from service on attaining the age of superannuation, on 31.12.2016.

2 (ii). In above backdrop, the grievance is that once the selection process was initiated in April 2003 and the petitioner attended the Counseling/Interview conducted during the period from 21.04.2003 to 26.04.2003, then in such an eventuality, notwithstanding her appointment in September 2003, the petitioner was entitled for pension, gratuity and other retiral benefits upon superannuation on 31.12.2016 as per the CCS (Pension) Rules, 1972; instead of giving the pension under New Pension Scheme or HPCS (Contributory Pension) Rules notified on 16.08.2006 [Annexure A-3]; with the prayer to regulate her retiral benefits, in terms of the Old Pension Scheme under the CCS (Pension) Rules from the date of her retirement on 31.12.2016.

STAND OF STATE-AUTHORITIES:

3. Upon issuance of notice, the State Authorities have filed the Reply Affidavit dated 15.12.2023, of Director Elementary Education, Himachal Pradesh.

3 (i). State Authorities have admitted the factual matrix of the case, by stating that the recruitment process for posts in C&V Category [Drawing Teacher] was initiated and Interviews were conducted from 21.04.2003 onwards and the selection process was completed on 26.04.2003 for the said post. Reply Affidavit indicates that the applicability of the Old Pension Scheme under the CCS [Pension] Rules, 1972 was ousted and these Rules were held to be inapplicable, for employees who were appointed on or after 15.05.2003 and since the petitioner was appointed as Drawing Master on regular basis in September 2003, therefore, the benefit of Old Pension Scheme could not be extended to the petitioner and she was to be governed by the Himachal Pradesh Civil Services (Contributory Pension) Scheme Rules 2006 notified by the State Government. Reply-Affidavit further indicates that once the petitioner stood retired from service on 31.12.2016 and she had filed the Original Application in 2019 after having received the Contributory Pension, therefore, the claim of the petitioner

for pension and retiral benefits under the Old Pension Scheme, including the CCS [Pension] Rules, 1972 was opposed by the State Authorities.

3 (ii). Sequel to the orders passed by this Court on 29.05.2025, the Respondents filed an Affidavit reiterating the same stand as taken in the reply affidavit, with the submissions that since the petitioner stood retired from service on 31.12.2016, then, the benefit of the Revised Old Pension Scheme notified by the Government on 04.05.2023 was to be applied and since the petitioner had already enjoyed the benefits under the New Pension Scheme and therefore, the claim of the petitioner for benefit of pension and retiral benefits under the Old Pension Scheme as per the CCS (Pension) Rules was not tenable.

POINT INVOLVED:

4. The issue involved, in the present case is, as to whether the persons, in whose cases the posts/vacancies were advertised or notification of recruitment was issued before 15.05.2003 but the appointments were made after 15.05.2003 [i.e. the date of ouster or inapplicability of the CCS (Pension) Rules, 1972] were to be given the retiral benefits, including pension under the CCS (Pension) Rules, 1972 or not; was

decided by the Central Government, allowing the coverage to such employees under the CCS (Pension) Rules, vide O.M. dated 03.03.2023.

ISSUE DECIDED BY GOVERNMENT BY ISSUING OM DATED 09.07.2026:

5. Learned Counsel for petitioner submits that the Respondent-State has taken a decision as per the OM dated 09.07.2026 [*Taken on Record*] that the Government servants, who were appointed against posts or vacancies, in whose case, such post was advertised or recruitment was initiated prior to 15.05.2003, but actual appointment was made after 15.05.2003, then also, in such cases, the coverage under the CCS (Pension) Rules was admissible, subject to an exercise of option by the said employee, latest by 31.10.2026; and subject to fulfillment of other terms and conditions, including adjustment(s) of corpus received by the government servant under NPS or Contributory Pension with the Government [as the case may be] and in case an employee, alike the petitioner was found to be covered under the CCS (Pension) Rules 1972, then, the appointing authority was to pass necessary orders before 31.12.2026. The OM dated 09.07.2026 reads as under:-

“GOVERNMENT OF HIMACHAL PRADESH
FINANCE (PENSION) DEPARTMENT
No.Fin(pen)A(1)-1/2020 Dated: Shimla-29th July, 2026

OFFICE MEMORANDUM

Subject: Coverage of State Government servants, who were recruited against the posts/ vacancies advertised/ notified for recruitment on or before 15.05.2003, under the CCS (Pension) Rules, 1972.

1. The undersigned is directed to say that the State Government has made the CCS (Pension) Rules 1972, inapplicable for all appointments made on or after 15.05.2003 vide Notification No. Fin(Pen)A(3)-1/96 dated 15.05.2003. The Contributory Pension Scheme (CPS), now called National Pension System (NPS), was introduced for all the Government servants who were appointed on or after 15.05.2003 vide Notification No. Fin(Pen)A(3)-1/96 dated 17.08.2006.

2. However, in the year, 2023, the State Government has restored the CCS (Pension) Rules, 1972 (OPS), w.e.f. 01.04.2023, vide notification No. Fin(Pen)A(3)-1/2023 dated 04.05.2023. The Government employees appointed between the period 15.05.2003 to 31.03.2023, including retired NPS Government servants and family member(s) of the Government servants, who had died during the relevant period, were given an option, either to opt for the Old Pension Scheme (OPS) or the National Pension System(NPS) vide Office Memorandum No. Fin (Pen)A(3)-1/2023 dated 04.05.2023.

3. Even after restoration of the Old Pension Scheme, representations have been received from the Government servants appointed on or after 15.05.2003 for grant of benefit of pension scheme under the CCS (Pension) Rules, 1972 on the analogy of Government of India instructions contained in the O.M. No.57/05/202-P&PW(B) dated 03.03.2023.

4. The **Government of India vide O.M. No.57/05/202-P&PW(B) dated 03.03.2023 has decided** that in all cases where the Central Government civil employees are appointed against the post of vacancy which was advertised/ notified for recruitment/appointment, prior to the date of notification for National Pension System (NPS)

i.e. 22.12.2003 and they are covered under the National Pension System on joining service on or after 01.01.2004, may be given a one-time option (Annexure-I) to be covered under the CCS (Pension) Rules, 1972.

5. Now, after due consideration of the matter, the Government has decided that the Government servants who have been appointed against posts or vacancies, which were advertised/notified for recruitment/appointment prior to 15.05.2003 may be given one-time option for coverage under the CCS (Pension) Rules, 1972. This option may be exercised by the covered Government servant latest by 31.10.2026.

6. The Government servant who is eligible to exercise option in accordance with Para-5 above, but does not exercise the option within stipulated date, shall continue to be covered under the relevant pension scheme as opted by him in accordance with the Standard Operating Procedures issued vide letter No. Fin(Pen)A(3)-1/2023 dated 04.05.2023.

7. The option once exercised shall be final and irrevocable.

8. The case of the Government servant regarding coverage under the CCS (Pension) Rules, 1972, based on the option exercised by him/her, shall be placed before the Appointing Authority of the post(s) for which such an option is being exercised, for consideration, in accordance with these instructions. **If the Government servant fulfils the conditions for coverage under CCS (Pension) Rules, 1972, in accordance with these instructions, necessary order in this regard shall be issued latest by 31.12.2026.** The NPS account of the Government servant shall consequently be closed w.e.f. 28.02.2027.

9. The Government servant, who exercise the option to switch over to the pension scheme under CCS (Pension) rules, 1972, shall be required to subscribe to the General Provident Fund (GPF), if not already subscribed in terms of Standard Operating Procedures issued vide OM No. Fin(Pen)A(3)-1/2023 dated 04.05.2023.

10. The corpus in the NPS account of the Government servant, shall be adjusted as under:-

- i) **Adjustment of Employees' contribution in the Accounts:** Amount may be credited to an individual's GPF account, and the account may be re-casted permitting up-to- interest (*Authority-FR-16 & Rule 11 of GPF Rules*).
- ii) **Adjustment of Government contribution under NPS Accounts:** The amount of Government contribution may be (-) Dr to the Government account under Major Head 2071- Pension and other Retirement Benefits, under Major Head 2017-Pension and other Retirement benefits, Sub Major Head 01-Civil, Minor Head 911-Deduct Recoveries of over payment, Sub Minor Head 01-Recovery on account of accumulated pension wealth in respect of National Pension System subscribers.
- iii) **Adjustment of increased value of subscription on account of appreciation of investments (Dividend):** The amount of dividend may be credited to Government account under Major Head 0071-Contributions and Recoveries towards Pension and other Retirement Benefits, Sub Major Head 01-Civil, Minor Head 800-Other Receipts, Sub Minor Head 02-Account of dividend on Government and employee's contribution under National Pension System.

These instructions may be brought to the notice of all concerned for necessary action.

By Order
Principal Secretary (Finance) to the
Government of Himachal Pradesh”

6. Per contra, Learned State Counsel submits that in terms of the Office Memorandum dated 09.07.2026, the

benefit is subject to the condition that an employee exercises an option latest by 31.10.2026 and failure to exercise an option shall result in denial of benefits under the Old Pension Scheme; and even after exercise of an option to switch over to the pension scheme under the CCS (Pension) Rules, 1972, the admissibility of pension is subject to the fulfillment of compliances as mandated in Para 10 of Office Memorandum and fulfillment of other conditions under the CCS (Pension) Rules.

STATEMENT OF LEARNED COUNSEL FOR PETITIONER:

7. Faced with the above situation, Learned Counsel for the petitioner, on Instructions, states that the petitioner shall be satisfied, in case, the State Authorities are directed to examine the case of the petitioner, subject to exercise of an option by 31.10.2026 and fulfillment of other compliances so as to enable her to be covered by the CCS (Pension) Rules, 1972 [*Statement Taken on Record*].

CONCLUSION:

8. Once the selection process for filling the post of C&V Category [Drawing Teacher] was initiated before 15.05.2003 [in April 2003] and even the Interviews-Counseling was completed on 26.04.2003 [Annexure P-1], but the actual

appointment was delayed till September 2003 due to administrative reasons and or without any fault of the petitioner, then also, in such an eventuality the petitioner could not have been ousted from the purview-coverage of the CCS (Pension) Rules, 1972. A similar issue cropped up before the Hon'ble Division Bench of High Court of Delhi in Writ Petition No (C) 756 of 2020, titled as **Dr. Devinder Singh Brar vs. Union of India** decided on 28.01.2020, entitling the government servant [who was a Medical Officer Dentals in said case who was appointed after 01.01.2004 but in whose case, the advertisement was issued or notification of vacancies/posts was issued before 01.01.2004 i.e. prior to the amendment carried out by the Central Government under the CCS (Pension) Rules making these Rules inapplicable to appointments made on or after 01.01.2004], by allowing them coverage under the CCS (Pension) Rules 1972. The judgment of the High Court was taken in Special Leave to Appeal i.e. SLP (C) No. 173 of 2021, titled as Union of India vs. Dr. Devinder Singh Brar and the same was dismissed by the Hon'ble Supreme Court on 04.02.2021. Even, the Hon'ble High Court of Jharkhand, in LPA No. 61 of 2025, titled as **Indian Institute of Technology vs. Dr. Pawan Kumar**, decided on 18.07.2025, after following

the judgment in case of Dr. Davinder Singh Brar (supra), has exercised similar benefit. After considering the judgment passed by various High Courts, Central Government issued an OM on 03.03.2023 entitling the coverage to the government servants under the CCS (Pension) Rules, 1972 who were appointed on or after 01.01.2004, but in whose cases, the process of recruitment for filling the vacancies/posts was initiated before 01.01.2004. Now, even the Respondent State has issued an OM on 09.07.2026, as referred to above, providing the coverage under CCS (Pension) Rules 1972 to persons in whose cases, the selection process for filling the vacancies/posts was initiated prior to 15.05.2003, notwithstanding the fact that the actual appointments were made on or after 15.05.2003. Resultantly, in case of the petitioner, once the selection process for filling the vacancies/posts of Drawing Teachers was initiated in April 2003 and Counselling/Interviews were conducted and completed on 26.04.2003 i.e. before 15.05.2003, then also, notwithstanding his appointment in September 2003, the petitioner was eligible and entitled to be considered for grant of benefits of pension, gratuity etc. under the CCS (Pension) Rules, 1972 w.e.f. 01.01.2017, subject to her exercising option and

adjustment/deposit of corpus [CFF etc] in terms of Office memorandum dated 09.07.2026 and thereafter admissible the benefits shall accrue to the petitioner.

9. No other point was raised/argued.

DIRECTIONS:

10. In view of above discussion and for reasons recorded hereinabove, in instant petition is ***allowed***, in the following terms:-

- i) Petitioner, if so desired, may exercise an option for switching over to the pension scheme under the CCS (Pension) Rules, 1972 by submitting the requisite option before 31.10.2026;
- ii) Upon receipt of option and refund/adjustment of amounts as in Para 10 of the Office Memorandum dated 09.07.2026, the State Authorities shall examine the admissibility of pension, gratuity and other benefits under the CCS (Pension) Rules, 1972, on or before 31.12.2026;
- iii) Upon consideration, as in O.M. dated 09.07.2026 read with the CCS (Pension) Rules, 1972, and upon finding the petitioner entitled for pension, gratuity etc under the CCS (Pension) Rules, the State Authorities shall grant all retiral benefits including pension before 30.01.2017; with

effect from 01.01.2017;, after completing all necessary formalities in accordance with law;

- iv) Failure to release admissible benefits shall entitle the petitioner for interest @ 6% per annum beyond 31.01.2027 till realization.
- v) Parties to bear their respective costs.

In the aforesaid terms, the instant petition and all pending applications, if any, shall accordingly stand disposed of.

(Ranjan Sharma)
Judge

23rd September, 2026.
(kck)