

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.906 of 2019

Decided on: 08th September, 2026

Narain Dass

...Petitioner

Versus

State of H.P. & others

...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

Whether approved for reporting?¹

For the petitioner: Mr. Raman Jamalta, Advocate.

For the respondents: Mr. Hemant Kumar Verma, Deputy
Advocate General.

Jiya Lal Bhardwaj, Judge *(Oral)*

The petitioner by way of present petition has
prayed for the following substantive reliefs:-

"a. This Hon'ble court may kindly be pleased to issue writ of mandamus directing the respondents to regularize the service of the petitioner as Surveyor w.e.f. 30-12-2006 with all consequential benefits and grant increments for the period spent by the petitioner on daily wage basis as well count the service rendered by him on daily wage for seniority and pensionary benefits.

b. Direct the respondents by issuing a writ of mandamus to pay to the petitioner the minimum of the wages of daily wage surveyor from the year 1994 till Dec 2006 and thereafter the regular pay scale of Surveyor with interest @12 percent per annum on the wages from the date when the same was payable to the petitioner till the date of its payment."

2. The facts as emerge from the pleadings are that

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

the petitioner was initially appointed as a Plumber with the respondents-State in the year 1994. His services were regularized as Plumber vide office order dated 30.12.2006 (Annexure P-2). The grievance of the petitioner, as highlighted in the petition, is that though he was appointed against the post of Plumber, but he has performed the duties as Surveyor, in view of the fact that he was in possession of the diploma (Annexure P-1). The petitioner was paid the wages of Plumber and not Surveyor, though the work of the post of Surveyor was extracted from him. The petitioner had made a representation dated 27.12.2006 (Annexure P-3) for regularizing his services as Surveyor, but subsequently vide office order dated 30.12.2006 (Annexure P-2), his services were regularized as Plumber. It has been averred that as per the muster roll issued to the petitioner, he had worked as Surveyor w.e.f 01.01.1999 to 30.12.2006 and even after his regularization as Plumber, the respondents have not considered his claim for promotion as Surveyor, despite his making a representation. It has further been averred that the

petitioner had again made a representation regarding his promotion from the post of Plumber to the post of Surveyor on 21.11.2011 (Annexure P-6), but the respondents have not taken any steps and hence he has approached this Court seeking relief that the respondents may be directed to regularize his services as Surveyor w.e.f. 30.12.2006 (Annexure P-2), with all consequential benefits.

3. The respondents filed reply to the petition and raised preliminary submission that the petition is barred on the ground of delay and laches. However, it has been admitted that the petitioner worked in two different categories on daily wage basis i.e as a Plumber from 01.06.1994 to December, 1998 and as a Surveyor from January, 1999 to December, 2006, but he himself opted for his regularization as a Plumber in December, 2006, being the lower category to Surveyor and joined as such without any protest. On merits, it is submitted that man-days detail (Annexure R-I), shows that the petitioner had been working as Plumber prior to 1998 and w.e.f. 01.01.1999 till 2006 he has

worked as Surveyor. The petitioner has worked almost for a year and has completed more than 362 days in each calendar year. It has further been averred that as per the Policy of the State Government dated 06.05.2000 (Annexure R-2), in case of daily waged/contingent paid worker, who has worked for less than the required years on a higher paid scale, he will be considered for regularization by combining his service both in the lower scale and a higher scale, but he shall be regularized on a lower post because for regularizing on a higher post, required years of complete service on the higher post is essential and thus the order dated 30.12.2006, regularizing the services of the petitioner as Plumber is legal.

4. The respondents have not denied the fact that the petitioner possesses the ITI Certificate in Surveyor and have also not denied the factum of receipt of representations dated 27.12.2006 (Annexure P-3) and dated 21.11.2011 (Annexure P-6) made by the petitioner. However, it has been averred that since the petitioner has joined as Plumber without any protest, the claim raised by him to regularize his

services as Surveyor is wrong and as such, prayed for dismissal of the petition.

5. I have heard the learned counsel for the parties and also perused the record carefully.

6. Before advertng to the submissions made by the learned counsel for the parties at bar, it would be relevant to reproduce the man days detail annexed by the respondents with the reply as Annexure R-I, which reads as under:

"Detail of Man days in respect of Sh. Narain Dass S/O Sh. Inder Singh Plumber working in HPPWD, Sub-Division No.VII, w.e.f 01.06.1994 to 31.12.2006.

<i>Sr. No.</i>	<i>Year</i>	<i>Man days</i>	
<i>1</i>	<i>01.06.1994 to 31-12-1994</i>	<i>213</i>	<i>As Plumber</i>
<i>2</i>	<i>1995</i>	<i>331</i>	
<i>3</i>	<i>1996</i>	<i>356</i>	
<i>4</i>	<i>1997</i>	<i>363</i>	
<i>5</i>	<i>1998</i>	<i>359</i>	
<i>6</i>	<i>01.01.1999 to 31.12.1999</i>	<i>365</i>	<i>As Surveyor</i>
<i>7</i>	<i>2000</i>	<i>362</i>	
<i>8</i>	<i>2001</i>	<i>365</i>	
<i>9</i>	<i>2002</i>	<i>364</i>	
<i>10</i>	<i>2003</i>	<i>365</i>	
<i>11</i>	<i>2004</i>	<i>366</i>	
<i>12</i>	<i>2005</i>	<i>365</i>	
<i>13</i>	<i>2006</i>	<i>365</i>	

7. A perusal of the detail of man days clearly reveals that

the petitioner has served the respondent-Department for almost a year, except for 3 days less in 2000 and 1 day in 2002. If the period is counted from 01.01.1999 to 30.12.2006, when the respondents-State had passed the order on 30.12.2006, regularizing the services of the petitioner as Plumber, he had completed eight years service with more than 362 days in each calendar year and thus, as per the regularization Policy dated 06.05.2000 (Annexure R-2), the services of the petitioner were to be regularized as Surveyor and not as Plumber.

8. Learned Deputy Advocate General has vehemently argued that as per the terms and conditions of the Policy dated 06.05.2000 (Annexure R-2), a daily waged/contingent paid worker, who has worked for less than the required years on a higher paid scale, he will be considered for regularization by combining the service both in the lower scale and a higher scale, but he shall be regularized on a lower post. However, the said contention cannot be accepted in view of the fact that the said condition can be made

applicable when the person does not complete the requisite number of years as per the policy for making him eligible for regularization on a higher post and a higher scale.

9. As per the Policy dated 06.05.2000, more particularly, condition No.2(i), which specifically postulates that the person, who has completed eight years as on 31.03.2000 shall be eligible for regularization. If the period is counted w.e.f. 01.01.1999 to 30.12.2006, when the respondent-Department had issued the regularization order on 30.12.2006, whereby the services of the petitioner were regularized as Plumber, he had completed eight years service as Surveyor and, therefore, the respondents were under an obligation to regularize his services as Surveyor and had wrongly interpreted condition No. 2(iv), which reads as under:

"2(iv.) In case of a daily waged/Contingent paid worker, who has worked for less then required years on a higher paid scale, he will be considered for regularization by combining the service both in the lower scale and higher scale but he shall be regularized on a lower post because for regularization on a higher post, required years of complete service on the higher post is essential."

10. Clause (iv.) of condition No.2 will come into

operation only if the person has not completed the requisite number of years on the higher post and, therefore, cannot be regularized on the higher post. In such a case, if his service in the lower and higher scales may be combined and he may be regularized on the lower post. As already observed above, the petitioner had already completed eight years service as a Surveyor by 30.12.2006, when he had served the respondents-State for almost 365 days in a year and, therefore, his services ought to have been regularized as Surveyor and not as Plumber.

11. Learned Deputy Advocate General has vehemently argued that since the petitioner did not come to the Court after regularizing his services as Plumber, vide Office Order dated 30.12.2006, his petition is barred on the ground of delay and laches. He placed reliance upon the judgment passed by the Division Bench of this Court in LPA No.228 of 2012, titled ***HIMURJA and another versus Bikram Singh*** and connected matters decided on 17.05.2018.

12. Firstly, non-regularization of the petitioner on the

post of Surveyor is affecting his salary every month and the respondents knowing fully well that even as per the terms and conditions of the Policy dated 06.05.2000, the petitioner had completed eight years service as Surveyor and had not regularized him as such despite his making representation even before regularizing his services as per Annexure P-3 dated 27.12.2006, which fact has not been denied by the respondents while filing reply to the petition. Since the petitioner was working on daily wage basis, he had no choice, but to accept the offer of regularization and thereafter also the petitioner had been making representations and the last representation was made on 21.11.2011 (Annexure P-6) and when no decision was taken, the petitioner has approached this Court. The plea taken by the respondents that the petitioner had opted for his regularization as Plumber, is falsified from the representation dated 27.12.2006 (Annexure P-3), which was made by him to regularize his services as Surveyor. The respondents have not denied receipt of the representation.

13. So far as the judgment passed by the Hon'ble Division Bench of this Court is concerned, no doubt the Court has held that the delay takes away the settings of law. A person who does not seek relief within the time frame, his petition has to be dismissed only on the ground of delay and laches. But in the present case, since the petitioner is getting less pay every month only on account of the fact that his services have been regularized as Plumber, the cause of action is recurring and thus, his petition cannot be rejected on the ground of delay and laches. A reference in this regard is made to the judgment of the Hon'ble Supreme Court in ***Union of India and others vs. Tarsem Singh***, (2008) 8 SCC 648 and the relevant paragraph of the judgment reads as under:

"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several

others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition."

14. In view of the above pronouncement of the Hon'ble Supreme Court, since the petitioner is getting less salary per month, he is entitled to the relief of regularization of his services as Surveyor from the date when his services as were regularized as Plumber, as per office order dated 30.12.2006.

15. Learned counsel representing the petitioner has relied upon the judgment passed by a coordinate Bench of this Court in CWPOA No.1633 of 2019, titled, **Nandini Thakur versus State of H.P. and others**. In this judgment, this Court has also taken a view that where a policy is more beneficial, the services of an employee have to be governed by such

policy.

16. In the present case, as already noticed above, the petitioner had completed eight years continuous service on the post of Surveyor and thus, as per the Policy of the State Government dated 06.05.2000 (Annexure R-2), his services ought to have been regularized as Surveyor and not as Plumber, which action on the part of the respondents-State is arbitrary, discriminatory and illegal.

17. The petitioner has approached this Court in January, 2012 and has sought regularization of his services as Surveyor w.e.f. 30.12.2006, with all consequential benefits. However, the monetary benefits cannot be granted to him from the said date, but he is entitled to the monetary benefits three years prior to the date of institution of the present writ petition, especially when grave injustice has been caused to him by wrongly interpreting the Policy dated 06.05.2000, issued by the State Government. Had the respondents-State regularized the services of the petitioner by counting the period of service rendered by him both as Plumber &

Surveyor and he was not having requisite service as Surveyor, his services could have been rightly regularized as Plumber. However, since the petitioner had completed eight years service while serving as Surveyor as on the date of regularization order passed on 30.12.2006, the respondents-State have wrongly regularized his services as Plumber and as such, the petitioner is entitled to have his services regularized as a Surveyor w.e.f. 30.12.2006.

18. Consequently, the present petition is allowed and the respondents are directed to regularize the services of the petitioner as Surveyor w.e.f. 30.12.2006. The petitioner shall be paid the monetary benefits only three years prior to the date of filing of the writ petition. No order as to costs. Pending applications, if any, also stand disposed of.

08th September, 2026

(ankit)

**(Jiya Lal Bhardwaj)
Judge**