

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWPOA No.2769 of 2019

Decided on: 13th August, 2026

Ishwar Dutt Sharma and others

...Petitioners

versus

State of H.P. and others.

...Respondents

Coram

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

Whether approved for reporting?¹

For the petitioners: Mr. Adarsh K. Vashista,
Advocate.

For the respondents: Mr. Anup Rattan, Advocate
General with Mr. Vishav Deep
Sharma, Additional Advocate
General.

Jiya Lal Bhardwaj, Judge (Oral)

The petitioners by way of present petition have
prayed for the following substantive relief:-

“(i) *Writ in the nature of mandamus may kindly be issued directing the respondent Deptt. to fill up the backlog of ex-servicemen quota in Distt. Sirmour to the admitted extent of 32 posts and the respondents may kindly be further directed to offer appointment to the petitioners against the said quota on regular basis with all consequential benefits w.e.f. the due date.*”

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

2. Shorn of unnecessary details, the key facts of the case are that the petitioners had earlier served in the Defence Forces and after their retirement, got their names registered with the employment exchange for a suitable post as ex-servicemen. In the year 2008–09, the respondents started the recruitment process for filling up the posts of Drawing Masters and since the petitioners were also eligible, their names were also sponsored by the ex-servicemen cell for the post. The respondents had issued office order dated 30.08.2011 (Annexure P-9), whereby the petitioners were offered appointment as Drawing Master on contract basis. Since petitioner No.3 was falling in the category of Other Backward Classes (in short 'OBC'), he was offered appointment under that category, but on contract basis. The petitioners, in sequel to appointment order, joined their duties.

3. The case of the petitioners is that since there were backlog vacancies of ex-servicemen quota in District Sirmour, they ought to have been offered appointment on regular basis instead of contract basis. The action on the part of the respondents in offering them appointment on contract basis is bad in law.

4. The petitioners feeling aggrieved by the action on the part of the respondents in offering them appointment on contract basis, have approached this Court *inter alia* on the ground that once they have been offered appointment on contract basis against the backlog posts of their quota, the same ought to have been on regular basis and offering them appointment on contract basis is illegal, unconstitutional, unjustified and arbitrary. It has further been averred that the respondents were liable to fill up the backlog posts on regular basis and denial of benefit to them to offer appointment on regular basis is contrary to the service jurisprudence inasmuch as violative of Articles 14, 16, and 21 of the Constitution of India.

5. It has also been averred that as per the judgment passed by this Court in CWP No.147 of 2011-A, titled, **Gian Chand and others Vs. State of H.P. and others**, the backlog posts/vacancies in the service in ex-servicemen quota have been ordered to be filled up with all consequential benefits in District, Mandi and as such, the petitioners have prayed that the respondents be directed to offer them appointment on regular basis with all consequential benefits from the due date.

6. The respondents filed reply to the petition and averred that respondent No.3 had initiated recruitment process to fill up the posts of Drawing Master in District Sirmour, purely on contract basis, in view of the approval conveyed by respondent No.2 vide letter dated 01.07.2010. According to the roster points, there were three posts meant for ex-servicemen quota, out of which, two were unreserved and one was for OBC. It has further been averred that as per the amended Recruitment and Promotion Rules (in short 'R&P Rules'), respondent No.3 had sent requisition to the Director, Sainik Welfare, Ex-Servicemen Cell, Hamirpur, H.P., vide letter dated 11.10.2010 and on the recommendation of the Director, Sainik Welfare, Ex-Servicemen Cell, Hamirpur, H.P., the Secretary, State Selection Committee-cum-Sub Region Employment Officer, Ex-Servicemen Cell, Hamirpur, vide letter dated 05.08.2011 conveyed the names of the eligible candidates for appointment to the posts of Drawing Masters and in view of this, the petitioners have been offered appointment on 30.08.2011 on contract basis as per new R&P Rules. Therefore, the contention of the petitioners to appoint them on regular basis is not tenable as they have

been appointed on contract basis, as per new R&P Rules, with the prior approval of the competent authority.

7. It has further been averred that as per the judgment passed by this Court on 03.04.2012 in CWP No.7447 of 2010-H, titled, **Ashok Kumar Patial vs. State of H.P. and others** with connected matters, it has been held that the manner in which the posts are to be filled up, is the prerogative of the employer and it is a policy matter and the scope of judicial review in these matters is very limited. The decision whether the posts are to be filled up on ad hoc, contract, tenure, contractual basis or regular basis, is to be taken by the employer. It is only in those cases, where the decision has been taken arbitrarily or against the statutory provisions and in negation of the Constitution, the Courts can interfere. The Court has further held that the names of the petitioners have been sponsored by the Ex-Servicemen Cell, will not give any indefeasible right to them and similarly situate persons for appointment on regular basis. The Board of Director, Sainik Welfare, Himachal Pradesh used to sponsor the names of the candidates whenever a requisition is received and as such, the respondents have prayed for dismissal of the writ petition.

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 reveals that that selection of the petitioners to the post of Drawing Master has been made on the basis of the recommendations made by the Director, Sainik Welfare, Ex-Servicemen Cell, Hamirpur, H.P., the Secretary, State Selection Committee-cum-Sub Region Employment Officer, Ex-Servicemen Cell, Hamirpur. Thereafter, respondent No.3 has offered the appointment to the petitioners vide office order dated 30.08.2011 (Annexure P-9).

10. It is not the case of the respondents that the proper procedure was not followed while offering the appointment to the petitioners as Drawing Master on contract basis. When the petitioners were offered the appointment as Drawing Master under Ex-Servicemen category, three posts were falling to their share, out of which, two were unreserved and one was reserved for OBC. Out of three petitioners, petitioner No.3 belongs to OBC category and thus the appointment made by respondent No.3 of the petitioners under the Ex-Servicemen category, cannot at all be faulted

with. Out of 22 vacancies, three were falling in the category of Ex-Servicemen.

11. The question which now arises for determination is whether the petitioners were to be offered appointment on regular basis or contract basis. Once the proper procedure has been followed by the respondents while offering the appointment to the petitioners on contract basis and further they have discharged their duties and later on have been regularized, the period rendered by them on contract services has to be counted for the purpose of increments as well as for pensionary benefits, as per the judgment dated 10.01.2020 passed by this Court in **CWP No. 2411 of 2019, titled, Jagdish Chand versus State of H.P. and others** and connected petitions, which judgment has now attained finality, when the civil appeal filed by the respondent-State has been dismissed on 07.08.2023. Not only this, even as per the judgment passed by the Division Bench of this Court in CWP No.2004 of 2017, titled, **Shri Taj Mohammad and others versus the State of Himachal Pradesh and others** and connected petition, decided on 03.08.2023, it has been held that the services rendered on contract basis are liable to be counted for the purpose of seniority and consequential

benefits, after regularization and the said judgment has also attained finality when the Hon'ble Supreme Court has dismissed the Special Leave Petition filed by the State of H.P. against the aforesaid judgment passed by the Division Bench of this Court.

12. Learned Additional Advocate General has vehemently argued that as per judgment passed in **Ashok Kumar's** case (supra), it is the prerogative of the employer to fill up the posts either on ad-hoc, contract, tenure, contractual basis or regular basis and the Court cannot interfere with the policy matter and the scope of judicial review in such matters is very limited. No doubt, it is not for the Court to see whether to offer the appointment to a person on contract or regular basis or on other mode, but once the process as required to fill up the regular vacancies has been adopted for the purpose of offering the appointment to the petitioners and further their regularization has been followed by rendering contract service, the period of contract service has to be counted for seniority, increments, and other pensionary benefits. Therefore, the judgment referred above, is not applicable to the facts and circumstances of the present case, more particularly, when the judgment passed by the

Division Bench of this Court in **Taj Mohammad's** case (supra), wherein direction was given to count the service rendered by the employee on contract basis for the purpose of seniority and other consequential benefits after their regularization has attained finality upto to the Hon'ble Supreme Court. Thus, the action on the part of respondent No.3 to offer appointment to the petitioners on contract basis, even if not disturbed, the said period has to be counted for all intents and purposes.

13. Consequently, the present petition is allowed and the respondents are directed to count the entire service rendered by the petitioners on contract basis for the purpose of grant of increments, seniority, pension and other service benefits from the initial date of their appointments. The respondents are directed to pay the arrears to the petitioners within a period of three months from today.

14. The writ petition is disposed of in the aforesaid terms. No order as to costs. Pending applications, if any, also stand disposed of.

13th August, 2026
(naveen)

(Jiya Lal Bhardwaj)
Judge