

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.2409 of 2019

Decided on: 03rd September, 2026

Tara Chand Sharma and others

...Petitioners

Versus

State of H.P. and another

...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

*Whether approved for reporting?*¹

For the petitioners: Mr. Sanjeev Bhushan, Senior Advocate with Mr. Sohail Khan, Advocate.

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

Jiya Lal Bhardwaj, Judge, (Oral)

By way of present petition, the petitioners have prayed for the following substantive reliefs:-

“(i) That a writ in the nature of mandamus may be issued directing the respondents to regularize the services of the petitioners after three years on the analogy of ad hoc / tenure teachers after their appointment as volunteer teachers or in the alternative after five years on the basis of decision as taken by the respondents themselves with all consequential benefits of pay, arrears, seniority etc. etc.

(ii) That further a writ in the nature of mandamus

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

may be issued directing the respondents to count services rendered by the petitioners as volunteer teachers for the purposes of increments and pensionary benefits, with all consequential of pay, arrears, etc. along with interest @12% p.a."

2. Learned senior counsel representing the petitioners has not pressed relief No.(i) and as such, only relief No.(ii) claimed in the petition, is being considered in the present petition.

3. Shorn of unnecessary details, the key facts of the case are that the petitioners were appointed as Volunteer Teachers in the year 1992 on the basis of the Volunteer Teachers Scheme, 1991 framed by the respondents-State. Thereafter, their services were regularized in the year 1999. The claim as set out by the petitioners in the writ petition is that in case of the teachers, who were appointed on ad hoc basis or tenure basis, their services were regularized after completion of three years services, whereas in the case of the petitioners, who were also performing the same and similar duties, as were performed by the aforesaid teachers, they were not granted the benefit of regularizing their services

after completion three years of service.

4. Another grievance raised by the petitioners is that the teachers, who were appointed on ad hoc and tenure basis, were granted the benefit of increments and also counting of services for pensionary benefits, but the petitioners, who had also performed the same and similar duties and were teaching in the schools run by the respondent-State in the same manner as the ad hoc or tenure teachers were teaching, were also entitled to the increments and also counting of their services before regularization for pensionary benefits. It has further been averred that though the nomenclature given to the petitioners was that of Volunteer Teachers, but the duties performed by them were same and similar as performed by ad hoc/tenure appointee and as such, they cannot be treated differently from the other set of employees, who have firstly been regularized earlier to them and further granted the benefit of the period before their regularization for increments and pensionary benefits and as such has prayed for the relief that the respondents be

directed to regularize their services after three years of service on the analogy of ad hoc/tenure teachers and further to count their services as Volunteer Teachers for the purpose of increments and pensionary benefits.

5. The respondents filed reply to the petition and averred that the petition is not maintainable on facts and law and as such, deserves dismissal. Further, the petitioners were appointed as Volunteer Teachers in the year 1992 on the basis of the Volunteer Teachers Scheme, 1991 and were regularized in the year 1999, whereas they have instituted the present petition in the year 2013 i.e. after a lapse of more than 20 years of their appointment and as such, the petition is liable to be dismissed on the ground of delay and laches. Further, the petitioners were appointed on the basis of fixed honoraria and the terms and conditions of appointment were also in the knowledge of the petitioners and they joined their services after accepting the terms and conditions of such service and, therefore, the law of estoppel applies against them.

6. It has further been averred that as per the judgment of the Hon'ble Supreme Court in ***State of Punjab and another vs. Surjit Singh and others***, (2009) 9 SCC 514, it has been held that the principle of "equal pay for equal work" has no mechanical application in every case. Further, the matter is to be evaluated by the expert bodies and the writ Court cannot interfere. Therefore, the petitioners cannot equate themselves with the teachers appointed on ad hoc/tenure basis. The services of the petitioners were regulated as per the terms and conditions of the Volunteer Teachers Policy. The petitioners cannot claim anything beyond the same and thus, prayed for dismissal of the petition.

7. I have heard Mr. Sanjeev Bhushan, learned senior counsel duly assisted by Mr. Sohail Khan, learned counsel for the petitioners and Mr. Hemant Kumar Verma, learned Deputy Advocate General for the respondents and also perused the record carefully.

8. It is not in dispute that the petitioners were

appointed as Volunteer Teachers in the year 1992 on the basis of the Volunteer Teachers Scheme, 1991 and thereafter, their services were regularized in the year 1999. It is also not in dispute that the petitioners, who were engaged as Volunteer Teachers, also performed the same duties and functions as were performed by the teachers, who were appointed on ad hoc/tenure basis.

9. In the case of the petitioners, they were given fixed honoraria, whereas other persons appointed on ad hoc/tenure basis, were given the minimum of the pay scale. No doubt, as per the judgments of the Hon'ble Apex Court, this Court cannot equate the posts for the purpose of the grant of the pay scale, but at the same time, this Court cannot also ignore the fact that once the petitioners, who were appointed under a particular scheme framed by the State Government as teachers, had also performed the same and similar duties as performed by other persons even before regularization as performed by them after regularization, at least the services rendered by such employees have to be

counted for the purpose of pensionary benefits, if not for the grant of pay scale as well as increments.

10. The respondents have denied the relief to the petitioners to firstly regularize their services after completion of three years, only on the plea that they were appointed under the scheme on fixed honorarium, whereas the other persons, were appointed on ad hoc/tenure basis on minimum of the pay scale. As already noticed above, the learned senior counsel for the petitioners has not pressed the relief with respect to regularization of their services, but the relief claimed by him for the purpose of granting at least the benefit of service rendered by the petitioners for the purpose of pensionary benefits cannot be denied, especially when they were also possessing the requisite qualification to hold the post and further their services were utilized by the respondents-State to cope up with the need of the teachers and further to impart education to the students when they do not had the requisite teachers and furthermore the respondents-State had formulated the policy to engage the

teachers. The period of service rendered by the petitioners as Volunteer Teachers has ultimately resulted into their regularization and, thus, the period of service rendered by them from the initial date of appointment has to be counted only for the purpose of defraying the pensionary benefits to them and not for grant of pay scale and increments.

11. The petitioners were fulfilling the requisite qualification to hold the posts and they being out of job had accepted to serve the respondents-State on a fixed honorarium. But they cannot be denied the benefit of at least counting the service rendered by them as Volunteer Teachers for the purpose of pensionary benefits, especially when the respondents had regularized their services by counting their services rendered on fixed honorarium.

12. Learned senior counsel for the petitioners has vehemently argued that the petitioners should also be granted the benefits of the increments for the period when they were paid the fixed honorarium. However, the said submission cannot be accepted for the reason that the said

benefit could have been granted to them only in case they were appointed on minimum pay scale and as such the said submission is rejected.

13. Learned Deputy Advocate General has vehemently argued that since the petitioners did not rake up the issue when they were initially appointed and when their services were regularized in the year 1999, the petition instituted by them is barred by delay and laches. However, this submission cannot be accepted for the reason that the non-counting of the period of service rendered by them will adversely affect them for the reason that they will get lesser emoluments after their retirement and as such, the cause of action in their favour is a recurring one and the petition cannot be dismissed on the ground of delay and laches, especially when it is not affecting third party rights.

14. The Hon'ble Supreme Court in ***Union of India and others vs. Tarsem Singh***, (2008) 8 SCC 648, has held that the relief cannot be denied to the petitioner, when it relates to payment or re-fixation of pay or pension in spite of delay as it

does not affect the rights of third party. 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."

15. Thus, keeping in view the above law laid down by the Hon'ble Supreme Court, coupled with the fact that the services of the petitioners have been regularized by taking into account the services rendered by them as Volunteer

Teachers, the period from the initial date of appointment has to be counted at least for the purpose of pensionary benefits, but not for other benefits.

16. Consequently, the present petition is allowed to the extent that the respondents shall count the services rendered by the petitioners as Volunteer Teachers from the initial date of appointment only for the purpose of pensionary benefits.

17. The petition is accordingly disposed of. No order as to costs. Pending miscellaneous applications, if any, also stand disposed of.

03rd September, 2026

(ankit)

**(Jiya Lal Bhardwaj)
Judge**