

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.3688 of 2019
Decided on: 09.09.2026

Asha Joshi

...Petitioner

Versus

Dr. Y.S. Parmar University of Horticulture & Forestry and
another

...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

*Whether approved for reporting?*¹ Yes

For the petitioner: Mr. M.L. Sharma and Ms. Meghna
Kashava, Advocates.

For the respondents: Mr. Deepak Sharma, Advocate.

Jiya Lal Bhardwaj, Judge (Oral)

The original petitioner Radha Krishan Joshi by way
of present petition had prayed for the following substantive
reliefs:-

- “i) to quash order dated 16-7-05 Annexure-A/11
being arbitrary, void and illegal.*
- ii) to direct the respondents to allow the benefit of
presumptive pay to the applicant w.e.f. 8-8-2000
in accordance with the provisions of FR. 49 with
a direction to release the arrears thereof with
interest @ 12% per annum till payment thereof
is made to the applicant.”*

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

2. The original petitioner, who died on 25.02.2010 got substituted by his legal representative namely Asha Joshi on 29.06.2010.

3. For the purpose of adjudicating the claim in the present petition, the parties are referred to as in the writ petition initially filed.

4. Shorn of unnecessary details, the key facts of the case are that Sh. Radha Krishan Joshi was initially appointed as Draughtsman with the respondent-University on 01.11.1978 and thereafter promoted to the post of Head Draughtsman on 03.06.1991. It has been averred that in the Drawing Branch of the Estate Office of the respondent-University, besides other posts, one post of Circle Head Draughtsman exists. Earlier, on the said post a person from the HPPWD had been working on deputation. However, on repatriation of the said person to his parent Department, the petitioner was directed to look after the work of Estate Office, Drawing Branch as per office order dated 08.08.2000 (Annexure A/1). Since the petitioner was not paid the presumptive pay of the work being looked after by him of the post of Circle Head Draughtsman, he made a

representation to the respondent-University on 30.12.2000 (Annexure A/2), requesting therein to grant higher grade than that of the post, he is holding. However, the respondent-University did not pay any heed and the petitioner again made representation on 31.03.2004 (Annexure A/3). Another representation dated 25.05.2004 made by the petitioner, which has not been placed on record, came to be rejected vide communication dated 17.06.2004 (Annexure A/8), on the ground that he was not formally appointed to hold the charge of another post by the competent authority and thus he is not entitled to the grant of presumptive pay. Thereafter, the petitioner again made representations on 17.09.2004, 27.12.2004, 10.05.2005 and 14.10.2004 (Annexures A/4 to A/7), respectively, to the respondent-University for grant of presumptive pay.

5. It has further been averred that the competent authority, to appoint a person to the post of Circle Head Draughtsman, is the Registrar of the respondent-University and the petitioner had also made representation to the Vice Chancellor of the respondent-University dated 14.10.2004 (Annexure A/7), who is an authority superior to the Registrar. Despite being fully aware of the fact that the petitioner is

discharging duties of the post of Circle Head Draughtsman, the authorities did not act tacitly by necessary intendment concurred in the order dated 08.08.2000 (Annexure A/1).

6. The petitioner feeling aggrieved by the non-grant of presumptive pay had earlier approached the erstwhile Himachal Pradesh Administrative Tribunal (in short 'the Tribunal') by preferring an Original Application No.1409 of 2005, claiming the relief that since he is performing the duties, of higher/promotional post, he is entitled to the presumptive pay as per the provision of F.R. 49. The said Original Application came to be disposed of on 02.06.2005, wherein a direction was given to the respondent-University to consider and decide case of the petitioner within a period of six weeks. In sequel to the said order passed by the Tribunal, the respondent-University rejected the claim of the petitioner, as conveyed vide communication dated 16.07.2005 (Annexure A/11) on the ground that he was not formally appointed to the post, by the competent authority and, therefore, he does not deserve any additional remuneration.

7. The petitioner, feeling aggrieved by the said order, has approached this Court. It has been averred in the

petition that the respondent-University was aware of the fact that the petitioner is looking after the work of Estate Office and had been discharging the duties on the post of Circle Head Draughtsman, which fact can be gathered from the fact that the petitioner after assuming the additional charge, had made a representation on 30.12.2000 (Annexure A/2) and subsequent representations, but did not bother to pay any heed to the said representations and his claim came to be rejected on 17.06.2004 (Annexure A/8) only on the ground that he was not formally appointed to hold the charge of another post by the competent authority. Once the petitioner has discharged the duties of another post, i.e. Circle Head Draughtsman, which fact has not been denied by the respondents, the petitioner is entitled to the presumptive pay as per the provisions of F.R. 49 and thus the petitioner has, prayed that the impugned order, whereby his claim has been rejected, may be quashed and set aside with a direction to the respondents to grant him the presumptive pay w.e.f. 08.08.2000 in accordance with the provisions of F.R. 49 along with interest @ 12% per annum.

8. The respondents filed reply to the petition and raised preliminary objection. It has been averred that the

respondent-University came into existence on 01.11.1985 by an Act of legislation. At the time of infrastructure like construction of buildings, hostels, residences, roads, etc., to meet out the infrastructural need, were to be created involving civil work, which were to be carried out by the Estate Organization. The University is receiving grant-in-aid from the State Government to meet out the expenditure on account of salary of staff, services and supplies. The total volume of civil works carried out by the Estate Wing does not justify filling up of the post of Circle Head Draughtsman existing in the design cell. With a view that the individual does not remain stagnated on the post, the University had adopted the Career Advancement Scheme to its employees on the pattern of HP Government. Hence, the Original Application for grant of presumptive pay under FR-49 is neither justified by the quantum of work nor any undue hardship is caused to the petitioner. Filling up of any post depends upon various reasons and factors and the petitioner cannot compel his employer to either promote him irrespective of basic needs and genuine ground realities nor can agitate for the claim of presumptive pay. The Executive Engineer (Design), who is the in-charge of the Design Cell in

the Estate Organization, through an office order dated 08.08.2000 (Annexure A/1), had made internal arrangement for disposing of the routine work and accordingly issued the said order. This order does not specify the name of the petitioner that he will look after the routine work of the post of Circle Head Draughtsman since the said post is not statutory post as per the provisions of Act and Statutes of the University.

9. On merits, it has been averred that there is no Drawing Branch in the Estate Organization. However, it has been averred that there is only one Design Cell in the Estate Organization, where one post of Circle Head Draughtsman do exists. The allegations of the petitioner that he had been asked to work as Circle Head Draughtsman, vide order dated 08.08.2000, is contrary to the facts and without any jurisdiction. The appointing authority of the petitioner is the Registrar of the University and not the Executive Engineer and the petitioner had not been formally appointed to look after the work of Circle Head Draughtsman by the competent authority by name and, therefore, the petition does not merit any consideration. It has been admitted that the post of Circle Head Draughtsman was created in the

year 1988 in the Design Cell of the Estate Organization, but the said post had never been filled up and as such the same had lapsed with the passage of time being plan post. It has also been admitted that the petitioner had made numerous representations for grant of presumptive pay, but in absence of clear post and formal appointment of the petitioner for the post of Circle Head Draughtsman, his case cannot be processed and, therefore, on the above stated grounds, a prayer has been made for rejection of the of the petition.

10. The petitioner filed rejoinder to the reply and controverted the averments made therein. The petitioner had filed an application for placing on record the additional documents, which was allowed on 08.10.2009. The petitioner has placed on record the letter dated 19.02.2008, written by respondent No.2 wherein it was informed to the Registrar of the respondent-University that the post of Circle Head Draughtsman is very essentially required for the Estate Organization for smooth and legitimate functioning of the office, therefore, in case the post of Circle Head Draughtsman is filled up by way of promotion of the petitioner, who is also looking after the duty of Circle Head Draughtsman since August, 2002 and fulfills all the requisite

requirements as per Recruitment and Promotion Rules, he will get the nominal benefit of only one increment. Similarly, at least one post of Head Draughtsman be also filled up from amongst the feeding category i.e. Draughtsman by promotion, whereas in order to run the work smoothly, the posts of Draughtsman and Junior Draughtsman lying vacant in the organization since long may also please be got filled up by taking the incumbent on secondment basis from the HPPWD or on contract basis in the interest of University work. The petitioner has also placed on record the minutes of the meeting of the Tender Negotiation Committee held on 23.10.2008, in which the petitioner has been shown as Circle Head Draughtsman (officiating). The petitioner has also placed on record the office order dated 14.11.2008, whereby the respondent-University has accorded ex-post-facto approval to appoint Sh. R. L. Verma, Comptroller to officiate against the post of Registrar in addition to his own duties w.e.f. 12.09.2008 till further orders. The presumptive pay for holding additional charge of the post of Registrar will be regulated as per FR-49(iii).

11. I have heard the learned counsel for the parties and also gone through the record carefully.

12. It is not in dispute that the petitioner was asked to look after the work of Estate Office, Design Branch as per office order dated 08.08.2000 (Annexure A/1) and in the Estate Office, he has discharged the duties of Circle Head Draughtsman as evident from (Annexure A/12) which has not been disputed by the respondents. The only plea, which has been taken by the respondents while rejecting the claim of the petitioner, is that he was not formally appointed by the competent authority. Further as per the rejection order conveyed to the petitioner, a reliance has been placed on the instructions contained in FRSR Part-I General Rules, where it has been provided that where an officer is required only to attend to the routine day-to-day work of non-statutory nature attached to the post, he would not be entitled to any additional remuneration.

13. Once the petitioner immediately after issuance of office order dated 08.08.2000 (Annexure A/1), whereby he was asked to look after the work of Estate Officer, had made a representation on 30.12.2000 (Annexure A/2) to the Registrar of the respondent-University to grant him presumptive pay and thereafter various representations were made till his claim came to be rejected on 17.06.2004

(Annexure A/8), whereby it was informed to him that he was not formally appointed to hold the charge of another post by the competent authority, the respondents could have rescinded the order dated 08.08.2000 and asked the petitioner not to look after the work of the office of Estate Office. However, the respondents extracted the work from the petitioner, which fact has been admitted by the Estate Officer as evident from communication dated 19.02.2008 (Annexure A/12) (page 45-46), that the petitioner is also looking after the duties of Circle Head Draughtsman since August, 2000 and further fulfills all the requisite requirements as per the Recruitment and Promotion Rules for appointment to the post of Circle Head Draughtsman. Thus, the plea taken by the respondents that he was not formally appointed by the competent authority cannot be accepted.

14. The Hon'ble Supreme Court in ***Secretary-cum-Chief Engineer, Chandigarh vs. Hari Om Sharma and others***, (1998) 5 SCC 87 has held that an employee, who is promoted or put to officiate on a higher post is entitled to salary of that higher post and even if the person has given an undertaking that he would not claim promotion nor would

he claim any benefit pertaining to the post, but once he has performed the duties of the post he is entitled to the pay.

The relevant para of the judgment reads as under:-

“8. Learned counsel for the appellant attempted to contend that when the respondent was promoted in stop-gap arrangement as Junior Engineer I, he had given an undertaking to the appellant that on the basis of stop-gap arrangement, he would not claim promotion as of right nor would he claim any benefit pertaining to that post. The argument, to say the least, is preposterous. Apart from the fact that the Government in its capacity as a model employer cannot be permitted to raise such an argument, the undertaking which is said to constitute an agreement between the parties cannot be enforced at law. The respondent being an employee of the appellant had to break his period of stagnation although, as we have found earlier, he was the only person amongst the non-diploma holders available for promotion to the post of Junior Engineer I and was, therefore, likely to be considered for promotion in his own right. An agreement that if a person is promoted to the higher post or put to officiate on that post or, as in instant case, a stop-gap arrangement is made to place him on the higher post, he would not claim higher salary or other attendant benefits would be contrary to law and also against public policy. It would, therefore, be unenforceable in view of Section 23 of the Contract Act, 1872.”

15. A similar view has also been taken by the Hon’ble Supreme Court in **State of Punjab and another vs. Dharam Pal**, (2017) 9 SCC 395 and the relevant paras of the judgment reads as under:-

“20. In Hari Om Sharma, the respondent was promoted

as a Junior Engineer I in 1990 and had been continuing on that post without being paid salary for the said post and without being promoted on regular basis. It was in this situation, he approached the Central Administrative Tribunal which allowed the claim petition with the direction that the respondent shall be paid salary for the post of Junior Engineer I. That apart certain other directions were also issued. The Court took note of the fact that the respondent was promoted on a stopgap arrangement as Junior Engineer I and opined that this by itself would not deny his claim of salary for the said post. In that context, the Court held: (SCC p. 89, para 6)

"6. If a person is put to officiate on a higher post with greater responsibilities, he is normally entitled to salary of that post. The Tribunal has noticed that the respondent has been working on the post of Junior Engineer I since 1990 and promotion for such a long period of time cannot be treated to be a stop-gap arrangement."

21. After so stating, the Court proceeded to opine thus: (Hari Om Sharma case, SCC pp. 89-90, para 8)

"8. The learned counsel for the appellant attempted to contend that when the respondent was promoted in stop-gap arrangement as Junior Engineer I, he had given an undertaking to the appellant that on the basis of stop-gap arrangement, he would not claim promotion as of right nor would he claim any benefit pertaining to that post. The argument, to say the least, is preposterous. Apart from the fact that the Government in its capacity as a model employer cannot be permitted to raise such an argument, the undertaking which is said to constitute an agreement between the parties cannot be enforced at law. The respondent being an employee of the appellant had to break his period of stagnation although, as we have found earlier, he was the only person amongst the non-diploma holders available for promotion to the post of Junior Engineer I and was, therefore, likely to be considered for promotion in his own right. An

agreement that if a person is promoted to the higher post or put to officiate on that post or, as in the instant case, a stop-gap arrangement is made to place him on the higher post, he would not claim higher salary or other attendant benefits would be contrary to law and also against public policy. It would, therefore, be unenforceable in view of Section 23 of the Contract Act, 1872."

(emphasis supplied)

The principle postulated in the said case is of immense significance, for it refers to concept of public policy and the conception of unconscionability of contract."

22. In the instant case, the Rules do not prohibit grant of pay scale. The decision of the High Court granting the benefit gets support from the principles laid down in P. Grover and Hari Om Sharma. As far as the authority in A. Francis is concerned, we would like to observe that the said case has to rest on its own facts. We may clearly state that by an incorporation in the order or merely by giving an undertaking in all circumstances would not debar an employee to claim the benefits of the officiating position. We are disposed to think that the controversy is covered by the ratio laid down in Hari Om Sharma and resultantly we hold that the view expressed by the High Court is absolutely impeccable."

16. From the above pronouncements, it is crystal clear that once the employee has discharged the duties on higher post, he is entitled to the pay of the said post, as per the provision of FR 49.

17. In the present case, the petitioner has discharged his duties on another post in addition to the post held by him and thus, entitled to presumptive pay of additional post

in terms of FR 49(iii).

18. Learned counsel representing the respondent-University has vehemently argued that since the petitioner was not appointed by the competent authority, who is the Registrar of the University, he is not entitled to the presumptive pay. However, the said contention cannot be accepted in view of the authoritative pronouncements of the Hon'ble Supreme Court in the aforementioned judgments, wherein it has been held that the employee is entitled to pay of the higher post. No doubt, in the *ibid* judgments, the Court had considered the grant of benefit of higher post but in the present case, since the petitioner has performed the duties as Circle Head Draughtsman, he is entitled to presumptive pay in terms of FR 49(iii).

19. It has also been noticed in the aforesaid judgment that even if it is specifically written in the order that the incumbent shall not be entitled to the higher wages, even that cannot deny the benefit to a person, especially when he has discharged the duties of another post on the basis of the orders passed by his employer. In the present case, the petitioner had even made a representation to the Vice-Chancellor of the University, but nothing was done and once

the respondent-University has extracted the work from the petitioner and never rescinded/superseded the order, whereby, he was asked to look after the work of the Estate Office, Drawing Branch, where he has performed the duties of Circle Head Draftsman, he cannot be denied the said benefits and thus, the order rejecting his claim is unsustainable in law.

20. It is not denied by the respondents that earlier to passing of the office order dated 08.08.2000, whereby the petitioner was asked to look after the work of Estate Office, the post of Circle Head Draughtsman was held by a person on deputation and after his repatriation, the work was assigned to him. It has also not been denied by the respondents that the post of Circle Head Draftsman was in existence, but the plea taken that the same has been lapsed cannot be accepted only for the reason that the same was not filled up by the respondents after repatriation of the person from another Department. As already observed above, once the petitioner has discharged the duties in addition to his own duties to the post of Circle Head Draftsman, denying him the presumptive pay would be violative of Article 14 of the Constitution of India and also

arbitrary and discriminatory, more particularly when in other case, the respondent-University had accorded the ex-post-facto approval to comptroller to officiate against the post of Registrar in addition to his own duties as per office order dated 14.11.2008 (Annexure A/14) (page-49).

21. Consequently, the present petition is allowed and order dated 16.07.2005 (Annexure A/11) is quashed and set aside and the respondents are directed to grant the benefit of presumptive pay to the petitioner w.e.f. 08.08.2000, till he has discharged the said duties. However, since the original petitioner has died, the benefit be released in favour of his wife namely Asha Joshi, within a period of six months from today, failing which the same shall carry interest @6% per annum from today till actual payment. However, there shall be no order as to costs. Pending applications, if any, also stand disposed of.

09.09.2026

(Anurag)

**(Jiya Lal Bhardwaj)
Judge**