

THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Execution Pet. No. 65 of 2025

a /w COPCT No. 363 of 2020

Reserved on: 14.08.2026

Decided on : 21.08.2026

Uploaded on: 21.08.2026

1. **Execution Pet. No. 65 of 2025**

Kanta Sharma

... petitioner

Versus

State of HP

...Respondent

2. **COPCT. No. 363 of 2020**

Kanta Sharma

... petitioner

Srikant Baldi and others

...Respondents.

Coram

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

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

Whether approved for reporting?¹

For the petitioner(s): Mr. Sanjeev Bhushan, Sr. Advocate, with Mr. C.D. Negi, Advocate, in both the petitions.

For the respondent(s): Mr. Pranay Pratap Singh, Additional Advocate General, in both the petitions.

Bipin Chander Negi, Judge

By way of the present execution petition and contempt petition, implementation of judgment dated 31.05.2017 passed in OA No. 1752 of 2015 titled Kanta Sharma v. State of H.P. and others is being sought (Annexure C-1 pages 9 to 23). Hence the same are being taken up together. Relevant extract of judgment dated 31.05.2017 reads as follow:-

¹ *Whether the reporters of the local papers may be allowed to see the Judgment?*

“16. In the peculiar facts and circumstances of the present and on an overall view of the matter, the original application is disposed of with a direction to the respondents/competent authority(s), particularly respondent No.2, to consider the case of the applicant for promotion to the post of Agriculture Development Officer in the light of the principle of promissory estoppel and if required, by resorting to the relaxation clause embodied vide Rule 19 of the R&P Rules issued vide notification dated 3rd June, 1995, Annexure A2 (copy of Rules filed, which is taken on record), keeping in view the fact that the applicant was sent for undergoing B.Sc. Degree in Agriculture as a departmental candidate, after obtaining a bond from her and during the course of study, she was granted study leave with full pay for one half duration of the course to the extent of two years and the remaining two years course of study was completed by her on her own expenses. Let this exercise be carried out as expeditiously as possible, but in any case not later than three months from the date of production of certified copy of this order before the respondents/competent authority(s) by the applicant.”

2. The aforesaid judgment dated 31.05.2017 passed in OA No. 1752 of 2015, execution whereof is being sought, was assailed by the respondents by filing CWP No. 2512 of 2017. On 06.11.2017, the writ petition, so preferred, had been admitted and it had been clarified in the said order that promotion, if any, made would be subject to the outcome of the present writ petition.

3. In pursuance of the aforesaid judgment, order dated 14.05.2018 (Annexure CA-1, page 65) had been passed whereby the representation made by the present petitioner in pursuance of the judgment dated 31.05.2017 passed in OA No. 1752 of 2015, execution whereof is being sought, had been rejected, on the ground that excess persons were working. The relevant part reads as under:-

“9. AND WHEREAS, insofar as promotions of Panchyat Secretary/GPVA is concerned, as per rationalisation carried out in the Department during the year, 2008, only 328 posts of ADO have been kept, compared to earlier sanctioned strength of 397. Hence, 164 posts of ADO goes in the share of promotee in the ratio of 50% by promotion as per prevailing R&P Rules, amongst, 147.6 posts are meant for Assistant Agriculture Development Officer/Agriculture Extension Officer and 16.4 for GPVA of Rural Development Department in the quota of 45% and 5% respectively. Therefore, 148 Assistant Agriculture Development Officers / Agriculture Extension Officers and 16 GPVAs are to be considered for promotion to the post of ADO having requisite prescribed educational qualification and qualifying services in the fixed quota. As per records, it had been observed that 17 ADOs have already been promoted from the cadre of GPVA earlier and working in the department on regular basis, hence, in the fixed quota of GPVA for promotion, one ADO is in excess. It had further been gathered that previously 20 posts were calculated on total sanctioned strength of 397 inadvertently not as per rationalisation;

10. AND WHEREAS, in view of the Court's order passed in the case of said GPVAs, the matter was taken up with the HP. Public Service Commission on 20.2.2018 with the further request to convene DPC for promotion to the post of ADO from amongst GPVA alongwith all requisite documents/papers who have informed vide their letter No.8-1/99-PSC-Part, dated 9.3.2018 that since ADO promoted from the, GPVA/Panchayat Secretary category are already working over and above of the prescribed quota, therefore, keeping in view the rationalization of the ADOs in the Department of Agriculture, 03 more vacancies cannot be filled up from this category;

11. AND WHEREAS, the representations of the said GPVAs were considered and rejected in view of the facts of the case and record;

12. AND WHEREAS, after taking into the record and facts of the case referred above, the undersigned has come to the conclusion that the request of the applicant Smt. Kanta Sharma, LVDC, for promotion to the post of ADO cannot be considered at this stage, due to non-availability of posts

under 5% quota and as the main case is under appeal before the Hon'ble High Court”.

4. Purported non-compliance of the judgment dated 31.05.2017 passed in OA No. 1752 of 2015 led to the filing of a contempt petition bearing number COPCT 363 of 2020. In the same, on 22.09.2020, the following order was passed:- (Annexure C-2 page 24 of the paper book).

“Vide order dated 07.07.2020, learned Additional Advocate General was granted time to inform the Court about the status of the writ petition vide which, the Judgment dated 31st May, 2017. passed by the erstwhile learned Himachal Pradesh Administrative Tribunal in O.A. No. 1752 of 2015, titled as Kanta Sharma Vs. State of H.P. and others has been assailed, purported non-compliance of which has led to the filing of this petition. Thereafter, the matter was listed on 31.08.2020 and on the said date, as prayed for, the matter was ordered to be listed for today.

Learned Senior Counsel for the petitioner submits that as per his instructions, operation of the judgment passed by the learned Tribunal has not been stayed in the writ petition.

On the request of learned Additional Advocate General, the case is ordered to be listed on 28th September, 2020. It is made clear that either the order passed by the learned Tribunal be implemented by the said date, of course, subject to the adjudication of the writ petition which the State has filed against the order so passed or in the alternative, Principal Secretary (Agriculture), Government of H.P. shall remain present in person in the Court to show cause as to why he should not be punished for willful disobedience of the order passed by the learned Tribunal”.

5. Subsequent to the aforesaid, writ petition bearing CWP No. 2512 of 2017 preferred against the judgment now sought to be executed and implemented through contempt proceedings was decided by judgment dated 23.02.2021 (Annexure X-III, page 94 of

the paper book). From a perusal of the same, it is evident that order dated 14.05.2018 (Annexure A/1), whereby the representation made by the petitioner in furtherance of the judgment sought to be executed was rejected had been brought to the notice of the Court while disposing of the writ petition bearing CWP No. 2512 of 2017 on 23.02.2021.

6. In the aforesaid circumstance, the Division Bench while disposing of the writ petition bearing CWP No. 2512 of 2017, whereby a challenge had been laid to judgment dated 31.05.2017 passed in OA No. 1752 of 2015, on 23.02.2021 observed as follows:-

“5. Since the petitioners-competent Authority have passed the consideration order in compliance to the impugned order passed by the Tribunal and the same is also subject matter of COPCT No. 363 of 2020, which is already pending before this Court, this writ petition has become infructuous.

6. In view of the above, the writ petition is dismissed as having become infructuous, alongwith pending application(s), if any.”

7. Proceedings in the contempt petition bearing number COPCT No. 363 of 2020 thereafter were closed in terms of judgment dated 27.03.2023 by discharging the notices as therein the respondents had submitted that the judgment now sought to be executed is being complied with within a period of three months (Annexure X-IV, page 96). Liberty was reserved for the revival of the contempt proceedings.

8. Vide notification dated 31.10.2023 (Annexure C-4, page 28 of the paper book), the petitioner was promoted to the post of Agricultural Development Officer on a regular basis with immediate effect.

9. In the aforesaid facts and attending circumstances, the present execution petition was filed in May, 2025. In the execution petition, it would be appropriate to refer to order dated 8.7.2025 and 22.7.2025 (whereby contempt petition bearing number COPCT No. 363 of 2020 was revived), the same are being reproduced here-in-below for a ready reference:-

“08.07.2025:- Having heard the matter for quite some time, we are of the considered view that the respondent has clearly taken this Court for a ride and thereby committed contempt. Once the respondent itself conceded before this Court that the petitioner is required to be promoted, such promotion could not have been prospective. Given the fact that there is already a judgment in her favour passed by the erstwhile Tribunal as far back as on 31.05.2017, which, admittedly, has attained finality inter se the parties with the withdrawal of the writ petition that was preferred by the respondent-State against the said judgment.

In normal circumstances, we would have revived the contempt proceedings being COPCT No. 363 of 2020. However, before doing so, we afford the State one opportunity to take remedial steps for promoting the petitioner from the due date in terms of the judgment rendered by the erstwhile Tribunal.

Let needful be done within two weeks, failing which COPCT No.363 of 2020 would be deemed to be revived.

List on 22.07.2025

22.07.2025:- The order passed by the Court has not been complied with.

In view of order passed by the Court on previous date, COPCT No. 363 of 2020 is ordered to be revived to its original status with original number and the same be listed before appropriate Bench during next week.

As prayed by learned Additional Advocate General, matter is adjured for filing compliance affidavit/report within two weeks positively, failing which this Court shall be constrained to take coercive measures to ensure compliance of order passed by the Court. List on 21st August, 2025.”

10. Heard counsel for the parties and perused the record.
11. The judgment sought to be executed had directed the respondents to consider the case of the applicant for promotion. Admittedly, in the case at hand, post-consideration, initially vide order dated 14.5.2018 (Annexure CA/1 page 65 of the paper book), the representation made in pursuance of the judgment sought to be executed had been rejected by the respondent authorities for reasons reproduced above. It is in the said circumstance that the co-ordinate Division Bench while disposing of the writ petition bearing CWP No. 2512 of 2017, whereby a challenge had been laid to judgment dated 31.05.2017 passed in OA No. 1752 of 2015, on 23.02.2021 by the respondents observed that the said CWP No. 2512 of 2017 had become infructuous. Subsequently vide notification dated 31.10.2023 (Annexure C-4, page 28 of the paper book), the petitioner had been promoted to the post of Agriculture Development Officer on a regular basis with immediate effect.

12. In this backdrop, a reference to the Division Bench judgment in **C.W.P. No. 4729/2020, decided on 28.10.2020 titled Managing Director H.P State Electronics Development Corporation vs. State of H.P. and others** (Annexure C-A/II, page 69), would be relevant, wherein it has been categorically held that when in pursuance to a direction passed by the Court, the authority considers and decides the matter, than the only remedy available to the aggrieved party is to file a substantive petition assailing the same as that would be a fresh cause of action and the same cannot be considered to be a willful violation. Relevant extract whereof reads as follow:-

“6. It is not in dispute that the petitioner had infact considered and decided the case of the private respondents, though belatedly, on 29.02.2020, but that was much prior to the order passed by the Court on 21.8.2020 in the contempt petition. If at all the private respondents were aggrieved by the consideration order, then the only remedy available to them was to file substantive petition, assailing the same.

7. Once the order is passed by the Government on the basis of the directions issued by the Court, there arises a fresh cause of action to seek redressal in an appropriate forum. The order may be wrong or may be right or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail opportunity by way of judicial review. But that cannot be considered to be the willful violation of the order.

8. In taking this view, we are supported by the judgment passed by three Judges of the Hon'ble Supreme Court in **(1996) 6 SCC 291 titled J.S. Parihar Vs. Ganpat Duggar and others**, wherein it was observed as under:-

"6..... It is seen that once there is an order passed by the Government on the basis of the directions issued by the court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the wilful violation of the order....."

13. Besides the aforesaid, in the said judgment, it has also been held that in case a person aggrieved by the consideration order files a writ petition and the writ court comes to the conclusion that the aggrieved individual has been dragged into unwarranted or avoidable litigation, the aggrieved party can always be compensated by awarding costs and damages. Relevant extract whereof reads as follow:-

"19. We have no doubt in our mind that in case the respondents file a writ petition and the Writ Court comes to the conclusion that the private respondents have been dragged into unwarranted and otherwise avoidable litigation, then they would be compensated by awarding heavy costs and damages."

14. In the aforesaid factual circumstances, in the case at hand, once a consideration order has been passed, the present execution petition would not be maintainable. Hence the execution petition is dismissed. Pending miscellaneous application(s), if any, also stand disposed of.

15. Conferment of jurisdiction is a legislative function. The same can neither be conferred with the consent of the parties nor by a superior court. If a court passes an order/decreed having no jurisdiction

over the matter, it would amount to a nullity as the matter goes to the roots of the cause. An issue qua jurisdiction can be raised at any belated stage of the proceedings including in an appeal or execution.

16. Where a party is directed to do some act and the party fails to perform the act so directed to do, than an execution is to be made in pursuance of Order 21 Rule 32 CPC which provides the manner, mode of execution and therefore, no other mode is permissible. In this respect reference can be made to the apex court judgement in ***Kanwar Singh Saini v. High Court of Delhi, (2012) 4 SCC 307***. Relevant extract whereof reads as under;

21. The provision of Order 21 Rule 32 CPC applies to prohibitory as well as mandatory injunctions. In other words, it applies to cases where the party is directed to do some act and also to the cases where he is abstained from doing an act. Still to put it differently, a person disobeys an order of injunction not only when he fails to perform an act which he is directed to do but also when he does an act which he is prohibited from doing. Execution of an injunction decree is to be made in pursuance of Order 21 Rule 32 CPC as the CPC provides a particular manner and mode of execution and therefore, no other mode is permissible. (See *Hungerford Investment Trust Ltd. v. Haridas Mundhra.*)

22. There can be no dispute regarding the settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior court, and if the court passes order/decreed having no jurisdiction over the matter, it would amount to a nullity as the matter goes to the roots of the cause. Such an issue can be raised at any belated stage of the proceedings including in appeal or execution. The finding of a court or tribunal becomes irrelevant and unenforceable/inexecutable once the forum is found to have no jurisdiction. Acquiescence of a party equally should not be permitted to defeat the legislative animation. The court cannot derive jurisdiction apart from the statute. [Vide *United Commercial Bank Ltd. v. Workmen, Nai Bahu v. Lala Ramnarayan, Natraj Studios (P) Ltd. v. Navrang Studios,*

Sardar Hasan Siddiqui v. STAT, A.R. Antulay v. R.S. Nayak, Union of India v. Deoki Nandan Aggarwal, Karnal Improvement Trust v. Parkash Wanti, U.P. Rajkiya Nirman Nigam Ltd. v. Indure (P) Ltd., State of Gujarat v. Rajesh Kumar Chimanlal Barot, Kesar Singh v. Sadhu, KondibaDagadu Kadam v. Savitribai Sopan Gujar and CCE v. Flock (India) (P) Ltd.]

23. When a statute gives a right and provides a forum for adjudication of rights, remedy has to be sought only under the provisions of that Act. When an Act creates a right or obligation and enforces the performance thereof in a specified manner, “that performance cannot be enforced in any other manner”. Thus for enforcement of a right/obligation under a statute, the only remedy available to the person aggrieved is to get adjudication of rights under the said Act. (See *Doe d. Bishop of Rochester v. Bridges*, B & AD p. 859, *Barraclough v. Brown*, *Premier Automobiles Ltd. v. KamlekarShantaram Wadke* and *Sushil Kumar Mehta v. Gobind Ram Bohra*.)

17. Admittedly in the case at hand a contempt proceeding bearing number COPCT No. 363 of 2020 qua implementation of judgment dated 31.05.2017 passed in OA No. 1752 of 2015, wherein the respondents had been directed to consider the case of the present petitioner for promotion to the post of Agriculture Development Officer, had been filed on account of a purported non-compliance of the aforesaid judgment. In view of the law laid down by the apex court in **Kanwar Singh Saini** (cited supra) the only remedy available was to file an execution petition and any other proceedings filed either by a party or entertained by a superior court would be without jurisdiction. The question of jurisdiction being a legal issue can be raised and examined in the present execution proceedings. Hence in view of the aforesaid position of law, orders passed in COPCT No.363 of 2020 would be of no consequence.

18. In the aforesaid factual circumstances, in the case at hand, the contempt petition would not be maintainable. The contempt petition is, therefore, dismissed. Notices issued therein are discharged.

Pending miscellaneous application(s), if any, also stand disposed of.

(G.S. Sandhawalia)
Chief Justice

(Bipin Chander Negi)
Judge

21st August, 2026
(Tarun Singh)