

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWPOA No.3100 of 2019

Decided on: 19.09.2026

Satya Devi

.....Petitioner

Versus

State of Himachal Pradesh and others

....Respondents

Coram

Hon'ble Mr. Justice Ranjan Sharma, Judge

¹ *Whether approved for reporting? Yes*

For the petitioner: Mr. Dixit Sahotra and Ms. Anamika Negi, Advocates, appearing as vice counsel.

For the respondents: Mr. Varun Chandel, Additional Advocate General.

Ranjan Sharma, Judge

Petitioner-Satya Devi, being the widow of Late Shri Hardeshwar Singh, has filed instant writ petition i.e. CWP No.8402 of 2014 before this Court and upon establishment of State Administrative Tribunal, the matter was transferred to the said Tribunal and now upon its abolition, the same has been re-transferred to this Court as CWPOA No.3100 of 2019, seeking the following reliefs:-

“14 (i) That the respondents may kindly be directed to issue retrospective regularization order of the husband of the petitioner from the dated 01-4-1998.

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

- (ii) That respondent may kindly be directed to release arrears of pay and allowances for the period of 01-04-1998 to 27-06-1998 and all other consequential service benefits occurred due to regularization.”

FACTUAL MATRIX:

2. Case as set up is that petitioner's husband, Late Shri Hardeshwar Singh, was engaged as *Beldar* in 1989 on daily wage basis, in Irrigation & Public Health [IPH] Division Chamba, Himachal Pradesh and he has rendered continuous daily wage service with 240 days in each calendar year as per Muster Roll [Annexure P-1] but her husband was not regularized by the Respondent-Department. It is averred that her husband died on 27.06.1998, without being regularized by the Respondents. It is averred that the petitioner is an illiterate and she approached the Local Committee of All India Trade Union in 2012 for granting benefit of regularization and other consequential benefits and in view of this, a meagre amount of gratuity was released to her on 13.03.2013 [Annexure P-2]. It is averred that, in case, her husband is given the benefit of regularization as has been given to other similar persons including juniors, then, the petitioner being the widow, shall become entitled for admissible retiral benefits i.e. Leave

Encashment, Gratuity, Arrears of pay and admissible retiral benefits, including Family Pension etc. and the same may be released to the petitioner. In this background, petitioner has prayed for granting regularization to her Late husband, Shri Hardeshwar Singh from the date of completion of 9 years of continuous daily wage service on the analogy on which, the similar and junior incumbents with all consequential benefits.

STAND OF STATE AUTHORITIES:

3. Upon issuance of notice on 28.11.2014, the State Authorities were directed to file Reply. Resultantly, State Authorities filed the Reply-Affidavit dated 31.01.2015 of Superintending Engineer, I&PH Circle Chamba.

3(i). Perusal of the Reply-Affidavit admits that petitioner's husband, Late Shri Hardeshwar Singh was engaged in January 1989 by Executive Engineer, I&PH Division Chamba and he had rendered 9 years of continuous daily waged service with 240 days from 1989 to 1998 and he expired on 27.06.1998. Alongwith Reply-Affidavit, the Respondents have enclosed an Office Order dated 13.03.2013 [*Annexure RA-1*], which reveal incumbency of the petitioner's husband.

3(ii). Reply-Affidavit indicates that though the husband of the petitioner had worked for more than 9 years on daily wage basis with 240 days from January 1989 to 1998 vis-à-vis requirement of 10 years on daily wage service therefore, the petitioner did not fulfill the criteria of law as declared in the case of ***Mool Raj Upadhyaya versus State of H.P. and others, 1994 Supp (2) SCC 316***, and was not entitled for regularization or work charge status [as the case may be]. Reply-Affidavit indicates that the petitioner being legal heir was granted Gratuity as per *Annexure RA-1*. It is in this background, a claim has been opposed by the State Authorities.

REBUTTAL BY PETITIONER:

4. Petitioner filed a rejoinder stating that *Annexure R-3* with rejoinder indicates that incumbents who were *engaged as Beldar* on daily wage basis in the same Division i.e. I&PH Division Chamba and were figuring at Serial Nos.1 to 17 being similarly placed, were granted regularization, upon completion of nine years of daily wage service w.e.f. 01.04.1998. *Annexure R-3* further indicates that junior incumbents, namely, Puran Chand; Parbhati Ram; Jago Ram; Hukmi Ram; Sahab Singh; Paras

Ram; Nisha; Chain Singh; Hari Singh; Jagdish Chand; SohanLal; Chander Kanta; Sher Singh; Thunia Ram; Tilak Raj; Jai Singh; Mahachho Ram; Makholi Ram and Sufal Ram, who were figuring at Serial Nos.18 to 36, being junior to the petitioner's husband, Late Shri Hardeshwar Singh, in daily wage incumbency, were also regularized, on completion of 9 years of continuous daily wage service w.e.f. 01.04.1998. In this backdrop, the claim in the writ petition has been reiterated.

5. Heard, Mr. Dixit Sahotra and Ms. Anamika Negi, Advocates, appearing as vice counsel for the petitioner and Mr. Varun Chandel, Learned Additional Advocate General, for the respondent.

ANALYSIS:

6. Keeping in view the entirety of facts and circumstances and the material on record, this Court is of the considered view, that claim of the present petitioner for considering her husband, Late Shri Hardeshwar Singh, for regularization from the date similar and junior incumbents-daily wagers of the same Division were regularized w.e.f. 01.04.1998, upon completion of 9 years of continuous daily wage service ***is accepted, for the***

following reasons:-

**CLAIM FOR CONSIDERATION AND REGULARIZATION
POSTHUMOUSLY UNDER 9 YEARS' POLICY TENABLE:**

6(i). Perusal of the Writ Petition and the Rejoinder indicates that the claim of the petitioner is for regularization of her husband, Late Shri Hardeshwar Singh, who had admittedly rendered 9 years of continuous daily wage service from January 1989 till 01.04.1998, as required under the Policy. Petitioner's husband, Late Shri Hardeshwar Singh, continued beyond 01.04.1998 till his death on 27.06.1998. The State Authorities notified a policy on 23.09.1998 *[Taken on Record]* outlining the eligibility and a right for consideration from the date of completion of 9 years of continuous daily wage service as on 31.03.1998 w.e.f. 01.04.1998 and based on such policy, once a right of consideration had accrued to petitioner's husband, Late Shri Hardeshwar Singh, for regularization, then, merely because, the petitioner's husband remained as a daily wager till his death on 27.06.1998, then, the accrual of a right w.e.f. 01.04.1998 cannot be a ground to deny or scuttle the fundamental right of consideration, even though posthumously, in view

of the fact that similar and even junior 36 incumbents as per *Annexure R-3* were granted regularization after 9 years' service as daily wagers w.e.f. 01.04.1998. Mere factum of death of the petitioner's Late Husband, Shri Hardeshwar Singh shall not come in the way of the present petitioner from seeking benefit of posthumous consideration and regularization for her Late Husband w.e.f. 01.04.1998, in view of the principle mandated by the Hon'ble Division Bench of this Court, in the case of ***Shakuntla Devi versus State of H.P. and others, Indian Law Reports 1987 (16) 601***, whereby, in a similar fact-situation, the direction for consideration and resultant posthumous regularization, was accorded to the deceased employee therein, with resultant admissible benefits, *in following terms:-*

- “4. It is not in dispute that if the deceased husband of the petitioner had been regularised prior to his death, the pensionary benefits would have been admissible in the case. **Non-regularisation in his case was an event over which he had no control** and a consequence which was not of his own making. In conformity with the constitutional obligation, it was incumbent on the State Government to have taken timely and

affirmative steps to regularise his services and, if necessary, to have created even a supernumerary post in order to achieve the purpose, especially when the work load justified his continuous employment for a period of al-most three decades. **Since he is dead, his regularisation now would involve only a paper exercise. But the State still owes a duty of taking remedial measures in accordance with law without undue delay in order to give posthumous justice to him and, to secure to his dependents the right to monetary benefits** so that they can have adequate means of livelihood.

6. For the foregoing reasons, it appears expedient in the interest of justice to direct the State Government to consider in accordance with law and in conformity with the principles of equity, justice and good conscience and in light of the observations hereinabove made the question of **granting to the de-ceased husband of the petitioner the benefit of ex post facto regularisation of services and to work out and grant all the monetary benefits including the pensionary benefits due and admissible** in accordance with law to the petitioner. Compliance to be reported on or before February 29, 1988.”

DENIAL OF CONSIDERATION WHEN SIMILAR AND JUNIORS REGULARIZED W.E.F. 01.04.1998:

- 6(ii).** Non-consideration of the case for regularization w.e.f. 01.04.1998 due to departmental inaction or delays

cannot be a ground, for denying the fundamental right of consideration vis-à-vis similar incumbents and junior incumbents as *Annexure R-3*, who were regularized from the date of completion of 9 years continuous daily wage service w.e.f. 01.04.1998. In these circumstances, this Court upholds the fundamental right of consideration of the petitioner's husband, Late Shri Hardeshwar Singh, for regularization w.e.f. 01.04.1998 for having rendered continuous daily wage service of 9 years as on 31.03.1998 *[which is not in dispute]* as *Beldar* from the date from which about 36 similar and junior incumbents as in *Annexure R-3* were regularized w.e.f. 01.04.1998 by the State Authorities, so as to entitle the petitioner's late husband of the monetary benefits accruing from such regularization and then, the resultant retiral benefits, including Family Pension to the petitioner-widow.

**OBJECTION REGARDING DELAY AND LACHES BY
LEARNED STATE COUNSEL:**

6(iii). *During the course of hearing, Learned State Counsel has raised an objection regarding delay and laches and by contending that the claim was time-barred.*

The above contention of Learned State Counsel

speaks volumes of inaction by the State Authorities, firstly, for the reason, that a perusal of Writ Petition and Rejoinder indicates that the petitioner has claimed benefit of consideration and regularization of her late husband, Shri Hardeshwar Singh from the date of completion of 9 years of continuous daily wage service and the Respondents have admitted that the deceased employee had rendered the requisite service at par with similar and junior 36 daily wagers w.e.f. 01.04.1998 as in *Annexure R-3*; and secondly, the State Authorities without dispelling the claim with respect to eligibility and entitlement on completion of 9 years of continuous daily wage service have taken a contrary stand that the claim of the petitioner was not tenable, in view of the principle contained in the judgment in the case of ***Mool Raj Upadhyaya [supra]***; and thirdly, the plea for denying benefits on the basis of the mandate in the case of ***Mool Raj Upadhyaya [supra]*** is vitiated the non-application of mind and is perverse and unsustainable, as the judgment in aforesaid case related to grant of work charge status to a daily wager from the date of completion of 10 years of continuous daily wage service, which is neither the fact-situation nor the claim in

the instant case; *and fourthly*, the plea with respect to delay and laches appears to be wholly untenable, *for the reason*, that once the State Authorities have granted the benefit of regularization w.e.f. 01.04.1998 to 36 daily wagers as in *Annexure R-3*, out of whom 17 incumbents were similarly placed and 18 incumbents were junior to the petitioner's husband and all of them were regularized upon completion of 9 years continuous daily wage service as on 31.03.1998 by granting regularization w.e.f. 01.04.1998, *whereas*, the State Authorities having failed to consider the case of petitioner's husband, Late Shri Hardeshwar Singh w.e.f. 01.04.1998, even though posthumously; then the action of the State Authorities reveals hostile discrimination and manifest unreasonableness, just to deprive her late husband, Shri Hardeshwar Singh of legal entitlements due to him in normal course and the resultant benefits to the petitioner-widow; *and fifthly*, the petitioner being an illiterate lady had sought intervention through All India Trade Union but despite this, the State Authorities slept over the matter by not considering the claim of petitioner's husband, Late Shri Hardeshwar Singh for regularization w.e.f. 01.04.1998 i.e. the date from which similar and junior

daily wagers were regularized as per *Annexure R-3* amounts to treating “*equals as unequal*”, which defeats the core principle of Article 14 of the Constitution of India; *and lastly*, granting consideration and resultant regularization to petitioners’ husband w.e.f. 01.04.1998 shall entitled the petitioner-widow for Family Pension from the date of death of her husband w.e.f. 27.06.1998 and the denial of social measure Family Pension is a recurring loss every month till day and therefore, in these circumstances, contention of Learned State Counsel is misconceived and is turned down.

PLEA BY STATE COUNSEL FOR DENYING FAMILY PENSION UNTENABLE:

6(iv). Learned State Counsel has made an attempt to deny the claim of Family Pension to the petitioner-widow, on the ground that claim is belated, and on the ground that the Family Pension cannot be granted to the petitioner-widow as her husband died while on daily wage basis and without being appointed as a temporary employee/regular and without medical fitness.

The above plea is unsustainable, *for the reason*, that despite the eligibility of petitioner’s husband, Late Shri Hardeshwar Singh for regularization w.e.f. 01.04.1998,

the State Authorities slept over the matter and without considering the case of deceased employee for regularization posthumously, in terms of the judgment in the case of ***Shakuntla Devi [supra]***, at par with juniors; and the rightful legal entitlements admissible to her husband and the consideration of claim of petitioner, being the widow for Family Pension was blatantly denied/taken away.

6(iv-a). The contention of Learned State Counsel that the petitioner is a fence-sitter, cannot be attracted in the facts of instant case, rather, the principle of fence-sitter is invokable against the State Authorities also. State Authorities should act like a model employer. Inaction or lethargy and indolent attitude of the State, cannot be a ground to deprive the deceased employee of benefit of regularization, posthumously from 01.04.1998, as given to similar and junior 36 daily wagers. The claim for rightful entitlements to the petitioner-widow like Gratuity, Leave Encashment etc. and the admissible Family Pension, in terms of Rule 54 of the Central Civil Services [Pension] Rules, 1972, family pension is admissible to family member(s) of deceased employee having died after rendering less than one year of service.

6(iv-b). Plea of Learned State Counsel that as per Rule 54 of CCS [Pension] Rules, 1972, the Family Pension cannot be accorded, *for the reason*, that petitioner's husband, Late Shri Hardeshwar Singh died as a daily wager and was not regularized w.e.f. 01.04.1998 and he has not undergone medical fitness, which is pre-requisite for Family Pension under the Rule.

This contention is of no assistance to Learned State Counsel, *for the reason*, that provision of Rule 54 of CCS [Pension] Rules entitles the eligible family member(s) of deceased employee for Family Pension, who undergo medical fitness and who die within one year of service, in normal circumstances, *whereas*, the said Rule in *strict sensu* cannot be applied in facts of instant case, where the consideration and regularization was due to the petitioner's husband w.e.f. 01.04.1998 but before the actual conferment of regularization of petitioner's husband, Late Shri Hardeshwar Singh, died on 27.06.1998. In these circumstances, this Court negates the contention of Learned State Counsel and upholds the right of the present petitioner [*Smt. Satya Devi*] being the widow, to be considered for grant of Family Pension to the petitioner

w.e.f. 27.06.1998 as per Rule 54 (2) (ii) read with Rule 54 (6) (i) and Rule 54 (14) (a) & (B) read with Rule 83 (2) of CCS (Pension) Rules, 1972 read with Rule 88 [in case, the State Authorities, feel it necessary to invoke the relaxation under said Rule Rules], so as to obviate the “undue hardship” to the petitioner. The claim for Family Pension is upheld in instant case and the admissibility/ release of Family Pension, if any, gives rise to a recurring cause of action to the present petitioner.

ADMISSIBILITY OF CONSEQUENTIAL BENEFITS:

6(v). Material on record indicates that petitioner’s husband, Late Shri Hardeshwar Singh, had rendered 9 years of continuous daily wage service from January 1989 to 31.03.1998 and even thereafter till death on 27.06.1998 about 36 similar and junior daily wagers as per *Annexure R-3*, were granted regularization w.e.f. 01.04.1998, despite the entitlement for retrospective regularization of petitioner’s late husband, Shri Hardeshwar Singh, as per mandate in case of ***Shakuntla Devi [supra]***, coupled with the fact that once similar and junior incumbents were regularized, therefore, this Court upholds the claim and fundamental right of consideration and regularization

of Late Shri Hardeshwar Singh, posthumously w.e.f. 01.04.1998. After grant of posthumous regularization as *Beldar [Class-IV]* from 01.04.1998, the present petitioner, being the widow, shall be entitled for Leave Encashment, Gratuity etc. due w.e.f. 01.04.1998 till the date of death of her husband on 27.06.1998. Upon grant of regularization to her husband, the present petitioner, being the widow, deserves to be considered and granted the Family Pension from the date of death of her husband w.e.f. 27.06.1998, on “notional basis”. Since the present petition was filed by the petitioner, who is illiterate and after seeking intervention, through All India Trade Union, past-benefits were released in 2013 [*Annexure P-2*] coupled with the fact that the claim for Family Pension, is based on a recurring cause since 27.06.1998 till the filing of instant petition on 28.10.2014 and even till today; therefore, the petitioner is held entitled for Family Pension notionally from the date of death w.e.f. 27.06.1998, but actual monetary benefits shall accrue to the present petitioner from the date of filing of instant petition on 28.10.2014 and thereafter.

DIRECTIONS:

7. In view of above discussion and for the

reasons recorded hereinabove, the instant petition is ***allowed, in the following terms:-***

- (i) State Authorities shall consider and upon consideration to grant regularization to the petitioner's husband Late Shri Hardeshwar Singh as *Beldar [Class-IV]* posthumously, w.e.f. 01.04.1998 i.e. the date from which, similar and junior incumbents as per *Annexure R-3*, were regularized, in terms of the mandate of law in the case of ***Shakuntla Devi [supra]***;
- (ii) Upon regularization, the State Authorities shall release the admissible service benefits to the deceased employee, Late Shri Hardeshwar Singh, for the period from 01.04.1998 till his death on 27.06.1998 as regular employee;
- (iii) State Authorities shall consider the case of present petitioner for grant of Family Pension w.e.f. 27.06.1998 from the date of death of her husband/employee, Late Shri Hardeshwar Singh, in accordance with Rule 54 of CCS [Pension] Rules, 1972 read with Rule 88 [if regularization becomes necessary], without insisting for medical fitness, being an impossible act;
- (iv) Upon finding the present petitioner to be eligible for Family Pension [in view of observations made in this judgment]; State Authorities shall release the admissible Family Pension to the petitioner w.e.f.

27.06.1998 “notionally” and actual basis from the date of filing of instant writ petition on 28.10.2014 and thereafter with all consequential benefits;

- (v) Sequel to Directions (i) to (iv) above, State Authorities shall process the case and release the admissible-eligible benefits in aforesaid terms on or before **30.11.2026**; and

- (vi) Parties to bear their own costs.

In the aforesaid terms, the instant petition stands disposed alongwith all pending miscellaneous application(s), if any.

(Ranjan Sharma)
Judge

September 19, 2026
[Bhardwaj]