

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.3676 of 2019Decided on: 24.08.2026

Surjeet Singh

...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. P.D. Nanda, Advocate.

For the respondents:

Mr. Sumit Sharma, Deputy Advocate
General for respondents No.1 to 3-
State.Mr. Hamender Singh Chandel,
Advocate for respondent No.4.**Jiya Lal Bhardwaj, Judge (Oral)****CMP No.(T) 503 of 2021**

By way of present application, the applicant/petitioner has sought amendment in the writ petition stating therein that he could not place on record the policy decision of the respondents-State for regularization of the part time workers, which was taken and conveyed vide communication dated 13.09.1996 (Annexure

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

P-6) and further in terms of the policy decision, the respondents-State have regularized the services of certain officials during different dates in 2019. It has also been averred in the application that the persons who were regularized, were neither engaged through Employment Exchanges nor were possessing qualification of 7th pass. The petitioner also intends to place on record a copy of Employment Exchange Registration Card and other documents.

2. The respondents had filed reply to the application and did not dispute the factum of the decision taken by the respondents.

3. Keeping in view the averments made in the application coupled with the fact that the application was instituted in the year 2021 and thereafter, various orders have been passed by this Court and vide order dated 23.10.2024, the respondents were directed to place on record policy norms which provide for regularization by way of supplementary affidavit and the same policy decision dated 13.09.1996 has been placed on record, there is no impediment to allow the application. Hence, the application seeking amendment is allowed and the amended petition is ordered to be taken on record as well as other documents.

The application is accordingly disposed of.

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4. Keeping in view the controversy involved in the writ petition coupled with the fact that the respondents have already filed reply to the amended petition as well as the order dated 23.10.2024 passed by this Court, directing the respondents to place on record the policy norms, which provide for regularization of part time worker/ daily wage employee to fill up Class-IV vacant posts under ICDS Projects in the department, possessing minimum educational qualification, the matter is heard and is being decided on the policy decision dated 13.09.1996.

5. The facts as emerge from the pleadings are that the petitioner was appointed as a part time worker (Sewadar) by the respondents-Department on 09.10.1992 (Annexure P-2), who joined his duties on 12.10.1992. As per the policy decision dated 13.09.1996, those part time/daily wage employees who possess minimum educational qualification of 7th pass and engaged initially through employment exchange are to be given first preference for regularization. Since the petitioner was possessing the educational qualification of matric and was initially appointed through employment exchange, he ought to have been considered first,

but he was not considered and the persons, who were not possessing the educational qualification of 7th pass or not engaged through employment exchange(s), were considered and regularized. The names of the persons, who were ineligible were also mentioned. It has also been averred that the respondents-Department had prepared the seniority list of part time workers, which was finalized as per the seniority list (Annexure P-4). As per this seniority list, name of the petitioner appeared at serial No.141, whereas name of respondent No.4 appeared at serial No.165, who was engaged as Chowkidar w.e.f. 09.03.1994, but his services were regularized w.e.f. 01.04.2004 on the recommendation of the Departmental Recruitment Committee.

6. It has further been averred that the matter regrading regularization is still pending adjudication and thus, he has recurring cause of action. The respondents have acted arbitrarily and discriminatorily. The respondents-Department did not consider the case of the petitioner for regularization despite making oral and written requests to them. The petitioner had earlier approached this Court by way of CWP No.1213 of 2014, which was disposed of as withdrawn on 25.07.2014, with liberty to file the same on same and similar cause of action.

7. The petitioner thereafter has approached this Court by way of the instant petition *inter alia* on the grounds that the action on the part of the respondents is arbitrary and discriminatory and also violative of principles of natural justice to give equal treatment to the persons who are similarly situated. It has also been averred that respondents-Department had ignored and not considered the name of the petitioner for regularization, whereas name of respondent No.4, who was junior to him at Sr. No.165 was considered, which action on the part of the respondents-Department is violative of Articles 14 and 16 of the Constitution of India. It is settled law that seniors cannot be ignored from consideration for regularization and as such direction has been sought to the respondent-Department to regularize his service in terms of the policy decision dated 13.09.1996 or from the date when ineligible persons have been regularized with all consequential benefits.

8. The respondents filed reply to the amended petition (Page 91 onwards) and averred that the petitioner was initially appointed as part time worker in the respondent-Department on 12.10.1992. The respondents-Department had adopted one time criteria in 1996 for regularization of part time workers, vide which

58 part time/daily waged workers were regularized as per the criteria given below:

- (I) The part time workers who have completed 5 years, sponsored by the Employment Exchange and were within the admissible age limit at the time of appointment and have at least passed 7th class should be regularized at the first instance.*
- (II) Out of the remaining part time workers who do not fall under the above categories are required to be regularized in a phased manner according to their seniority amongst part time workers who have at least put in 5 years of services and have at least passed 7th class.*
- (III) Those part time workers whose date of birth is available irrespective of their educational qualification may also be regularized according to seniority in a phased manner as they have rendered many years of service in the department.*
- (IV) In the case of daily wagers the minimum service will also be five years & educational qualification shall be relaxed up to 5th standard.*

9. On the basis of above criteria, the Departmental Recruitment Committee recommended 58 part time workers in order of seniority in their respective category, for regularization. The petitioner did not complete minimum 5 years of service in order to become eligible as per the one time criteria on 23.11.1996 against 58 vacancies and could not be regularized. The case of the petitioner was not similar to respondent No.4. He

was treated as daily wager in view of the order passed by the HP Industrial Tribunal-cum-Labour Court granting him the status of daily wager from the date of joining as a part time worker w.e.f. 09.03.1994. The claim of the petitioner to regularize his services in terms of the policy dated 09.06.2006 is wrong since he had not completed 8 years' daily wage service as on 09.06.2006. Respondent No.4 had completed 8 years' service on daily wage basis before regularization of his services in accordance with the policy of the Government of 2004. It has further been averred that the services of respondent No.4 were regularized in terms of the policy dated 09.06.2006 keeping in view the daily wager status granted to him w.e.f. 09.03.1994 as per the directions of the HP Industrial Tribunal-cum-Labour Court and as such prayed for dismissal of the petition.

10. The respondents had also filed supplementary affidavit in terms of the order dated 23.10.2024 passed by the Court and placed on record the policy decision dated 13.09.1996 (Annexure R-1) (Page-104) and stated that the Department had adopted one time criteria in 1996 for regularization of part time workers, vide which 58 part time/daily wage workers were regularized. The petitioner had not completed minimum five

years of service in order to become eligible as per one time criteria dated 13.09.1996, vide which, only those part time workers were regularized against 58 vacancies, who had completed five years service on 23.11.1996, strictly as per their place in the seniority list.

11. The petitioner in response to the said affidavit filed reply and rebutted the submissions, more particularly with respect to the fact of completion of five years service. It was averred that at the first instance, part time workers, who had passed at least 7th class and whose names were sponsored by the Employment Exchanges, were to be considered for regularization and only thereafter the other persons were to be considered.

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

13. Before adverting to other submissions made at the bar, it would be relevant to quote English version of the criteria/instructions dated 13.09.1996:-

"Himachal Pradesh Government Social and Women Welfare Department.

From, Commissioner-cum-Secretary (Welfare), HP Government, Shimla, 171002.

To

The Director Welfare, HP Shimla, 171009.

Dated:- Shimla-2 13.09.1996

Subject:- Filling up of vacant post of Class-IV category under ICDS

Sir,

In continuation to this Department letter of even No. dated 13.09.1996, I am directed to say that vacant post of Class IV category in ICDS be filled up out of part time/daily waged employees as under:-

- i) In the first instance, the candidates who have passed 7th standard examination and their names have been sponsored by the employment exchange;*
- ii) Candidates must fulfill the age limit on the date of the Recruitment, and*
- iii) Candidates who have worked as part time workers/daily waged workers for at least 5 years in the department.*

Yours faithfully

Sd/-

*Joint Secretary (Welfare)
Himachal Pradesh Government"*

14. As per the aforementioned criteria, the respondents had to fill the vacant post of Class-IV category of ICDS of part time/ daily wage employees at the first instance from amongst the candidates, who had passed 7th standard examination and their names were sponsored by the Employment Exchange. There is no condition of 5 years of service to fill up the vacant posts of Class-IV category of ICDS. In the case of the petitioner even as per the reply filed by the respondents, he was appointed as a part

time worker with them on 12.10.1992. As per the pleadings, the petitioner had passed matriculation examination in the year 1988 (Annexure P-1). Once the petitioner was fulfilling the criteria of first condition postulated in the policy decision dated 13.09.1996, his case was to be considered for regularization even if his name was not sponsored by the Employment Exchange keeping in view the judgment rendered by the Hon'ble Supreme Court in *Excise Superintendent, Malkapatnam, Krishna, District, A.P. Vs. K.B.N. Visweshwara Rao and others*, (1996) 6 SCC 216, wherein it has been held that selection cannot be restricted to only such candidates, whose names come to be sponsored by the employment exchange. The claim of the petitioner for not regularizing his services as Class-IV employee was not considered for the reason that he had not completed 5 years' service, which is not the import of the instructions contained in communication dated 13.09.1996 and thus, the petitioner is entitled to be regularized from the date when the persons in terms of the instructions dated 13.09.1996 were regularized ignoring the total service rendered by him.

15. Furthermore, even if the petitioner had not completed 5 years service as on 23.11.2006, his services ought to have been

regularized after completion of 5 years service since this policy decision was in vogue and there was no other policy decision taken by the respondents-Department. Hence, the action on the part of the respondents-Department in not regularizing the services of the petitioner in terms of the policy decision dated 13.09.1996 even after completion of 5 years is illegal and arbitrary.

16. Learned counsel for the respondents has vehemently argued that the instructions dated 13.09.1996 has to be read harmoniously and it cannot be construed that the person who had not even completed 5 years' service as part time worker has to be regularized by construing that his qualification was 7th pass and his name was sponsored by the Employment Exchange. However, the said contention cannot be accepted for the simple reason that as per the instructions, service of only those part time/daily wage employees were to be considered for filling up the posts of Class-IV employees, who had passed 7th standard examination and their names have been sponsored by the Employment exchanges first. Even if the plea taken by the respondents is considered that only those candidates were to be considered for regularization who had completed five years' service, even then, when the petitioner

had completed five years' service, taking his date of appointment as 12.10.1992, he was entitled to be regularized after completion of five years' service especially when respondent No.4, who was down in the seniority list at serial No.165, has been regularized and the petitioner was at serial No.141 was not considered. No doubt plea has been taken by the respondents that services of junior of the petitioner have been regularized on the directions given by the HP Industrial Tribunal-cum-Labour Court, but fact remains that he was junior to the petitioner. Once the respondents-Department has regularized the services of the junior even if it was after direction issued by the Court, the petitioner, who was senior to him cannot be denied the similar benefit, especially when he had fulfilled the criteria laid down in the policy decision dated 13.09.1996 taken by the respondents-Department.

17. Learned counsel for the respondents further argued that in case the claim of the petitioner is to be considered for regularization at par with respondent No.4, the arrears of pay etc. have to be restricted after his regularization. The said submission deserves merit and the same is accepted and the petitioner who has approached this Court in the year 2014, is entitled for regularization notionally from the date when junior to him i.e.

respondent No.4 has been regularized, but on actual basis three years prior to the date of filing the present petition in view of the law laid down by the Hon'ble Supreme Court of India in ***Union of India v. Tarsem Singh (2008) 8 SCC 648*** wherein, similar issue has been considered and in paragraph No.7, it has been held 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."

18. Learned counsel for respondent No.4 has argued that since there is no fault on the part of respondent No.4, who has been granted benefits including promotion etc. he may not be

disturbed. The said contention deserves merit for the reason that respondent No.4 was granted benefits without making any misrepresentation on his part and, therefore, benefits granted to him cannot be altered at this juncture and the petitioner is only held entitled to the benefits at par with respondent No.4.

19. Consequently, the present petition is allowed and the respondents are directed to regularize the services of the petitioner as Class-IV employee from the date when respondent No.4 was regularized with all consequential benefits such as seniority, promotion, increments and other service benefits. However, it is made clear that the petitioner is held entitled to the monetary benefits only from three years prior to the date of filing of the present petition. In case the arrears are not released in favour of the petitioner within three months from today, he shall be entitled to interest @ 6% per annum from today till actual payment. Further, it is made clear that the benefits granted in favour of respondent No.4 shall not be disturbed, as there is no fault on his part. No order as to costs. Pending applications, if any, also stand disposed of.

24th August, 2026

(sk)

**(Jiya Lal Bhardwaj)
Judge**