

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWPOA No.736 of 2019

Decided on: 28.09.2026

Narinder Dev

.....Petitioner

Versus

The State of H.P. and others

....Respondents

Coram

Hon'ble Mr. Justice Ranjan Sharma, Judge

¹ *Whether approved for reporting?*

For the petitioner: Mr. Bonit Thakur, Advocate vice
Mr. A.K. Gupta, Advocate.

For the respondents: Mr. Sumit Sharma, Deputy Advocate
General.

Ranjan Sharma, Judge

Petitioner-Narinder Dev, had filed instant writ petition i.e. *CWP No.1036 of 2012* before this Court; and upon abolition of State Administrative Tribunal, the matter was transferred to the said Tribunal; and now upon its abolition, the same has been re-transferred to this Court as *CWPOA No.736 of 2019*, seeking the following relief:-

- “6(i) That Annexure P-1 may be quashed and the respondents may be ordered to examine the case of the petitioner in the light of the observations made by the Engineer-in-Chief in the case of Mohd. Aslam Vrs. State of H.P.”

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

FACTUAL MATRIX:

2. Case as set up by Learned Counsel is that the petitioner was engaged on daily wage basis and thereafter he was given work charge status w.e.f. 01.01.1994 and after trifurcation of cadre in the ratio 50:30:20 as per Government Decision, the petitioner was designated as Technician Grade-II w.e.f. 01.01.1996 and was thereafter designated as Technician Grade-I w.e.f. 01.01.2005. It is averred that though the petitioner had been working as Technician Grade-I w.e.f. 01.01.2005, yet, the Respondents had issued an order on 10.02.2010[*Annexure P-1*], whereby, seniority of the petitioner has been changed resulting in re-fixation of pay and intended recovery in the pay scale of Rs.4020-6200/-.

It is in this backdrop, that the petitioner has challenged the *Impugned Order* dated 10.02.2010 [*Annexure P-1*], on the ground, that the said order was passed without affording an opportunity of hearing and in violation of the principles of natural justice and the judgment in the case of ***Mohd. Aslam versus State of Himachal Pradesh***, with the prayer to restore the status and rank to the petitioner as Technician Grade-I w.e.f. 01.01.2005, with all

consequential benefits.

STAND OF STATE AUTHORITIES IN REPLY-AFFIDAVIT:

3. Upon issuance of notice on 03.03.2012, the State Authorities have filed Reply-Affidavit dated 07.12.2012 of Superintending Engineer, I&PH Circle, Sundernagar, District Mandi.

3(i). Perusal of the Reply-Affidavit indicates that the petitioner has no cause of action in view of the fact that provisional seniority list was circulated on 02.07.2009 and the petitioner, despite having received the seniority list did not file any objections and the seniority list was finalized on 25.05.2010 [*Annexure R-I* and *Annexure R-II*]. Reply-Affidavit indicates that earlier seniority was determined on the basis of age by showing persons elder in age to be senior but as per Government Instructions, the seniority has been revised by determining the same from the date of joining on the post as daily wager. Reply-Affidavit indicates that the cadre of Technician was trifurcated in the ratio 50:30:20 as on 01.01.1996.

3(ii). Reply-Affidavit further indicates that Review DPC was convened on 13.10.2009 and on the basis of Review DPC, the petitioner has been treated as Junior

Technician w.e.f. 01.01.1996 *[without change]* and as Technician Grade-II w.e.f. 01.01.2001 *[from earlier status as Technician Grade-II granted w.e.f. 01.01.1996]* and was granted further placement as Technician Grade-I w.e.f. 29.05.2005 *[from earlier status granted w.e.f. 01.01.2005]*. Reply-Affidavit indicates that alternation, based on Review DPC held on 13.10.2009, led to rectification of seniority as rendered to above was made after serving him a proper show cause notice and considering the matter, in accordance with Government Instructions. Para-4 of the Reply-Affidavit indicates that Engineer-in-Chief has upheld the seniority of daily wagers, with further direction that no recovery is to be effected, except the alternation in seniority and further placements as Technician Grade-II and Technician Grade-I based on the revised seniority as rendered to above.

4. Heard, Mr. Bonit Thakur, Advocate, appearing as vice counsel for the petitioner and Mr. Sumit Sharma, Learned Deputy Advocate General, for the respondent.

ANALYSIS:

5. Taking into account the entirety of facts and circumstances and the material on record, this Court is

of the considered view, that the *first contention* of the petitioner that alteration in seniority led to change in placement as Technician Grade-II and Technician Grade-I without affording an opportunity of hearing, cannot sustain, *for the reason*, that the re-determination of seniority was in accordance with the Revised Pay Rules and Government Instructions. The altered seniority, as per *Annexure R-II* dated 25.10.2010, was issued in accordance with Government Instructions and the same was further approved by the Division Bench of this Court on 13.05.2011 in **CWP No.5195 of 2010**, titled as *Yugal Kishore versus State of H.P. and others alongwith connected matters*. In these circumstances, once the alternation in seniority stands approved by the Division Bench of this Court, in the case of **Yugal Kishore [supra]**, therefore, this Court is not inclined to accept the prayer of the petitioner.

5(i). *Second contention* is that the alteration in placement as Junior Technician w.e.f. 01.01.1996; Technician Grade-II w.e.f. 01.01.2001 [*instead of w.e.f. 01.01.1996*]; and then as Technician Grade-I w.e.f. 29.05.2005 was illegal, is unsustainable, *for the reason*, that the same became necessary due to trifurcation of cadre of

Junior Technician, Technicians Grade-II and Technician Grade-I on the ratio of 50:30:20 resulting in issuance of Revised Pay Rules w.e.f. 01.01.1996 and the Government Instructions based on this Revised DPC was held on 15.10.2009 which led to issuance of revised placement in the cadre by the State Authorities after serving proper show cause notice and considering the matter in the light of Government Instructions. Moreover, pursuant to alteration in placement of the petitioner, the State Authorities have taken a conscious decision to re-fixing the pay but without effecting any recovery from the petitioner.

In these circumstances, once the re-fixation was a result of Review DPC, with the intent to rectify the erroneous placement and to give effect to placement as Technician Grade-II and Technician Grade-I in view of Government Instructions and the trifurcation of ratio 50:30:20 as Junior Technician; Technician Grade-II; and Technician Grade-I on 01.01.1996, then, in such circumstances, the Review DPC does not suffer from any infirmity and therefore, the claim of the petitioner, fails to pass the test of judicial scrutiny and the same is turned down.

5(ii). *Third contention* of the petitioner is that after issuing re-fixation orders dated 10.02.2010 [Annexure P-1], the State Authorities should have effected any recovery from the petitioner. Para-3 of the Reply-Affidavit indicates that the Government has taken a conscious decision not to effect any recovery after re-fixation of pay on account of Review DPC qua its employees. In these circumstances, the State Authorities having taken a conscious decision not to effect recovery, are restrained from effecting recovery from the petitioner.

Needless to say, that, in case, after passing of orders dated 10.02.2010 [Annexure P-1], in case, the State Authorities have recovered any amount, on account of re-fixation of pay, when the petitioner had not misrepresented the things or was not party to higher pay and such higher pay fixation was done by the Respondents *inter-se*, then, in such an eventuality, the recovered amount, if any, from the petitioner, shall be refunded in view of the mandate of Hon'ble Supreme Court in the case of ***Syed Abdul Qadir and others versus State of Bihar and others, (2009) 3 SCC 475***, in the following terms:-

- “57. This Court, in a catena of decisions, has granted **relief against recovery of excess payment of emoluments/allowances if** (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.
58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See *Sahib Ram v. State of Haryana*, *ShyamBabuVerma v. Union of India*, *Union of India v. M. Bhaskar*, *V. Gangaram v. Director*, *Col. B.J. Akkara [Retd.]v. Govt. of India*, *Purshottam Lal Das v. State of Bihar*, *Punjab National Bank v. Manjeet Singh and Bihar SEB v. BijayBahadur*.

59. Undoubtedly, the excess amount that has been paid to the appellants - teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter affidavit, admitted that it was a bona fide mistake on their part. **The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the appellants cannot be held responsible.** Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellants-teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and **to avoid any hardship to the appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants-teachers should be made.**
60. Learned counsel also submitted that prior to the interim order passed by this Court on 7.4.2003 in the special leave petitions, whereby the order of recovery passed by the Division Bench of the High Court was stayed, some instalments/amount had already been

recovered from some of the teachers. Since we have directed that no recovery of the excess amount be made from the appellant-teachers and in order to maintain parity, **it would be in the fitness of things that the amount that has been recovered from the teachers should be refunded to them.**

61. In the result, the appeals are allowed in part, the impugned judgment so far as it relates to the direction given for recovery of the amount that has been paid in excess to the appellants-teachers is set aside and that part of the impugned judgment whereby it has been held by the Division Bench that the amended provisions of FR.22-C would apply to the appellants-teachers is upheld. We direct that no recovery of the excess amount, that has been paid to the teachers of Secondary Schools, be made, irrespective of the fact whether they have moved this Court or not. We also direct that the amount that has been recovered from some of the teachers, after the impugned judgment was passed by the High Court, irrespective of the fact whether they have moved this Court or not, be refunded to them within three months from the date of receipt of copy of this judgment.”

6. Considering the matter in above perspective, once the change in placement as Junior Technician and then as Technician Grade-II and as Technician Grade-I was due to Review DPC conducted on 13.10.2009 to give effect to

rectified placement by virtue of the Revised Pay Structure in cadre of Technicians w.e.f. 01.01.1996 after giving due notice to the petitioner on 14.12.2009 [at page 16 of paper book], then, the benefits earlier given due to misapplication of Rules/Norms were validly rectified by the State Authorities. Moreover, once the State Authorities have decided not to recover the amount of excess payment, then recovery affected, if any, is liable to be refunded to the petitioner as per the mandate of the Hon'ble Supreme Court in the case of **Syed Abdul Qadir [supra]**.

7. No other points argued/raised.

DIRECTIONS:

8. In view of above discussion and for the reasons recorded hereinabove, the instant petition is ***disposed of, in the following terms:-***

- (i) The *Impugned Orders* dated 10.02.2010 [Annexure P-1], re-fixing the pay of the petitioner as Work Inspector in the pay scale of Rs.4020-6200/- w.e.f. 01.01.2006, is upheld;
- (ii) The *Impugned Orders* dated 10.02.2010 [Annexure P-1] re-fixing the pay on account of re-determination of seniority and grant of revised placement as Technician Grade-II w.e.f. 01.01.2001 and as Technician Grade-I

w.e.f. 29.05.2005 does not suffer from any infirmity or illegality;

- (iii) Pursuant to the *Impugned Orders* dated 10.02.2010 [Annexure P-1], in case, any recovery has been effected, the same is quashed, in view of the decision taken by State Authorities not to affect recovery from the petitioner;
- (iv) *Needless to say*, that, in case, any recovery has been effected, the same shall be refunded to the petitioner, as per mandate of the Hon'ble Supreme Court in the case ***Syed Abdul Qadir [supra]***, within a period of six weeks from today; and
- (v) Parties to bear their own costs.

In the aforesaid terms, the instant petition stands disposed alongwith all pending miscellaneous application(s), if any.

(Ranjan Sharma)
Judge

September 28, 2026
[Bhardwaj]