

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

LPA No.382 of 2026
Reserved on: 20.08.2026
Pronounced on: 25.09.2026
Uploaded on: 25.09.2026

State of Himachal Pradesh and Others	Appellants
Vs.	
Suneel Kumar	...Respondent

Coram:

The Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice.
The Hon'ble Mr. Justice Bipin Chander Negi, Judge.

Whether approved for reporting?

For the Appellants: Ms. Priyanka Chauhan, Deputy Advocate General.

For the Respondent: Mr. Yashvardhan Singh Thakur and Mr. Amrick Singh, Advocates.

G.S. Sandhawalia, Chief Justice.

The appellants-State is aggrieved by the order dated 22.12.2025, passed by the learned Single Judge in ***CWP No. 3035 of 2024***, titled as ***Suneel Kumar Vs. State of Himachal Pradesh and Others***, wherein the writ petition was allowed, and the appellants-State was directed to treat the date of the petitioner's appointment against the post of D.P.E. at Government Senior Secondary School, Shiva-Badar as 16.06.2008 instead of 30.08.2022. However, the learned Single Judge had protected the

appellants-State by holding that since the petitioner-employee had not worked against the post from the said date until his actual appointment, he was not entitled to any monetary benefits for the said period and this period was directed to be counted toward his service and regularization.

2. The reasoning as such that prevailed with the learned Single Judge was that on an earlier occasion, in **CWPOA No. 1269 of 2019**, titled as **Suneel Kumar Vs. State of Himachal Pradesh and Others**, decided on 04.01.2020 (**Annexure P-3**), directions had been issued to appoint the petitioner to the post of D.P.E. at Government Senior Secondary School, Shiva-Badar forthwith, and that he would be entitled to service benefits from the date of his joining. The said decision was upheld in Letters Patent Appeal (LPA) No.59 of 2021, titled as **State of Himachal Pradesh and Others Vs. Suneel Kumar and Others**, decided on 25.05.2022 (**Annexure P-4**). Resultantly, he was directed to be deemed to have been appointed from the year 2008 itself, when the post became available due to the transfer of one Jiva Nand.

3. It was noticed that as per the information received under the Right to Information Act (RTI), the post had been lying vacant w.e.f. 14.06.2019 on account of transfer of Sh. Yashwant Singh, D.P.E. However, the writ petitioner was never appointed

against the said post. Therefore, the learned Single Judge had come to conclusion that once the selection had been made in terms of communication dated 15.06.2004 (**Annexure P-1**), the benefits deserved to be given on account of the vacancy w.e.f. 15.06.2008 but for wholly unjustified reason, he was not given the appointment.

4. Accordingly, the learned Single Judge recorded that the writ petitioner had regularly written to the Department to consider his request for appointment against the said post. The petitioner thereafter approached this Court by way of **CWP No. 2351 of 2012**. This matter was later transferred to the Himachal Pradesh State Administrative Tribunal and resultantly, on account of the abolition of the Tribunal, the case was transferred back to this Court and re-registered as **CWPOA No.1269 of 2019**, titled as ***Suneel Kumar Vs. State of Himachal Pradesh and Others.*** Thus, the matter remained pending till 04.01.2020. Since the post had fallen vacant on 15.06.2008, the appointment should have been granted from that date.

Arguments of counsel for the appellants-State:-

5. Counsel for the appellants-State has argued that the writ petition bearing **CWP No.2351 of 2012** was filed initially only in the year 2012 itself and therefore, it was impermissible for the

learned Single Judge to grant relief w.e.f. 16.06.2008. Merely because the post had fallen vacant on that date, did not create a vested right in favour of the petitioner as such. It was further argued that the petitioner was initially selected as a Para-teacher for a specific school on 15.06.2004. In the earlier round of litigation decided in the petitioner's favour, the learned Single Judge had restricted the entitlement for service benefits to the actual date of joining. The appellant-State's subsequent appeal was also dismissed on 25.05.2022 with the identical observation that service benefits would only accrue from the date of joining. Because the petitioner did not file a cross-appeal, he was presumably satisfied with the benefits granted. Resultantly, he was permitted to join the service on 30.08.2022 (**Annexure P-5**). Despite this, he chose to file the present writ petition almost two years later in the year 2024. Therefore, the learned Single Judge had erred in allowing it.

6. It is thus submitted that the dispute had already been settled *inter se* the parties. Resultantly, the learned Single Judge could not vary the order previously passed by him, which had already been duly upheld by the Division Bench of this Court in **LPA No. 59 of 2021** titled as ***State of Himachal Pradesh and***

Others Vs. Suneel Kumar and Others, filed by the appellants-State.

Arguments of counsel for the respondent:-

7. Counsel for the respondent, on the other hand, has submitted that there are no valid reasons why the petitioner was not allowed to join based on his selection way-back on 15.06.2004. Resultantly, counsel has relied upon the judgment of the Apex Court in ***C. Jayachandran Vs. State of Kerala and Others (2020) 5 SCC 230*** to contend that the petitioner had been wrongly excluded from the joining process due to the State's illegal and arbitrary actions, and was therefore entitled to a notional appointment from the date, the vacancy arose.

8. After hearing counsel for the parties, it is apparent that the relief granted by the learned Single Judge could not have been granted, as it had already been determined on an earlier occasion that the said benefit could not be allowed.

9. A perusal of the amended writ petition would go on to show that initially, the relief claimed was for the State to grant the petitioner the revised pay scale given to his counterparts holding the same post and designation in the same Department. The writ petition was thereafter amended in August, 2025 to seek notional appointment from the date of the petitioner's initial selection on

15.06.2004, to grant seniority from that date, and to issue directions to consider the petitioner's case for regularization and enhancement of pay.

10. The consistent response of the appellants-State was that the appointment had been granted in accordance with previously issued directions, which was upheld in appeal. Resultantly, the petitioner was appointed on 31.08.2022 and all admissible benefits were released as per policy; furthermore, while other para-appointees were regularized in the year 2015 after completing 12 years of service, the petitioner had only completed one year of service.

11. In the first round of litigation in ***CWPOA No. 1269 of 2019***, titled as ***Suneel Kumar Vs. State of Himachal Pradesh and Others***, a writ petition was filed wherein the following reliefs were sought:-

“(i) That writ in the nature of mandamus may kindly be issued directing the respondent No.5 to accept the joining of the petitioner against the post of D.P.E. (Para Teacher) in Govt. Sr. Sec. School, Shiva Badar, Tehsil Sadar, District Mandi, H.P. in light of Annexure P-3, since the post was lying fact during the year 2008-2009 and the petitioner was appointed by the competent authority on 15.06.2004 as D.P.E. (Para Teacher) in Govt. Sr. Sec. School

Shiva Badar, but till date, he has not been given joining.

(ii) That writ in the nature of mandamus may kindly be issued, directing the respondents to give seniority and other economic benefits to the petitioner from 15.6.2004 since the petitioner was appointed by the competent authority on the said date being a meritorius in the merit, but the respondent department gave joining to other Para Teachers, who were in the waiting list, but the petitioner has been deprived without any justification till date.”

12. It is pertinent to notice that the petitioner himself was not successful in obtaining relief from the date the post fell vacant. On the earlier occasion, the following order was passed in his favor in **CWPOA No.1269 of 2019**, titled as **Suneel Kumar Vs. State of Himachal Pradesh and others**, decided on 04.01.2020. The learned Single Judge did not grant benefits from 15.06.2004, even though they had been prayed for in the first round of litigation. The relevant part reads as under:-

“4. Reply having been filed by respondents No 1 to 3 and 5 clearly reveals that though on 15.6.2004 no post of D.P.E. was lying vacant at Government Senior Secondary School, Shiva-Baddr, but such post was subsequently fell vacant on the transfer of above named Jiva Nand on 15.6.2008. Information received by petitioner under Right to Information Act, vide communication dated

13.12.2019 issued by Public Information Officer-cum-Deputy Director of Higher Education, Mandi, District Mandi, which is taken on record, reveals that post of D.P.E. is lying vacant in Government Senior Secondary School, Shiva-Baddr w.e.f.14.6.2019 on account of transfer of Yashwant Singh D.P.E. Since, selection of the petitioner made in terms of communication dated 15.6.2004, Annexure P-1, still holds good, this Court sees no reason to deny appointment to the petitioner against the post of D.P.E. at Government Senior Secondary School, Shiva-Baddr, especially when post of D.P.E. in that school is lying vacant. This Court cannot lose sight of the fact that petitioner is waiting for his appointment to the post of D.P.E. at the aforesaid School, since year 2004 and it is none of the case of the respondents that on account of subsequent developments, petitioner has rendered himself ineligible to be appointed against the aforesaid post of D.P.E.

5. Consequently, in view of above, present petition is allowed and respondents are directed to appoint petitioner against the post of D.P.E. at Government Senior Secondary School, Shiva-Baddr forthwith. Needless to say that petitioner shall be entitled to service benefits on account of appointment from the date of his joining.

Pending miscellaneous applications, if any, also stand disposed of."

13. The petitioner was happy with the said order, however, the State was not satisfied and filed LPA No.59 of 2021,

titled as ***State of Himachal Pradesh and Others Vs. Suneel Kumar and Others***. This was dismissed upon noticing that a vacancy had existed since 14.06.2019. Accordingly, it was held that the order of the learned Single Judge called for no interference. The relevant part reads as under:-

“8. It has been noticed by the learned Single Judge that as per information received by the respondent vide communication dated 13.12.2019, issued by Public Information Officer-cum-Deputy Director of Higher Education, Mandi, District Mandi, H.P., a post of D.P.E. was lying vacant in Government Senior Secondary School Shiva Badar, w.e.f. 14.06.2019, on account of transfer of Yashwant Singh, D.P.E. Since the respondent had been duly selected for appointment to the post of D.P.E. , learned Single Judge rightly held that the appellant–State was liable to appoint the respondent as D.P.E and he would be entitled to service benefit on account of appointment from the date of his joining. The order passed by the learned Single Judge is just and fair and calls for no interference.

9. Dismissed.

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

14. As noticed above, the writ petitioner was never aggrieved by the relief granted by the learned Single Judge.

Although, he had previously claimed the same relief on the grounds that he was wrongly disallowed on 15.06.2004, this relief had been denied to him in sum and substance. Having failed to challenge those findings, this second round of litigation is not maintainable. Furthermore, the writ petition was initially filed for an entirely different relief, then amended in March, 2024 to claim the benefit of revised pay-scales, and subsequently amended during its pendency to seek a relief that had already been denied. The petitioner neither challenged this denial by any cross appeal/objections nor sought any clarification from the Division Bench of this Court, despite being duly represented by counsel at that point of time also.

15. In such circumstances, we are of the considered opinion that the matter has become final *inter se* the parties, and the learned Single Judge could not have granted the said benefits, having not granted them earlier. It is a settled principle of *res judicata* that what has become final *inter se* the parties, cannot be permitted to be reopened in a second round of litigation.

16. The judgment relied upon in **C. Jayachandran case (supra)** would not have any application, as we find that in the earlier case, the appellant had been wrongfully excluded from the process of appointment and had already been granted the benefit

on a previous occasion. Furthermore, directions were issued to recast the seniority amongst the seven shortlisted candidates, and that order had become final. Resultantly, it was recorded in a second round of litigation, the High Court could not have excluded him and treated his actual date of appointment as 24.02.2011. In such circumstances, a notional appointment was given from that date, making him entitled to a notional appointment in pursuance of the selection along with other candidates in the same select list prepared on the basis of the common appointment process dated 30.03.2009. The relevant paragraph reads as under:-

“35. The earlier writ petition filed by the appellant was allowed on 13-9-2010. The Division Bench of the High Court has directed to re-cast the seniority amongst the seven shortlisted candidates. The appellant was one of them. The challenge to the said order by three affected candidates remain unsuccessful when SLP was dismissed by this Court on 8-10-2010. The SLP was filed by the candidates who were granted benefit of moderation of marks. Once the direction of the Division Bench has attained finality, the applicant was entitled to seniority as per the select list to be revised as per merit of the candidates. In terms of Rule 16(2), the seniority is to be determined by the serial order in which the name appeared in the appointment order. The argument of the learned counsel appearing

for Respondent No.5 that the appellant was not appointed by the same appointment order, therefore, the appellant cannot claim seniority is not tenable. The appellant was entitled to be appointed along with other three candidates but because of the action of the High Court in adopting moderation of marks, the appellant was excluded from appointment. The execution of appellant from appointment was on account of an illegal act by the High Court which has been so found by the judgment dated 13-9-2010. Since the select list has to be revised, the appellant would be deemed to be the part of the appointment along with other candidates in the same list. As the actual date of appointment was on 24-2-2011, the appellant cannot actually be treated to be appointed on 30-3-2009 but is entitled to notional appointment from that date and consequential seniority.”

17. Thus, the judgment as such does not help; rather, it works the other way around. As noticed in the present case, the appellant-State himself accepted the findings against the employees. He chose not to agitate against it then, and now cannot turn around and claim a relief that was not granted. Thus, we are of the considered opinion that the present appeal is liable to be allowed, and it is ordered accordingly.

18. It is to be noticed that when we reserved the order in an open Court after interacting with the counsel(s) for the parties, we had passed the following order:-

“Arguments heard. Judgment reserved.

After the judgment was reserved, counsel for the respondent-herein presented us with a fait accompli by placing on record the order passed on 28.02.2024 in Execution Petition No.332 of 2020, titled as Suneel Kumar Vs. State of Himachal Pradesh and Others. The intention is very clear, because that order was passed by one of us (Justice Bipin C. Negi), an effort has now been made to ensure this Court does not pass the judgment which has been reserved. We deprecate this conduct of the respondent-herein.”

19. We have also examined the order passed by one of us (Justice Bipin C. Negi) in Execution Petition No.332 of 2020, titled as Suneel Kumar Vs. State of Himachal Pradesh & Others. In that order, Justice Bipin C. Negi closed the execution petition but granted the present writ petitioner liberty to challenge if the revised pay scales are not implemented. Therefore, it cannot be said that he should not take up this matter, not having in any manner decided the issue on merits, which is being challenged today.

20. Resultantly, we allow the present appeal and set aside the order dated 22.12.2025, passed by the learned Single Judge and dismiss the writ petition accordingly. Pending miscellaneous application(s) if any, shall also stand disposed of.

(G.S. Sandhawalia)
Chief Justice

(Bipin Chander Negi)
Judge

September 25, 2026.
(Munish Thakur)