

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.**CMP(M) No. 1132 of 2026 and
LPA No. 433 of 2026****Date of decision: 23.07.2026**

Vijay Kumar	Versus	...Appellant
State of H. P. & Ors.		...Respondents

*Coram****The Hon'ble Mr. Justice G. S. Sandhawalia, Chief Justice.******The Hon'ble Mr. Justice Bipin C. Negi, Judge.****Whether approved for reporting?***For the Appellant:** Mr. Rupesh Kumar, Advocate.**G. S. Sandhawalia, Chief Justice (Oral)****CMP(M) No. 1132 of 2026**

Keeping in view the averments made in the application, which is duly supported by the affidavit of the applicant, the delay of 138 days in filing the appeal is condoned.

2. Application stands disposed of.

LPA No. 433 of 2026

3. Consideration in the present appeal is sought to the order of the learned Single Judge passed in **CWPOA No. 7399 of 2019**, titled as **Vijay Kumar vs. State of H.P. & Ors.**, decided on 26.11.2025, whereby the said case was dismissed, in which the petitioner was seeking the benefit of condoning the breaks given from the year 1996 to 2004. The prayer had been made that the break in service should be condoned and

continuous service of 240 days should be treated for the said period.

4. The learned Single Judge vide detailed order had noticed that the appointment of the petitioner had been made on daily waged basis on 17.03.1996 in the Irrigation and Public Health Division, Dehra, District Kangra, H.P. and his services were regularised on 23.09.2013 against the post of Chowkidar. It was noticed that the proceedings had been initiated after a period of four years by filing Original Application being CWPOA No. 1729 of 2016 before the erstwhile H.P. State Administrative Tribunal and upon the abolition of the same, the matter had been re-transferred to this Court.

5. The reasons which weighed with the learned Single Judge, were that there were disputed issues, as such and could not be gone into in the writ proceedings, as the breaks had been given way back in 1996 to 2004 and once the petitioner had accepted his regularisation on 22.09.2012, the plea of estoppel taken by the State, was accepted.

6. The learned Single Judge had relied upon the judgment of the Apex Court in **A.P. Electrical Equipment Corporation vs. Tehsildar & Ors., 2025 SCC OnLine SC 447**, on the ground of disputed questions of fact and the same not having been raised at an earlier point and that the same

could only be established by adducing oral and documentary evidence before appropriate forum.

7. Keeping in view the fact that substantial delay as such had occurred in raising the industrial dispute since 1996 and the remedy before the Tribunal or an alternate remedy had also not been availed, reliance had been placed upon the judgment of the Apex Court in ***Union of India and others vs. N. Murugesan and others, (2022) 2 SCC 25.***

8. Reliance which had been placed upon the judgment in ***CWP No. 4489 of 2009***, titled as ***Ravi Kumar vs. State of H.P.***, decided on 14.12.2009 was distinguished on the ground that the alleged period of break in the aforesaid case was for 15 days as such and the said person had availed the remedy expeditiously.

9. We have gone through the paper book and find that the stand of the State was categorical in the reply filed before the Tribunal, wherein it has been specifically mentioned in para-3 of the reply that the regularization has been done after completion of 7 years continuous service w.e.f. 22.09.2012. The relevant para reads as under:-

"3. That the contents of this para are wrong, hence denied. It is submitted that the applicant has worked for 11, 208, 236, 160, 193, 178, 199, 210, 210 w.e.f. 01.03.1996 to 2004 respectively and not completed 240 days in each calendar year upto 2004. Since 2005 to 2011

the applicant has worked more than 240 days in each calendar year as per availability of work, hence regularized as per policy after completion of 7 years continuous service from 22.09.2012 the detail of man days chart is annexed as Annexure R-II."

10. Thus, it is apparent that the appellant had worked for 9 years with the respondent-Department from 1996 to 2004 and the appellant had not raised the issue with the authorities that he was not being allowed to mark the presence, whereas he was reporting for duty. It was only after getting the benefit of regularization in the year, 2012 on the post of the Chowkidar, keeping in view the policy as such that it was to be done after completion of 7 years, that the appellant raked up the issue after four years of regularization.

11. In such circumstances, we are of the considered opinion that in absence of specific averment against any official that the petitioner was not being allowed to mark his presence with a specific purpose to deny him regularization, the learned Single Judge was justified in dismissing the case on the ground that the issue of disputed facts could not be agitated in the writ petition and secondly on the ground of delay, estoppel and acquiescence.

12. Reliance upon other cases as such whereby the period had been condoned, could not in any manner place the petitioner on the same pedestal, since the factual matrix of each and every case is different and the authority as such did have the authority to condone the delay, if the matter had raked up at the earliest on the basis of the material at the relevant point of time.

13. In such circumstances, we do not find any plausible reason to interfere with the well reasoned judgment and accordingly the appeal is dismissed.

(G. S. Sandhawalia)
Chief Justice

(Bipin C. Negi)
Judge

23rd July, 2026
(sanjeev)