

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWPOA No.1549 of 2019 a/w
CWPOA Nos.1548 & 2026 of 2019
Decided on: 1st September, 2026

1. CWPOA No.1549 of 2019

Manoj Kumar and Ors. Petitioners

versus

State of H.P. and Anr. ...Respondents

2. CWPOA No.1548 of 2019

Ajay Kumar and Ors. Petitioners

versus

State of H.P. and Anr. ...Respondents

3. CWPOA No.2026 of 2019

Bhupender Pal Petitioner

versus

State of H.P. and Anr. ...Respondents

Coram

Hon’ble Mr.Justice Jiya Lal Bhardwaj, Judge.

Whether approved for reporting?¹

**For the petitioners: Mr. Manish Sharma, Advocate (in
all the petitions).**

**For the respondents-State: Mr. R.P. Singh, Deputy Advocate
General (in all the petitions).**

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

Jiya Lal Bhardwaj, Judge (Oral)

Since common questions of law and facts are involved in all these petitions, they are being taken up together for final disposal.

2. For the purpose of deciding the issue, the facts of CWPOA No.1549 of 2019 are taken up.

3. The petitioners, who were having the requisite qualification to hold the post of Language Teacher had applied pursuant to Advertisement No.18/2010 dated 01.11.2010 before the cut-off date prescribed to receive the application forms. After conducting the written test and *viva-voce*, the petitioners were offered the appointment to the post of Language Teacher. The petitioners have placed on record the office order dated 04.02.2012 (Annexure P-2), whereby petitioners No.2 to 4 were appointed to the post of Language Teacher on contract basis on fixed emoluments of Rs.13,500/- per month, i.e. pay band of Rs.10,300+Grade Pay Rs.3200/- for one year, which were to be renewed after one year on the specific terms and conditions attached with effect from the date of joining in the school mentioned against their names.

4. The grievance of the petitioners in the writ petition is that once the proper procedure was followed for making selection to

the posts advertised through the recruiting agency, the respondents instead of offering them appointment on contract basis ought to have offered them appointment on regular basis. It has also been averred that action on the part of the respondents in not offering them the appointment on regular basis is illegal, unjust, irrational and against Articles 14 and 16 of the Constitution of India and as such, sought a direction to the respondents to consider them as members of service in the cadre of Language Teachers and to assign them seniority as per merit from the date of their appointment and also grant them the same pay scales and other allowances as being paid to the regular teachers of their categories.

5. In CWPOA No.1548 of 2019, the petitioners were appointed to the post of Trained Graduate Teachers (Medical) by adopting the same procedure as was adopted in the case of recruiting the Language Teachers, and in their case, the advertisement was issued prior to the advertisement issued in the case of Language Teachers.

6. Similarly, in CWPOA No.2026 of 2019, the petitioner was appointed as Drawing Master as per the Advertisement No.18 of 2010 dated 01.11.2010, which was issued for recruiting the Language Teachers also.

7. The respondents filed reply to the petition and averred that the petitioners were selected as Language Teachers in the screening test and personal interview in the year 2011 and thereafter, they had been offered the appointment during the year 2012 on contract basis on fixed contractual amount of Rs.13,500/- per month (which shall be equal to minimum of pay band plus grade pay of the post) with an annual increase of 3% of minimum pay band+Grade Pay of the post, i.e. at the rate of Rs.410/-, with specific terms and conditions in addition to the usual terms and conditions of the appointment. Further, the petitioners were given option through offer of appointment on contract basis and pursuant to which they also joined. Therefore, they are estopped from questioning the mode of appointment solely made by the employer subsequently after accepting the said offer. As per Annexures P-1 and P-2 annexed to the petition, the appointment was being offered purely on contract basis and the appointee will have to execute a bond with the Principal/Headmaster of the concerned school, where he/she is posted. The joining report will be accepted only after the execution of the requisite bond between the Head of the institution and the appointee. The parties are bound by the terms of the agreement and they cannot resile from the agreement. After executing the agreement and taking the benefit of the agreement,

the petitioners cannot take the plea that he executed the agreement because the Government had the excess bargaining power. The plea of excess bargaining power itself shows the *malafide* and guilty conscience of the petitioners, who belong to the noble profession of teachers. Once the petitioners had joined the service on the basis of agreement, the remedy is not the writ petition, but they can challenge the agreement on the ground of fraud, misrepresentation or excess bargaining power only by way of Civil Suit. It has also been averred that the State Government had taken a policy decision in the year 2004 to fill up all the vacancies on contract basis, and since then, all the appointments have been made in all the Departments in Himachal Pradesh on contract basis.

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

9. A perusal of the reply filed by the respondents clearly shows that the selection of the petitioners was made after the screening test and the personal interview conducted by the recruiting agency as per the Recruitment and Promotion Rules for filling up the posts on regular basis. Once the procedure as postulated for recruiting the petitioners on regular basis was adopted by the respondents before offering them appointment and furthermore, the petitioners were possessing the requisite

qualifications to hold the posts and also appointed against the sanctioned posts, the period of contract service which has been followed by regularization has to be considered for the purpose of seniority and other service benefits, in view of the judgment rendered by the Constitution Bench of the Hon'ble Supreme Court in ***Direct Recruit Class II Engineering Officers' Association versus State of Maharashtra and others***, (1990) 2 SCC 715, wherein it has been held that if the appointment is made against the sanctioned post after following the proper procedure, the period of officiating service will be counted for the purpose of seniority and other benefits.

10. A Division Bench of this Court had also an occasion to consider the similar proposition of law in CWP No.3361 of 2025, titled, ***Devinder Kumar & Ors. vs. State of H.P & Anr and connected matters*** wherein too, it has been held that in case the appointment is as per the Recruitment and Promotion Rules after advertising the posts and undergoing the rigour of the said process by competing in open market in the test or in the interview conducted by the prescribed agency as adopted for regular appointment, the entire period of service has to be counted for the purpose of seniority and other service benefits, but after regularization.

11. Learned counsel for the petitioners has submitted that the services of the petitioners have been regularized taking into account the contract service rendered by them and, therefore, in view of the pronouncement of the Hon'ble Supreme Court in **Direct Recruit's** case (supra) and of Division Bench of this Court in **Devinder Kumar's** case (supra), the petitioners are also held entitled to count the service rendered by them on contract basis for seniority, increments, promotion, pension etc.

12. It is apt to note that the judgment passed by the Division Bench of this Court in **Devinder Kumar's** case (supra) was challenged before the Hon'ble Supreme Court by the State of Himachal Pradesh and the SLP preferred by the State has been dismissed on 29.07.2026. Once the mandate contained in the judgment passed in **Devinder Kumar's** case (supra) has been upheld by the Hon'ble Apex Court, the petitioners, who have been offered the appointment after adopting the same procedure as required for the purpose of appointing the persons on regular basis and that too against the sanctioned posts, the entire period of service rendered by them from the initial date of appointment on contract basis has to be counted for the purpose of seniority, increments, pay fixation, promotion and pensionary benefits.

13. Consequently, the present petitions are allowed and the respondents are directed to count the entire service rendered by the petitioners on contract basis for the purpose of seniority, increments, pay fixation, promotion and pensionary benefits. Since the petitioners have approached this Court well within time, they are entitled to get the arrears from their initial date of appointment. However, it is made clear that in case the arrears are not released in favour of the petitioners within three months from today, the respondents shall pay interest @6% per annum from today till actual payment.

14. The writ petitions are accordingly disposed of in the aforesaid terms. No order as to costs. Pending application(s), if any, also stands disposed of.

1st September, 2026
(naveen)

(**Jiya Lal Bhardwaj**)
Judge