

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWPOA No.2937 of 2019
Decided on: 17th August, 2026

Revti Nandan 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. Subhash Sharma, Senior Advocate with Mr. Prantap Sharma, Advocate.
For the respondents:	Mr. Hemant Kumar Verma, Deputy Advocate General for respondent No.1.
	Ms. Archana Dutt, Advocate for respondent No.2.

Jiya Lal Bhardwaj, Judge(Oral)

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

- “(i) That a writ in the nature of mandamus may kindly be issued directing the respondent University to treat the petitioners as regular drivers (L&V) since their appointments i.e. from 23rd May,2006.
- (ii) That further a writ in the nature of mandamus may kindly be issued directing the respondent University to give the petitioners pay scale of regular drivers as applicable with effect from 23rd May, 2006 along

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

consequential benefits like, seniority, arrears, pay, etc. ect. with interest @ 9% PA.”

2. The facts as emerge from the pleadings are that the petitioners had applied for the post of Driver (Light Vehicles) pursuant circular dated 15.10. 2005 issued by respondent No.2-University, since they were possessing the requisite qualifications to hold the post of Driver (light vehicles (in short Driver (LV). The petitioners were called for the interview on 31.12.2005 by respondent No.2-University as per the call letters Annexure P-3 (Colly). It is apposite to mention that when the circular was issued, there was no condition that the posts of the Drivers were to be filled up on contract basis, but as per the approval conveyed by respondent No.1 as per letter dated 20.01.2006 (Annexure P-4), the same was granted subject to the condition that all posts may be filled up strictly on contractual basis at starting basic of pay scale (fixed). It was made clear that the contractual appointment letter should make it categorically clear that no claim pertaining to regularization or the other allied terminal benefits would be entertained. Thereafter, vide a communication dated 22.02.2006 (Annexure P-5), respondent No.2-University had replied that the selection of Drivers had already been completed during the month of

December, 2005 and, therefore, these posts cannot be delayed as the substitutes are required. However, the appointment letters to the persons selected will be issued strictly as per the conditions conveyed by the State Government.

3. Thereafter, respondent No.2-University issued appointment letters to the petitioners as Driver (LV) on contract basis and one of the appointment letters in respect of petitioner No.3 dated 23.05.2006 (Annexure P-6) clearly shows that the appointment is on contract basis for a period of one year from the date of joining the post with a salary of Rs.3330/- per month, (initial basic pay of the scale of the post i.e., Rs.3330/-) plus DP as prevailing on the date of issuance of the letter on certain terms. Consequent upon the issuance of appointment letters, the petitioners joined their duties with respondent No.2-University which fact is evident from order dated 17.06.2006 (Annexure P-7).

4. It has been averred in the petition that the petitioners had accepted the offer of appointment on contract basis, though they were selected on regular posts. It has also been averred that since they were hard-pressed in their respective lives submitted to the dictatorial and whimsical

terms of respondent No.2-University. It has further been averred that the petitioners are eligible for the posts of Drivers (L&V) on regular basis. However, respondent No.2-University had offered them the appointment on contract basis, which is wrong and also contrary to the judgment passed by this Court in CWP No. 1811 of 2008, titled, **Dev Raj vs. State of H.P. and others**, and connected petitions, in which it has been clearly laid down that the rule of the game cannot be changed in mid-way and as such, sought directions to respondent No.2-University to treat them as regular Drivers since the date of their initial appointment.

5. Respondent No.2-University has filed reply and averred that as per the Notification dated 22.09.2005 issued by respondent No.1, it is mandatory for the University to seek approval of the Government to fill up any of the sanctioned vacant posts. However, the service conditions of the employees, teaching and non-teaching, will be governed as per HP Ordinances/Statutes, subject to the condition that HP Government Rules/regulations are not violated under any circumstances. The University will open separate bank account for grant-in-aid. The said Notification was received by respondent No.2-University on 06.10.2005. Respondent

No.2-University, unaware about the contents of Notification dated 22.09.2015 had issued the circular dated 15.10.2005 inviting applications to fill up two vacant sanctioned posts of Driver (HV) and three vacant sanctioned posts of Driver (LV) on regular basis. However, thereafter, in view of the above Notification, the State Government was requested vide letter dated 14.11.2005 to convey the approval to fill up the sanctioned vacant posts of the Drivers. Pending Government approval, interviews for the posts were held on 30th and 31st December, 2005. However, before the interview, notice was displayed on the notice board of respondent No.2-University making clear that the posts of Drivers were to be filled up on contractual basis on the fixed salary as per the terms and conditions to be prescribed on the analogy of Government of Himachal Pradesh as the same had not been received in the University by that time. Besides displaying on the notice board, the petitioners, who were present for the interview were also informed verbally before the start of interview. The State Government had granted the approval on 20.01.2006 to fill up the posts strictly on contractual basis at starting basic of pay scale fixed. Instead of re-advertising the posts, the University had written to respondent No.1

apprising of the situation and it was also informed that the process for selection of Drivers had already been completed during the month of December, 2005 and, therefore, these posts cannot be delayed because substitutes are required. However, the appointment letters to the persons selected will be issued strictly as per the conditions conveyed by respondent No.1. Accordingly, the appointment letters were issued to the petitioners for a period of one year in the first instance and it was made clear in the appointment letter that, in case the above terms and conditions of appointment are acceptable to them, they should report for duty within seven days in writing or within a period of 15 days from the date of issue of the letter, failing which, the order of contractual appointment shall stand cancelled. Since respondent No.2- University receives grants from the State Government and University is being funded by the State Government, it is duty bound to strictly adhere to State Government's terms and conditions in respect of appointments etc. University is a public institution and cannot act in isolation of its funding State Government conditions. It was always open for the petitioners not to accept the offer and, therefore, the same

does not deserve any consideration after a gap of seven years that too seeking the regular appointment retrospectively.

6. This Court vide order dated 28.11.2025 had directed respondent No.2-University to file a supplementary affidavit on the following aspects:-

- “(i). *Recruitment & Promotion Rules/ Regulations/ Norms for the post of Driver [light vehicle] on the date of commencement of selection process on 15.10.2005 [Annexure P-1] be placed on record;*
- (ii). When were the Recruitment & Promotion Rules for post of Driver [light vehicle] amended by the University and incorporating the contractual nomenclature of recruitment based on Government decision dated 20.01.2006 [Annexure P-4]; and same be placed on record;*
- (iv). Once the approval for filling-up the post of Drivers [light vehicles] by contractual was granted on 20.01.2006 [Annexure P-4], then Respondent-University should explain as to on what basis the University issued notice dated 30.12.2005 [Annexure R-3]?*

7. Pursuant to the directions issued by this Court, respondent No.2-University has filed an affidavit and has averred that in terms of the provisions of Ordinance 38.5 of the University, the Executive Council vide Resolution No.22 of its meeting held on 27.03.2004, had approved the prescribing provision for making appointment on contract basis on the analogy of the State Government, conveyed vide letter dated

12.12.2003 and consequently, the group of words "By direct recruitment" was amended/substituted "By direct recruitment" or on contract basis, notified vide Notification dated 27.04.2004. It has further been averred that on the analogy of the State Government, the notice dated 30.12.2005 was issued prior to the interview and displayed on the gate of the interview venue of the H.P. University Faculty House stating that the post of Driver would henceforth be filled up on contractual basis on a fixed salary as per terms and conditions to be prescribed on the analogy of Government of Himachal Pradesh. Since University receives grant from the State Government and the University is funded by the State Government, it is bound to adhere to the terms and conditions of the State Government in respect of the appointment etc. The petitioners were fully aware about this while appearing in the interview and while accepting the offer of appointment.

8. The petitioners filed reply to the supplementary affidavit and placed on record the Recruitment and Promotion Rules, which are called the Himachal Pradesh University Ministerial and Administrative Services (Recruitment, Promotion, and Certain Conditions of Service) Rules, 1973, as

notified on 06.02.1973 (Annexure P-8). The petitioners have also placed on record the Recruitment and Promotion Rules for the post of Driver notified by the Principal Secretary (Personnel) to the Government of Himachal Pradesh on 24.11.2010 (Annexure P-9), whereby a provision of recruitment on contract basis has also been provided. Further, the decision of the Executive Council of respondent No.2-University, which had approved the amendment in the qualification, recruitment and promotion and certain conditions of service to the post of Driver (Heavy/Light Vehicle) to the Himachal Pradesh University, Ministerial and Administrative Services, Rules, 1973 notified on 15.09.2017 (Annexure P-10) as well as judgment passed by a Division Bench of this Court CWPOA No.5847 of 2020, titled, **Atul Tomar v. H.P. State Cooperative Marketing and Consumer Federation Limited** has also been placed on record. It has also been averred that since the R&P Rules in vogue at the time of advertisement and offer of appointment did not prescribe to offer appointment on contract basis, the action on the part of the respondent No.2-University to offer appointment to the petitioners on contract basis is totally wrong and unsustainable in law.

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

10. It is apposite to note that when the circular dated 15.10.2005 was issued by respondent No.2-University to invite the applications to fill up the posts of Drivers (LV) in the pay scale of Rs.3330-6200, it was not mentioned that the appointment is to be made on contract basis. Even when the interview letters were issued, a decision was not taken by respondent No.2-University to fill up the posts on contract basis. Though, respondent No.2- University, by way of supplementary affidavit, has placed on record the Recruitment and Promotion Rules, called as the Himachal Pradesh Transport Department Driver (Class-III, Non-Gazetted) Recruitment and Promotion Rules, 1996, but these Rules do not provide that the persons can be appointed on contract basis, though the said Rules are not framed by respondent No.2-University. As per the Recruitment and Promotion Rules called as the Himachal Pradesh University Ministerial and Administrative Service (Recruitment, Promotion, and Certain Conditions of Service) Rules, 1973, notified on 06.02.1973 (Annexure P-8) by respondent No.2-University, do not contain any provision for appointment to

be made on contract basis. As per Notification dated 24.11.2010 (Annexure P-9), which has been issued by the Department of Personnel to the Government of Himachal Pradesh for appointment to the post of Driver (Class-III Non-Gazetted), Non-Ministerial Services, in various Departments of the Government of Himachal Pradesh, there is a reference of appointment by direct recruitment and also on contract basis, but respondent No.2-University has not ever amended the Recruitment and Promotion Rules for the category of Driver where they had taken the decision to fill up the posts on contract basis. As per Notification dated 15.09.2017 (Annexure P-10), the Executive Council of respondent No.2-University while approving the recommendations of the Finance Committee had carried out the amendment in the R&P Rules and for the first time made a provision to make appointment on contract basis of Drivers. However, when the process was initiated for filling up the posts of Driver (LV), the R&P Rules do not envisage that the Drivers will be offered the appointment on contract basis.

11. It is now settled by the Constitution Bench judgment of the Hon'ble Supreme Court in **Tej Prakash Pathak and others vs. Rajasthan High Court and others**

(2025) 2 SCC 1 that the Rules of the game cannot be changed in mid-way and the recruitment process commences from the issuance of the advertisement calling for applications and ends with filling up of vacancies. No doubt, respondent No.2 used to receive the grant from the State Government to meet its expenses and also bound to follow the norms fixed by the State Government, but the same has to be followed in case the same are incorporated in the R&P Rules. Once the R&P Rules do not provide offering appointment to the posts of Drivers on contract basis, the action on the part of respondent No.2-University to offer the appointment to the petitioners on contract basis is wrong and as such is not sustainable in the eyes of law.

12. Learned counsel representing respondent No.2-University has vehemently argued that the petitioners have approached this Court in the year 2012, whereas their appointment was made in the year 2006 and thus the relief claimed by them is hit by the principle of delay and laches. The said contention cannot be accepted for the reason that the petitioners are being paid less amount of salary every month due to the fact that they were offered appointment on contract basis and thus the cause of action is recurring one

and at the most they can be denied the benefits from the initial date of appointment, but their claim cannot be rejected, more particularly, when the R&P Rules under which the petitioners were appointed do not prescribe that the appointments had to be made on contract basis.

13. The Hon'ble Supreme Court in **Union of India v. Tarsem Singh (2008) 8 SCC 648** has held that the claim with respect to re-fixation of pay or pension may be granted in spite of delay as it does not affect the rights of others, but while granting the consequential benefits like financial benefits, the same can be restricted. The relevant para 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, the principles relating to recurring/successive wrongs will apply. As a consequence, 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. Learned counsel representing respondent No.2-University has further vehemently argued that once there were instructions in place as issued by the State Government, which were prior to offering the appointment to the petitioners, clearly mentioning that the appointment henceforth has to be made on contract basis, respondent No.2-University has not committed any illegality. However, the said contention cannot be accepted, keeping in view the judgment of the Hon’ble Supreme Court in **P. Mohanan Pillai vs. State of Kerala and others (2007) 9 SCC 497**, wherein it has been held that the ordinarily Rules which were prevailing

at the time, when the vacancies arose would be adhered to. Admittedly, in the present case, when the circular for filling up the posts was issued, there was nothing in the said circular that the posts were to be filled up on contract basis. The view taken by the Hon'ble Supreme Court in the *ibid* judgment has again been reiterated in the **State of Bihar and others vs. Mithilesh Kumar (2010) 13 SCC 467** and the Division Bench of this Court has considered the aforementioned judgments in CWPOA No.5847 of 2020, titled, **Atul Tomar vs. H.P. State Cooperative Marketing and Consumer Federation Ltd.** and held that services of the petitioners were to be taken on regular basis since the R&P Rules do not provide to offer appointment on contract basis. The relevant paras of the judgment read as under:-

“28. In LPA No. 21 of 2013, titled as State of H.P. Vs. Ravinder Kumar, referring judgment passed in CWP No. 1811 of 2008, Dev Raj Vs. State of H.P., it has been observed that services of the petitioners were required to be taken over in terms of Recruitment and Promotion Rules, which were in existence on the date of taking over of the College i.e. 6.2.2007, as on that date Recruitment and Promotion Rules did not provide for contractual appointment, but only provide for regular recruitment and clause providing appointment on contract basis was inserted by amendment of Rules on 20.9.2010,

subsequent to taking over of services, and, therefore, petitioners were held entitled for regular appointment as amendment of Rules cannot be retrospectively applied to the petitioners.

29. In Vikram Singh's case, Division Bench of this Court, referring decision in LPA No. 21 of 2013, State of H.P. Vs. Ravinder Kumar, has observed that petitioners were entitled to claim appointment on regular basis, who were appointed on contract basis, w.e.f. their initial date of appointment as per Recruitment and Promotion Rules existing at relevant point of time, because recruitment had been made in accordance with Recruitment and Promotion Rules and after duly advertising the post.

30. The judgment in Vikram Singh's case was assailed in the Supreme Court by filing SLP(C) No. 5806 of 2024, which has been dismissed by the Supreme Court."

15. Admittedly, in the present case too, the R&P Rules do not provide to offer appointment to the petitioners as Drivers on contract basis and thus, the action on the part respondent No.2-University to offer them appointment on contract basis is bad and dehors the provisions contained in the R&P Rules and as such, the action on the part of respondent No.2-University is not sustainable in the eyes of law and hence, the petition filed by the petitioners deserves to be allowed. However, it is made clear that the petitioners shall be entitled to the monetary benefits only from the date of filing of the petition.

16. Consequently, the present petition is allowed and the respondents are directed to consider the petitioners as regular Drivers (LV), from the date of their initial appointment in the month of May, 2006. The petitioners are held entitled to the benefits such as seniority, increments, promotion and other consequential benefits, except the monetary benefits which shall be paid to them from the date of institution of the present petition. In case, the respondents do not pay the arrears to the petitioners within three months from today, they shall be paid the same along with interest @6% per annum from today till actual payment to them.

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

17th August, 2026
(naveen)

(Jiya Lal Bhardwaj)
Judge