

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.5301 of 2021
Decided on: 10.09.2026

Lalit Chauhan 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. Shivank Singh Panta, 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 the following substantive reliefs:-

- "a) *allow the present writ petition;*
- b) *issue an appropriate writ, order or direction thereby directing the respondents to allow the benefit of stepping up to the petitioners, upgrade and refix their basic pay at par with their juniors;*
- c) *issue an appropriate writ, order or direction thereby protecting the pay of the petitioners vis-a-vis their juniors by upgrading the basic pay of the petitioners from the day the juniors are drawing higher basic pay than them;*
- d) *issue an appropriate writ, order or direction thereby directing the respondents to remove the said anomaly of difference in basic pay being paid to the*

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

petitioners and their juniors while extending the benefit/s of ACP Scheme and the petitioners be stepped up to the level of their juniors who are drawing more basic pay than them;"

2. Shorn of unnecessary details, the key facts of the case are that the petitioners were appointed as DPEs in the year 1997. Since they were not designated as Lecturers and further not paid the pay scale at par with Lecturers (School Cadre) in different streams and subjects, they had approached the erstwhile Himachal Pradesh Administrative Tribunal (in short 'the Tribunal') by way of Original Application, which came to be transferred to this Court on abolition of the Tribunal, and got registered as CWP-T No.2114 of 2008, titled, ***Mukesh Manhas and others vs. State of HP and another.*** The petition was disposed of on 03.11.2010 (Annexure P-1), whereby a direction was given to the respondents to grant the petitioners the scale of School Lecturers to those Physical Education Teachers who possess the minimum educational qualifications laid down by the National Council for Teacher Education (in short 'NCTE') and are teaching ten plus one and plus two classes in Government Senior Secondary Schools of the State. The benefit of grant of such scale should be given to

all the eligible teachers, whether they are petitioners in the case or not, with effect from 01.06.2008. Since the petition was instituted in the Tribunal on 26.05.2008, the arrears were ordered to be paid/credited to the accounts of the person, so found eligible on or before 30.04.2011, failing which, the State shall be liable to pay interest @ 12% per annum. It is undisputed fact that the petitioners are teaching plus one and plus two classess which are in Senior Secondary Schools.

3. The respondents feeling aggrieved by the judgment passed by a coordinate Bench of this Court in the aforesaid mentioned petition had preferred a Letters Patent Appeal No.380 of 2011, titled, ***State of HP and another vs. Mukesh Manhas and others***, which was dismissed on 20.09.2012 (Annexure P-4). During the interregnum period, the respondents had issued a Notification dated 26.08.2009 (Annexure P-2), whereby, the Himachal Pradesh Civil Services (Revised Pay) Rules, 2009 were framed. Thereafter, as per communication dated 05.10.2010 (Annexure P-3), the Government of Himachal Pradesh issued the instructions to remove the anomaly by stepping up of the pay of senior Government

employees, who were drawing less pay than their juniors due to operation of the provisions of Rule 11-A of the Himachal Pradesh Civil Services (Revised Pay) Rules, 2009. The respondents also issued the instructions dated 09.08.2012 (Annexure P-5), thereby introducing the new Assured Career Progression Scheme (in short 'new ACPS') on completion of 4, 9 and 14 years of service in a cadre and restoration of old (8-16-24-32) ACPS for Government employees. Thereafter another Notification was issued on 24.09.2012 (Annexure P-6), making the Rules called as the Himachal Pradesh Civil Services (Category/Post-wise Revised Pay) Rules, 2012, specifically dealing with fixation of pay and rate of increment. As per communication dated 29.03.2013 (Annexure P-7), respondent No.1 directed respondent No.2 that the subject of physical education should be kept only in that plus two schools where there are at least minimum 30 students opted for this subject in plus one class. Further there should be only five PGTs in a plus two school, where the total students in plus one class are 60 or less than that. The designation should be PGT and not Lecturer. During the year 2013, the Government of Himachal Pradesh had accorded the approval to create the

post at par with the other Lecturer (School cadre), for which separate Recruitment and Promotion Rules (in short 'R&P Rule') were to be framed. Thereafter, instructions dated 07.07.2014 (Annexure P-9), were issued with respect of the new ACPS. While introducing these instructions, the anomaly was created in the basic pay, which a senior was drawing as DPE vis-a-vis a junior was getting, while working on the same post.

4. It has further been averred that, vide letter dated 30.09.2015 (Annexure P-10), a clarification was sought with respect to the grant of benefit under 4-9-14 and 8-16-24-32 under ACPS, for the DPEs eligible for ACPS on 01.06.2012, after completion of 4 years of service in the scale of PGT. It was conveyed that the increase in grade pay (Rs. 4200/-), is to be treated as financial enhancement for the purpose of new ACPS, as it will remove anomaly of grade pay between senior and junior on award of new ACPS. The petitioners and their counterparts had been pursuing their case with respect to grant and designation of PGT/ Lecturer (Physical Education). The grievance which has been raised by the petitioners in the present petition is that the persons junior

to them, are getting higher pay than them and as such have prayed for stepping up/upgradation of their pay, to remove the anomaly. The petitioners have placed on record the annual salary statement for the year 2020-2021 (Annexure P-16 colly), in which the petitioner No.1 is getting Rs. 24,440/- as basic pay, whereas the person who was junior, during the same financial year, namely Narinder Kanwar, he has been granted the basic pay of Rs.25,120/-. Once admittedly, the petitioner No.1 is senior to the said person, the respondents had to remove the anomaly and the petitioners are getting less pay than their juniors. Thus, the action on the part of the respondents is arbitrary, unreasonable, discriminatory, unfair, illegal, and without application of mind and as such the petitioners have prayed for a direction to the respondents to grant the benefit of stepping up/ upgradation of their pay to that of their juniors, who are admittedly drawing higher pay than them.

5. Respondents No.1 & 2 filed reply to the petition and raised preliminary submissions that the petitioners are working as DPEs in the Education Department in the pay scale of Rs.10300 - 34800 + 3,600 Grade Pay and after

two years, the Grade Pay of Rs.5,000/- has been granted to them w.e.f. 01.11.2014, as per Government Notification dated 01.11.2014. The qualification for the post of DPE is Bachelor of Physical Education as per R&P Rules of 1973 and also in the existing R&P Rules notified vide Notification dated 25.09.2020. Further, it has been averred that in compliance with the direction given by this Court in the judgment passed in **Mukesh Manhas's** case (supra), all eligible DPEs whether petitioners or non-petitioners, who possess Post Graduate Degree in Physical Education i.e. MPE / MPED. of two years duration have been granted higher pay scale at par with School Lecturer w.e.f. 01.06.2008. Some of the DPEs, who have acquired Master's degree in Physical Education have also been granted the higher pay scale of Rs.6400-10640 (pre revised). As far as the plea of the petitioners in respect of stepping up of their pay at par with their junior is concerned, it has been averred that some of the juniors are getting higher pay because of ACPS benefit. As per the instructions issued by the Government of Himachal Pradesh, Department of Finance (pay revision) letter No. Fin.(PR)B(7)-59/2010-loose dated 03.11.2016, it has been

directed that no pay anomalies of any kind, as a result of non-grant of benefits under ACPS are to be considered/removed by granting stepping up of pay in case of senior employees, as the benefits allowed/granted under ACPS are always personal to an incumbent/Government employees. Therefore, the pay anomalies arising due to ACPS are not considered for step up of pay against the juniors, hence the present petition is liable to be dismissed.

6. The petitioners filed rejoinder to the reply and controverted the averments made therein.

7. I have heard Mr. Shivank Singh Panta, learned counsel for the petitioners and Mr. Hemant Kumar Verma, learned Deputy Advocate General for the respondents and also perused the record carefully.

8. Mr. Shivank Singh Panta, learned counsel for the petitioners has placed reliance upon the judgments passed by the Hon'ble Supreme Court in **Gurcharan Singh Grewal and another vs. Punjab State Electricity Board and others**, (2009) 3 SCC 94 and **Union of India and others vs. C.R. Madhava Murthy and another**, (2022) 6 SCC 183 and on the other hand, Mr. Hemant

Kumar Verma, learned Deputy Advocate General for the respondents has placed reliance upon the judgment passed by the Hon'ble Supreme Court in ***Union of India and others vs. M.V. Mohanan Nair***, (2020) 5 SCC 421.

9. From the facts as have been narrated above, it has not been disputed by the respondents while filing reply to the petition that the petitioners, who are seniors are getting less pay than their juniors. The only plea, which has been taken by the respondents in the reply, is that as per the instructions dated 03.11.2016, no pay anomaly of any kind as a result of grant of benefit under ACPS is to be considered/removed by granting stepping up of pay in case of senior employees as the benefits allowed/granted under ACPS are always personal to an incumbent/ Government employees. However, the said contention cannot be accepted for the reason that as per the judgment passed by the Hon'ble Supreme Court in ***Gurcharan Singh Grewal's*** case (supra), it has been held that it is settled principle of law that the senior cannot get less pay than his junior even if the junior is getting the same on account of some increments. The relevant paras of the judgment read as under:

“15. Mr. Chhabra also attempted to justify the disparity in the pay of Shri Shori and the appellant No.1 by urging that the appellant No. 1 had been granted the promotional scale with effect from 1st January, 1996, where the benefits of increment in the scale were lower. On the other hand, Shri Shori who joined the services of the Board in 1974, was granted the promotional scale on 17th May, 2006, with effect from 1st September, 2001, when the increments and the pay-scales were higher. Mr. Chhabra submitted that it is the disparity in the incremental benefits that led to the anomaly of the appellant No.1 getting a lower salary in the promotional scale.

16. Having regard to the submissions made on behalf of the respective parties, we have little hesitation in accepting Mr. Gupta's submissions that since the writ petition had been jointly filed on behalf of the appellants, whose interest was common, the prayer therein should not have been confined to the appellant No.2 alone and that the High Court should have granted relief to the appellant No.1 also by directing that his pay also be stepped up to that of his junior, Shri R.P. Shori. Although, this question does not appear to have been gone into by the High Court for the simple reason that the writ petition was disposed of only on the averments contained in paragraph 7 of the written statement filed on behalf of respondents that the grievance of the appellant No.2 duly addressed, there ought to have been at least some discussion in the judgment of the High Court regarding the claim of the appellant No.1. Unfortunately, the case of the appellant No.1 was not considered at all by the High Court.

17. Something may be said with regard to Mr. Chhabra's submissions about the difference in increment in the scales which the appellant No.1 and Shri Shori are placed, but the same is still contrary to the settled principle of law that a senior cannot be paid lesser salary than his junior. In such circumstances, even if, there was a difference in the incremental benefits in the scale given to the appellant No.1 and the scale given to Shri Shori, such anomaly should not have been allowed to continue and ought to have been rectified so that the pay of the appellant No.1 was also stepped up to that of Shri Shori, as appears to have been done in the case of Appellant 2.

18. We are unable to accept the reasoning of the High Court in this regard or the submissions made in support thereof by Mr. Chhabra, since the very object to be achieved is to bring the pay scale of the appellant No.1 at par with that of his junior. We are clearly of the opinion that the reasoning of the High Court was erroneous and the appellant No.1 was also entitled to the same benefits of pay parity with Shri Shori as has been granted to Appellant 2."

10. A similar view has been taken by the Supreme Court in **C.R. Madhava Murthy's** case (supra), wherein too, the senior was drawing less pay than his junior on account of upgradation under the ACPS and the Hon'ble Supreme Court after considering the import of the provisions of F.R. 22, had come to the conclusion that in

case the junior is drawing more pay on account of upgradation under the ACP Scheme, the pay of the senior is required to be stepped up. The relevant para of the judgment reads as under:

"9. Having heard Ms. Madhvi Divan, learned ASG and considering the facts and circumstances of the case, which has emerged from the impugned judgment and order passed by the High Court, it cannot be said that the original writ petitioners were as such claiming the stepping up of the pay under the ACP Scheme. Their grievance was with respect to the anomaly in the pay scale and their grievance was that while granting upgradation under the ACP Scheme, their juniors were getting higher salaries than what they receive. Therefore, it was a case of removal of anomaly by stepping up of pay of seniors on promotion drawing a less pay than their juniors.

10. The High Court has therefore rightly relied and/or considered FR 22 and the order issued by the Government of India on removal of anomaly by stepping up of pay, which reads as under:

"(22) Removal of anomaly by stepping up of pay of Senior on promotion drawing less pay than his junior (a) As a result of application of FR 22 C. [Now FR 22 (I) (a) (1)]. In order to remove the anomaly of a Government servant promoted or appointed to a higher post on or after 1-4-1961 drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following

conditions, namely:

(a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;

(b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;

(c) The anomaly should be directly as a result of the application of FR-22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer.

The orders refixing the pay of the senior officers in accordance with the above provisions shall be issued under FR-27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of refixation of pay.

[G.I., M.F., O.M. No.F.2 [78)E.III (A)/66, dated the 4-2-1966)".

11. Therefore, it was a case where a junior was drawing more pay on account of upgradation under the ACP Scheme and there was an anomaly and therefore, the pay of senior was required to be stepped up. Hence, in the facts and circumstances of the case, the High Court has rightly directed the appellants herein to step up the pay of the original writ petitioners keeping in view of pay scale which has been granted to the juniors from the date they have started drawing lesser pay than their juniors. We are in complete agreement with the view taken by the High Court. No interference of this Court is called for."

11. Learned Deputy Advocate General has placed

reliance upon the judgment passed by the Hon'ble Supreme Court in ***M.V. Mohanan Nair's*** case (supra) to contend that since the petitioners are getting less pay on account of the introduction of the new ACPS it cannot be said that the senior has to be paid the same pay scale as was being granted to the junior. However, the said judgment cannot be attracted to the facts of the present case for the reason that it is not on account of the introduction of the new ACPS, but it is on account of the instructions dated 03.11.2016. As already noticed above, the Hon'ble Supreme Court has clearly and in unequivocal terms held that it is settled law that senior cannot draw less pay even on account of grant of upgradation under ACPS.

12. The respondents with a view to remove the anomaly had issued the instructions, whereby it was clarified that the seniors will not get less pay than their juniors and even if the juniors have got more pay by giving the benefit of ACPS, the said pay of the petitioners being admittedly senior to the juniors, has to be protected. In case the junior is allowed to draw more salary than the seniors, it would tantamount to infraction of Articles 14

and 16 of the Constitution of India and under the service jurisprudence, admittedly the senior has to draw at least the equal pay as to his junior, if not more. Therefore, the action on the part of the respondents in denying the stepping up to the petitioners is illegal, arbitrary and discriminatory.

13. Consequently, the present petition is allowed and the respondents are directed to allow the benefit of stepping up of the pay of the petitioners and re-fix their basic pay at par with their juniors from the date the juniors started drawing a higher basic pay than them. The respondents are directed to release the arrears to the petitioners within three months from today, on account of their stepping up of pay and in case the same are not paid within the aforesaid period, the petitioners shall be paid interest on the same @ 6% per annum from today till actual payment. No order as to costs. Pending applications, if any, also stand disposed of.

10.09.2026

(Anurag)

**(Jiya Lal Bhardwaj)
Judge**