

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.2898 of 2019
Decided on: 22.09.2026

S.M. Chauhan

...Petitioner

Versus

State of Himachal Pradesh and others

...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

*Whether approved for reporting?*¹

For the petitioner : Mr. Sunil Mohan Goel, Senior Advocate with Mr. Raman Jamalta, Advocate.

For the respondents: Mr. Anup Rattan, Advocate General and Mr. Balvinder Singh Ballu, Deputy Advocate General, for respondents No.1 to 3.

None for respondent No.4.

Jiya Lal Bhardwaj, Judge (Oral)

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

- "a. That this Hon'ble Court may be pleased to issue a writ of Certiorari impugned orders dated 20.9.2013 Annexure P 12 and Office Order dated 25-09-2013 Annexure P 14 and all actions taken thereupon by the Respondents.
- b. That the Respondents be directed to remove the anomaly in the pay scale of Law Officer and grant the pay scale of Rs.2200-4000 (pre-revised) and Rs.7200-10680 (revised) w.e.f. 1-1-1996, to Law

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

Officers so that the promotional avenues are kept intact, anomaly is settled and the objection raised by the Audit is met and to avoid any financial hardship to the petitioner/Law Officers. ”

2. Shorn of unnecessary details, the key facts as emerge from the pleadings are that the petitioner was appointed as Legal Assistant with the respondent-Department on 15.07.1988. Thereafter, he had gone on deputation as Law Officer with the Shimla Development Authority, where he joined on 17.11.1992 and worked there till 14.12.1998. When the petitioner had joined with the respondent-Department as Legal Assistant, there were five posts, out of which three posts were filled in by promotion from the feeder category of Superintendent Grade-IV and one by direct recruitment from Himachal Pradesh Public Service Commission in the pay scale of Rs.800-1400 (Class-III non Gazetted). The petitioner was appointed as direct recruit. In order to provide promotional avenues to the Legal Assistants, the respondents-Department had upgraded two posts of Law Officer in the pay scale of Rs.825-1580/- (Class-II Gazetted). Later on the State Government had revised the pay scale of its employees during the year 1990 w.e.f. 01.01.1988 and the pay scale of Legal Assistant was

revised from Rs.800-1400/- to Rs.1800-3200/- and the pay scale of Law Officers was revised from Rs.825-1580/- to Rs.2000-3500/-. The petitioner while posted on deputation on the post of Law Officer was granted the pay scale of Rs.2000-3500/-

3. The respondent-Department had revised the pay scale of the Law Assistants, who were promoted from the post of Superintendent Grade-IV, to Rs.2000-3500/-, but the petitioner who was directly appointed to the post of Legal Assistant, he was only granted the pay scale of Rs.1800-3200/- and he feeling aggrieved by the said action had approached the erstwhile Himachal Pradesh State Administrative Tribunal (in short 'the Tribunal') by way of O.A. No.2020 of 2007, to grant him the pay scale of Rs.2000-3500/-, which original application was transferred to this Court and was registered as CWP(T) No. 4657 of 2008, titled, **S.M.Chauhan versus State of H.P. and others** and this Court had allowed the said petition on 10.12.2009, when the respondents were directed to place the petitioner in the pay scale of Rs.2000-3500/- w.e.f. the date when the other Legal Assistants were granted the said scale in the Public Works Department. In sequel to the said

direction given by this Court, the respondents had issued an office order dated 03.12.2010 (Annexure P-10), when the pay scale of Rs.2000-3500/- was granted to him and further he was also granted the increments on the basis of the said pay scale. However, later on an audit objection was raised regarding pay fixation of the petitioner. The petitioner was issued a notice dated 06.09.2013 (Annexure P-11) to hear him before his pay is re-fixed and the matter was fixed on 12.09.2013. The petitioner attended the office of respondent No.3 and submitted that until the reply of audit para, submitted vide letter dated 24.11.2009 is received, his pay may not be re-fixed. Respondent No.3 vide communication dated 20.09.2013 (Annexure P-12), had conveyed the Principal Accountant General, Audit, Himachal Pradesh (respondent No.4) to re-examine the matter and report the decision. It was also submitted that since the petitioner is retiring on 31.10.2013, the reply submitted by the office vide letters dated 24.11.2009 and 29.07.2011 be considered and necessary action be taken in the matter.

4. Thereafter, as per office order dated 21.09.2013/ 25.09.2013(Annexure P-14), the pay of the petitioner was re-fixed and the benefit of Assured Career Progression

Scheme (in short ACP) earlier granted after 8 years' service under FR22(1)(a)(i) has been deleted on the ground that the same is not applicable in view of the clarification conveyed vide F.D. letter Fin(C)(3)(7)-6/88-II dated 06-04-1990 as the officer remained in ex cadre post in higher pay scale of Rs.2200-4000/- w.e.f. 17.11.1992 to 14.12.1998 i.e. 6 years 28 days, therefore, this period is to be excluded for the purpose.

5. The petitioner, feeling aggrieved by the refixation of his pay scale and not extending him the benefit of proficiency increments of the period when he had remained on deputation, has approached this Court *inter alia* on the ground that the action on the part of the respondents is arbitrary inasmuch as the benefit, which was given to him for the last more than 15 years, has been withdrawn without affording sufficient opportunity of being heard. There is no justifiable reason assigned while lowering down the pay scale of the petitioner. Respondent No.2, instead of pursuing the matter with the Audit Department regarding the settlement of the audit para and removing the anomaly in the pay scale, has passed the impugned order dated 21.09.2013/25.09.2013. The post of Law Officer was created

to provide promotional avenues to the category of Legal Assistants and since the post of Law Officer is carrying higher duties and responsibilities and further was a Gazetted Class-II post, the petitioner was entitled to the higher pre-revised pay scale. The impugned orders have been passed without application of mind and further the respondents have granted the benefit of FR22(i)(a)(i) to the predecessor of the petitioner, who was promoted during the year 1992 from the post of Legal Assistant to the part of Law Officer from the scale of Rs.2000-3500/- to Rs.2000-3500/- as the Finance Department had granted the pay scale to him as Legal Assistant and, therefore, such benefit cannot be denied to the petitioner and thus, prayed for quashing the impugned orders and further seeking direction to the respondents to remove the anomaly in the pay scale of Law Officer and grant the pay scale of Rs. 2200-4000/- (pre-revised) and Rs.7220-10680/- (revised) w.e.f. 01.01.1996.

6. Respondents No.1 to 3 filed reply to the petition and in preliminary submissions averred that the proficiency increment was inadvertently given to the petitioner w.e.f. 16.07.1996 vide office order dated 16.03.2007, which was

against the rules and instructions issued by the Finance Department dated 14.06.1989, for sanction of additional increment by way of proficiency step-up, on completion of 8 and 18 years of service against a post. The petitioner was appointed with the respondents-Department on 15.07.1988 as Legal Assistant. In 1992 he applied for serving on deputation with the then Shimla Development Authority on ex-cadre post of Law Officer. His services were placed on deputation with the then Shimla Development Authority, where he joined on 17.11.1992 and continued to work as such up to 14.12.1998. After, joining the then Shimla Development Authority, the pay of the petitioner was fixed under FR-22, where he gained financial enhancement in his pay scale from 17.11.1992. The petitioner was promoted as Law Officer by the respondents-Department on regular basis in the same pay scale, who joined on 15.12.1998. Since the petitioner had gained financial enhancement in his basic pay by getting his pay fixed under FR-22 from 17.11.1992 till 14.12.1998 in the then Shimla Development Authority, therefore, in view of the condition No(s). 7(a) to (c) and 8 of the Government instructions dated 14.06.1989, the period rendered on the ex-cadre post in the then Shimla

Development Authority from 17.11.1992 to 14.12.1998 shall have to be excluded for the purposes of calculating eight years of service on the same post in the cadre for grant of proficiency increment. The petitioner was promoted as Law Officer in the same/identical pay scale and hence, his cadre was changed. The petitioner had worked in the same/identical pay scale from 15.07.1988 to 16.11.1992 as Legal Assistant and from 15.12.1998 to 11.08.2002 as Law Officer. As such, both these periods were considered for the purpose of calculating eight years of service and for granting proficiency increment. Accordingly, while re-fixing the pay of the petitioner in compliance with the judgment dated 10.12.2009, passed by this Court and in compliance with the instructions of the Finance Department dated 14.06.1989, the petitioner was granted proficiency increment w.e.f. 12.08.2002 instead of 16.07.1996, by the respondent No.3 vide office order dated 25.09.2013, thereby rectifying the mistake committed earlier while inadvertently allowing proficiency increment w.e.f. 16.07.1996.

7. It has further been averred that the audit party deputed from the office of respondent No.4 had raised an

audit para/objection with regard to the pay fixation of the petitioner in its audit report of 2008-09 on account of granting proficiency increment w.e.f. 16.07.1996 and benefit under FR 22(1)(a)(i) on promotion in the same identical pay scale, whereas it was incumbent upon the petitioner to point out the wrong pay fixation. The petitioner remained silent and this amounted to misrepresentation. The action of granting proficiency increment w.e.f. 16.07.1996, against the rules and instructions of the Government, was without any authority of law. It has been held by the Hon'ble Supreme Court that any amount of public money which is often described as tax payers money is paid/received without authority of law can always be recovered as law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment. On the basis of the aforesaid submissions, the respondents have prayed for dismissal of the petition.

8. The petitioner has filed rejoinder to the reply and controverted the averments made therein.

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

10. The dispute raised in the present petition is in

narrow compass. The petitioner had filed an original application seeking grant of pay scale of Rs.2000-3500/-, with effect from the date when other Legal Assistants were granted and the said original application preferred by him, came to be transferred to this Court was allowed on 10.12.2009, wherein a direction was given to the respondents to grant him the pay scale of Rs.2000-3500/-, which had been granted to other Legal Assistants, however, the actual monetary benefits were ordered to be paid to him from 24.10.1994 onwards. In sequel to the directions issued by this Court, the respondents had passed an office order on 03.12.2010 (Annexure P-10) whereby the petitioner was granted the benefit of proficiency increment taking into account the entire service rendered by him with the respondents as well as well as in the Shimla Development Authority. However, later on, on the basis of the audit para, the petitioner was denied the benefit of proficiency increment only for the reason that the period spent by him with the Shimla Development Authority cannot be considered for grant of benefit in view of the conditions postulated in the instructions issued by the Finance Department, Government of Himachal Pradesh, contained in

letter dated 14.02.1989. It is relevant to quote the conditions No.7(a) to 7(d) and 8 of the said instructions which reads as under:-

“7) For reckoning the period of 8 and 18 years on the date of award of prop increment:

a) Entire service in the time scale and senior scale or more placements (not involving fixation of pay at higher level) in one cadre shall be counted.

In case pay in senior scale is fixed at the minimum, whereby one gets benefit of one or more increments, period of 8 years or 18 years shall be reckoned from the date of placement in the senior scale.

b) Period of service rendered against a cadre in the same time scale will be counted. If, however, selection grade has been awarded, the period will be reckoned from the date of award of selection grade, as it involves fixation of pay at higher stage.

c) Period of service rendered against an ex-cadre post will also be taken into account for reckoning the period of 8 or 18 years for the grant of proficiency increment. (substituted vide letter No. Fin(C)B(7)-6/88 dated 18th August, 1989.)

d) If two time scales of two cadres comprising of feeder posts and promotional posts have been merged into a single revised scale of pay, service rendered against the time scale of the feeder cadre post and revised pay scale of two cadres shall be taken into account, subject to the condition as stipulated under para-7 (a) above.

8) An employee will be eligible to proficiency increment (s) only if he has not gained any enhancement in his basic pay, except by way of annual increments and fixation of pay as a result of revision of pay scales from time to time, during preceding eight years for first prop-

increment, and 18 years for second prop-increment as on the date from which prop increment is given."

11. As per the reply filed by the respondents, the petitioner has been denied the benefit of proficiency increment, only for the reason that pay of the petitioner was fixed under FR 22 in Shimla Development Authority, where he gained financial enhancement in his basic pay from 17.11.1992 and thus, the period of service rendered by him with the Shimla Development Authority w.e.f. 17.11.1992 to 14.12.1998 is to be excluded. However, the said contention cannot be accepted for the reason that the petitioner, who was serving on deputation, had joined the parent Department on 15.12.1998 and when he was promoted to the post of Law Officer, there was no change in the pay scale and, therefore, the benefit of the proficiency increment cannot be denied to the petitioner, only for the reason that while serving in the Shimla Development Authority, he was fixed under FR 22, where he gained financial enhancement as per the instructions issued by the State Government. The entire service in the time scale and senior scale, in one cadre shall be counted, in case the pay in senior scale is fixed at the minimum, whereby one gets

benefit of one or more increments period of eight years or 18 years, and thus the action on the part of the respondents in denying the benefit to the petitioner under FR 22 (i) (a) (i) is totally illegal and thus the order dated 21/25.12.2013 (Annexure P-14), is unsustainable in the eyes of law.

12. The petitioner after his promotion to the post of Law Officer was granted the same scale as was granted to him while posted as Legal Assistant. It is also not disputed by the respondents that the petitioner was promoted to the post of Law Officer vide order dated 14.12.1998. The post of Law Officer carries increased duties, responsibilities and authority accompanied by an elevation in status and designation. But the petitioner was not granted any benefit, thus he is entitled to count the entire period of service rendered by him even while working with the Shimla Development Authority. The respondents have not disputed that in case of another employee namely Sh. O.P. Sharma, the benefit of FR 22(1)(a)(i) was given, but it has been said that if it has committed an error/mistake, it does not imply under any circumstance that the respondents should continue it. However, that submission cannot be accepted. The petitioner, who is similarly situate is also entitled to

proficiency increment by counting the entire service rendered by him since after his promotion to the post of Law Officer, he was granted the same pay scale.

13. So far as the recovery part is concerned, the respondents had granted the benefit to the petitioner of proficiency increment, which was granted to him after the direction given by this Court, when he was placed in the pay scale of Rs.2000-3500/- as per office order dated 03.12.2010 and later on, the said benefit could not have been withdrawn simply on the basis of the audit para, as per the communication dated 06.09.2013 (Annexure P-11), more particularly when the petitioner, on the date of hearing had also submitted that until the reply of audit para submitted vide office letter dated 24.11.2009 is received, his pay may not be refixed. However, despite that the respondents had issued the impugned orders and the pay of the petitioner was refixed, denying him the proficiency increment, ignoring the service rendered by him with the Shimla Development Authority. As already observed above, once the petitioner was granted the same pay scale, he is at least entitled to the proficiency increment taking into account the entire service rendered by him and the non

granting of the same is arbitrary and discriminatory. The entire action of the respondents in denying the proficiency increment to the petitioner from the earlier date, as was granted to him while passing order on 03.12.2010, is based on the fact that the period with effect from 17.11.1992 to 14.12.1998 cannot be considered, since the petitioner was fixed under FR 22, where he had gained financial enhancement in his basic pay, which is totally erroneous and unsustainable.

14. The respondents had filed the compliance affidavit in terms of the order passed by this Court on 09.04.2025, wherein it was admitted by them that the leave encashment amounting to Rs.6,70,130/- has been withheld and as per their own calculation only a sum of Rs.3,77,287/- was required to be recovered from him. Since the respondents themselves had admitted that only an amount of Rs.3,77,287/- was to be recovered from the petitioner as per the audit para, there was no justification in retaining the rest of the amount and thus, the petitioner is held entitled to the interest on the entire amount, which has been withheld by the respondents.

15. Consequently, the present petition is allowed and

the impugned order dated 20.09.2013 (Annexure P-12) and office order dated 21/25.09.2013 (Annexure P-14), are quashed and set aside and the respondents are directed to grant the proficiency increment to the petitioner, as was done by passing the order dated 03.12.2010 (Annexure P-10) and release him all the benefits along with interest @ 6% per annum from the due date till actual payment. However, there shall be no order as to costs. Pending applications, if any, also stand disposed of.

22nd September, 2026

(Anurag)

**(Jiya Lal Bhardwaj)
Judge**