

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.938 of 2019

Decided on: 19.09.2026

Shiv Dev

...Petitioner

Versus

State of Himachal Pradesh and another

...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

Whether approved for reporting?¹

For the petitioner:

Mr. Anshul Jairath and Ms. Neha Thakur,
Advocates.

For the respondents:

Mr. Anup Rattan, Advocate General and
Mr. Balvinder Singh Ballu, Deputy
Advocate General.

Jiya Lal Bhardwaj, Judge (Oral)

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

- "i) *That the writ in the nature of Mandamus or any other writ, order or direction directing the Respondents to grant the pay scale of Rs. 1800-3200 to the petitioner w.e.f. 1.1.1986 (Rs. 5800-9200 w.e.f. 1.1.1996) and further corresponding revision w.e.f. 1.1.2006 at par with the craft instructors, who have been granted this pay scale on the strength of the judgment passed by the Hon'ble High Court in CWP (T) No. 13977 of 2008, with all consequential benefits.*
- ii) *That Your Lordships may further graciously be pleased to issue the Writ in the nature of Mandamus directing the respondents to provide the Petitioner atleast two promotional avenues from the post of Technical Assistant*

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

by making suitable amendment in the Recruitment and Promotion Rules for the post of Sr. Technical Assistant/Group Instructor or by framing scheme since the petitioner is the holder of isolated post of Technical Assistant since 1987 and has not earned even a single promotion for the last 25 years."

2. Shorn of unnecessary details, the key facts of the case are that the petitioner was appointed as Technical Assistant, vide office order dated 02.09.1987 (Annexure P-7) by respondent No.2 in pay scale of Rs.570-1080/- plus usual allowances at the rates admissible, who joined his duties on 21.09.1987. The petitioner was in possession of three years diploma in Mechanical Engineering as evident from Annexure P-3. The petitioner at the time of his appointment, was though given the pay scale of Rs.570-1080/-, but in the Labour and Employment Department, the pay scale of the same very post was Rs.620-1200/-. After the petitioner having been appointed as Technical Assistant, the respondents-State had issued Notification dated 15.10.1987 (Annexure P-10), whereby the Recruitment and Promotion Rules (in short 'R&P Rules') for the post of Technical Assistant were framed, which were called as Himachal Pradesh, Technical Education, Vocational and Industrial Training Department, Recruitment and Promotion Rules, 1987 for the post of Technical Assistant. As per these Rules, two posts of Technical Assistant were created. As per Notification dated 20.01.1989 issued

by the Government of Punjab (Annexure P-11), the pay scale of Rs.570-1080/- and Rs.620-1200/- was revised to Rs.1500-2640/- and the respondents-State on the basis of the said revision of pay scale had issued the Notification dated 27.01.1988 (Annexure P-12), whereby, the pay scale was revised from Rs.570-1080/- and Rs.620-1200/- to Rs.1500-2640/-. Thereafter, as per the Notification dated 22.08.1991 (Annexure P-13), the pay scale of the Technical Assistant was revised from Rs.570-1080/- to Rs.1640-2925/-. It has been averred that since the petitioner was holding the post of Technical Assistant, his scale ought to have been revised to Rs.1800-3200/-, as was revised to the category of Craft Instructors, ITIs/instructors.

3. It has further been averred that respondent No.1 had created two posts of Senior Technical Assistant in the pay scale of Rs.2000-3500/- to run the World Bank Projects. The petitioner made a representation dated 16.08.1993 (Annexure P-15) to respondent No.1 requesting therein to provide an avenue of promotion to the post of Senior Technical Assistant and consider the post of Technical Assistant as feeder category to the said post, so that he gets chance for his promotion to the said post, since he is in possession of Diploma in Mechanical Engineering. On receipt of the representation, it was informed to the petitioner, vide letter dated 27.09.1993

(Annexure P-17) that the R&P Rules for filling up the post of Group Instructor from amongst the Technical Assistant is under consideration of the Government. The petitioner sent a reminder dated 17.03.1994 (Annexure P-16) to respondent No.1, but nothing happened. Subsequent thereto also, the petitioner made a representation to upgrade the isolated post of Technical Assistant as Senior Technical Assistant as per the revised NCVT norms for Directorate Staff, or equivalent to Group Instructor dated 07.10.2009 (Annexure P-19), but despite receipt of the representation, no heed was paid to ventilate his grievance.

4. The petitioner feeling aggrieved by the inaction on the part of the respondents has thus approached this Court by way of instant petition. It has been averred that the petitioner was entitled for the pay scale of Rs.620-1200/- (revised w.e.f. 01.01.1978) from his date of appointment, but he was not granted the said pay scale, which action on the part of the respondents is illegal, arbitrary and discriminatory, besides being violative of Articles 14 and 16 of the Constitution of India. It has further been averred that when the Craft Instructors were granted the pay scale of Rs.1500-2925/- w.e.f. 01.01.1986, the same pay scale ought to have been granted to the petitioner. However, thereafter the pay scale was revised from

Rs.1500-2640/- to Rs.1640-2925/- and the petitioner was granted the said scale. The Craft Instructors were granted the pay scale of Rs.1800-3200/- as per the judgment passed by this Court and thus, the petitioner is also entitled to the said scale. The petitioner has also averred that the action on the part of the respondents in not promoting him to the post of Senior Technical Assistant or the Group Instructor and left him stagnant for the last 25 years, is patently illegal and against the law and as such prayed for a direction to the respondents to grant him the pay scale of Rs.1800-3200/- and also issue a writ in the nature of mandamus directing the respondents to provide him at least two promotional avenues from the post of Technical Assistant by making suitable amendment in the R & P Rules.

5. The respondents filed reply to the petition and averred that the Department of Technical Education, Vocational and Industrial Training was established by way of merger of erstwhile Technical Education Department and transferring of Rural ITIs/ Girls ITIs (now Industrial Training Institutes/ Industrial Training Institutes for Women) from Industries Department and Industrial Training Institutes from Labour and Employment Department. Consequent upon the aforesaid decision, amongst others, a post of Technical

Assistant, i.e. the petitioner's post was transferred to the respondent-Department, vide Government of Himachal Pradesh, Directorate of Labour, Employment and Training Department letter dated 21.04.1984. A number of incumbents were also deployed on secondment basis in the Department. The respondent-Department had not framed R&P Rules for each category of posts. The Department had initiated the process to frame its own R&P Rules in the year 1986 and the draft R&P Rules were sent to the Government. During this interim period, a requisition was sent for filling up the post of Technical Assistant to Himachal Pradesh Public Service Commission and in the aforesaid requisition, the scale of the post was inadvertently mentioned, as per the draft Rules, which had not come into force. The petitioner got appointed against the created post by the Department of Labour, Employment and Training and as per the Rules for the time being in force and fulfilled all the requisite qualifications, i.e. Diploma in Mechanical Engineering and the scale applicable to the post was required to be the scale in which the post was actually created, i.e. Rs. 200-450/- and revised to the scale of Rs.620-1200/-. However, the petitioner was offered the appointment in the scale different than the scale indicated in the R&P Rules. It has further been averred that as per the new R&P Rules framed in

October 1987, inadvertently, the post having same nomenclature, lower qualification with lower scale got created. The aforesaid inadvertence has resulted into anomalies, which have not been addressed. A perusal of the old record and analysis also depicts that recourse to declaration of the isolated posts with same requisite qualification and scale applicable to the post was required to be declared as analogous before framing of the R&P Rules by the Department of Technical Education or in the alternative, the nomenclature of the new posts was required to be appropriately changed, so that the anomalies do not arise. As per the provisions of old R&P Rules and new R&P Rules, the inconsistencies do exist and a due consideration for removal of the inconsistencies regarding similar nomenclature and different scales applicable to the post and the resultant anomalies of the scales, deserves to be undertaken. In light of the said submissions, it has been prayed that this Court may pass any suitable order as deem fit.

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

7. From the facts as mentioned above, it is crystal clear that the petitioner was appointed as Technical Assistant on the basis of the draft Rules in the pay scale of Rs. 570-1080/-. This fact has

candidly been admitted by the respondents while filing reply to the petition. It has also been admitted that the petitioner, as per the old R&P Rules, was possessing the qualification to hold the post of Technical Assistant and further, the post of Technical Assistant was created by way of merger of erstwhile Technical Education Department and transferring of Rural ITIs from Industry Department and Industrial Training Institutes from Labour and Employment Department. The petitioner who was possessing the requisite qualification to hold the post, which was created in the Department of Labour, Employment and Training, was fulfilling all the requisite qualifications i.e. Diploma in Mechanical Engineering and thus was to be offered the appointment in the pay scale of Rs.200-450/-, which was revised to the pay scale of Rs.620-1200/-and not Rs.570-1080/-. The respondents once having admitted that the respondent-Department was created by merger of erstwhile Technical Education Department and transferring of Rural ITIs from Industry Department and Industrial Training Institutes from Labour and Employment Department and further the petitioner was appointed against the created post of the Department of Labour, Employment and Training, which was having the pay scale of Rs.620-1200/-, denying him the said pay scale as attached to the said post is illegal, arbitrary as well

as discriminatory.

8. The respondents have averred in the reply that the inconsistencies do exist in the provisions of old R&P Rules and new R&P Rules and a due consideration for removal of inconsistencies regarding similar nomenclature and different scales applicable to the post and the resultant anomalies of the pay scales deserves to be undertaken, but nothing was done. The respondents have not even disputed the fact that the petitioner had been raking up the issue with respect to grant him pay scale of Rs.1800-3200/- which was revised on the basis of the pay scale of Rs.620-1200/- and also his promotion, especially when the respondents had accorded the sanction to create two posts of Senior Technical Assistant to run the different plans under the World Bank Project for the year 1992-93 as per instructions dated 09.03.1993 (Annexure P-14) which fact has not been denied by the respondents while filing the reply to the writ petition. No doubt, an employee does not have fundamental right for promotion, but he has a right to be considered for promotion. In the present case, the petitioner had made the first representation on 16.08.1993 (Annexure P-15) seeking his promotion to the post of Senior Technical Assistant, which was after the creation of the aforesaid post as evident from instructions dated 09.03.1993, but the

respondents did not take any action, except that the matter regarding the filling up of the post of Group Inspector from amongst the Technical Assistant by way of promotion is under active consideration before the Government.

9. The respondents once having accepted that the petitioner was wrongly granted the pay scale of Rs.570-1080/- though he was appointed against the created post of the Department of Labour, Employment and Training and fulfilled all the requisite qualifications i.e. Diploma in Mechanical Engineering and the scale applicable was to be given of Rs.620-1200/-, they should have rectified the mistake, thereby granting him the pay scale of Rs.620-1200/- which was revised to Rs.1800-3200/-, but the respondents did not rectify the mistake and thus, caused him injustice and also monetary loss.

10. Learned Advocate General representing the respondents-State vehemently argued that since the petitioner was fence-sitter, he is not entitled for any relief. He placed reliance upon the decision in recent judgment of the Supreme Court in Civil Appeal Nos.10552-10563 of 2026 (arising out of SLP(C) Nos. 33813-33824 of 2025), titled, ***State of Himachal Pradesh and another vs. Jameet Singh and another*** and connected matters, decided on

11.08.2026. The aforementioned decision is not attracted to the facts of the present case for the reason that the persons who had claimed the relief were basing their claim on the decision of the Court passed in another case and further the Court had passed the order in the execution petition. The Hon'ble Supreme Court held that the Court has misdirected itself by going behind the order, the implementation of which was sought and held that the executing Court cannot travel behind the decree. However, in the present case, the respondents themselves have admitted their mistake that the petitioner was wrongly given the pay scale of Rs.570-1080/- and he ought to have been given the pay scale of Rs.620-1200/- which scale was revised to Rs.1800-3200/-. Thus, the contention of the learned Advocate General cannot be accepted and the petitioner cannot be denied the pay scale of Rs.620-1200/- which was revised to Rs.1800-3200/-.

11. The denial of the pay scale of Rs.620-1200/- to the petitioner, which scale was revised to Rs.1800-3200/-, is causing him loss every month.

12. The Hon'ble Supreme Court in ***M.R. Gupta vs. Union of India***, (1995) 5 SCC 628, has held that so long as the employee is in service, a fresh cause of action would arise every month when he is paid salary on the basis of the wrong computation being made

contrary to the Rules. If the employee's claim is found to be correct on merits, he would be entitled to be paid according to the properly fixed pay scale in future and question of limitation would arise for recovery of the arrears for the past period.

13. The aforesaid view has again been followed by the Hon'ble Supreme Court in ***Union of India and others vs. Tarsem Singh***, (2008) 8 SCC 648, wherein it has been held that where a service related claim is based on a continuing wrong, relief can be granted even if there is long delay in seeking remedy with reference to the date on which the continuing wrong commenced, if such continued wrong create a continuing source of injury. For example, if the issue relates to payment or fixation of pay or pension, relief can be granted in spite of delay as it does not affect the rights of third parties. However, the Court 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. 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 refixation 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. This view has consistently being followed by the Supreme Court. In ***Rushibhai Jagdishbhai Pathak vs. Bhavnagar Municipal Corporation***, (2022) 18 SCC 144, it has been held that delay and laches are applied only in continuous wrong for the purpose of grant of arrears. In the present case, no doubt the petitioner had made representation to the respondents to claim the pay scale of Rs.1800-3200/-, which pay scale was revised from the pay scale of Rs.620-1200/-, but he did not approach this Court immediately after making the representation. He has approached this Court only in the year 2013, and thus, as per the judgments referred above, he is entitled to the arrears of the pay

scale of Rs.1800-3200/- (pre-revised) only from three years prior to the date of institution of the present petition.

15. So far as the claim of the petitioner for providing him promotional avenues from the post of Technical Assistant by making suitable amendment in the R&P Rules is concerned, since he has now retired from service, no purpose will be served in case the said direction is given to the respondents to provide the avenues for promotion in the R&P Rules, which can be made effective only from the prospective date and thus, the prayer made by the petitioner to provide promotional avenue to the post of Technical Assistant is declined. However, the petitioner is held entitled to the pay scale of Rs.1800-3200/- (pre-revised) from the due date, but the arrears shall be paid only from three years prior to the institution of the petition.

16. Consequently, the present petition is partly allowed to the extent that the respondents are directed to give the pay scale of Rs.1800-3200/- (pre-revised) to the petitioner from the due date, except the monetary benefits, which shall be paid to him from three years prior to the date of institution of the present petition. In case the arrears are not paid to the petitioner within six months from today, the respondents shall pay interest thereon @6% per annum

from today till actual payment. However, it is made clear that the interest shall be recovered from the erring officers/officials. No order as to costs. Pending applications, if any, also stand disposed of.

19th September, 2026

(Anurag)

**(Jiya Lal Bhardwaj)
Judge**