

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWPOA No.5339 of 2019

Decided on: 5th August, 2026

Anil Kumari

...Petitioner

versus

State of H.P. and another

...Respondents

Coram

Hon'ble Mr.Justice Jiya Lal Bhardwaj, Judge.

Whether approved for reporting?¹

For the petitioner:

**Mr. K.S. Banyal, Senior Advocate
with Mr. Uday Singh Banyal,
Advocate.**

For the respondents:

**Mr. Anup Rattan, Advocate
General with Mr. Amandeep
Sharma, Additional Advocate
General.**

Jiya Lal Bhardwaj, Judge(Oral)

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

- i) That the impugned office order dated 18.12.2014, Annexure A-9, may very kindly be quashed and set aside to the limited extent that the remarks, "the period of absence as leave of kind due, if any, as per Govt. letter No.EDN-A-Ka (9)-6/2014 dated 25.09.2014".
- ii) That the respondents may very kindly be directed to release the salary of the applicant for the period with effect from 01.08.2008 to 08.01.2009 (five months and eight days) with

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

interest @18% per annum without insisting to have the leave of kind due, if any.”

2. Shorn of unnecessary details, key facts of the case are that the petitioner, who was working as Principal in Government Senior Secondary School (in short “GSSS”), Paonta, District Mandi, H.P., was transferred vide Notification dated 31.07.2008 (Annexure A-1) to the office of Deputy Director Elementary Education, Hamirpur as Deputy District Education Officer, (in short ‘DDEO’). Pursuant to the said transfer order, she joined her duties as DDEO at Hamirpur, however, within a short span of 13 days, she was transferred to GSSS Tarwar, District Bilaspur, H.P., vide Notification dated 13.08.2008, against vacancy with TTA/joining time.

3. In compliance with the transfer order, she went to join at GSSS, Tarwar, District Bilaspur, H.P., however, one Smt. Asha Goel, who was under transfer, had already joined in the said school and the petitioner became surplus.

4. The petitioner had approached this Court by way of CWP No. 1696 of 2008 praying therein that since other incumbent has already joined at GSSS Tarwar, she may be adjusted against a vacant post of Principal in GSSS, Bani, District Hamirpur, H.P. However, the Court did not accede to her request and vide

Notification dated 26.09.2008 (Annexure A-3), she was adjusted at GSSS Dumehar, Bilaspur against vacancy to be caused due to retirement of an incumbent on 30.09.2008, subject to the condition that she will join on or after 01.10.2008 with TTA/Joining time. Surprisingly, when the petitioner went to submit her joining on 01.10.2008 at GSSS Dumehar, in compliance with the Notification dated 26.09.2008, one Shri Surender Singh Patial, who was also under transfer had already joined as Principal in the school on 30.09.2008, and due to this reason, the petitioner could not join at the transferred place. The petitioner has also placed on record the joining report dated 30.09.2008 submitted by the Principal, Shri Surender Singh Patial.

5. It has further been averred that the petitioner had joined her duties on 09.01.2009 at GSSS, Dumehar in compliance with the orders dated 27.06.2008 and 13.08.2008, as is evident from joining report dated 09.01.2009 (Annexure A-6). Thereafter, Shri Surender Singh Patial, Principal, GSSS Dumehar was relieved of his duties on 14.01.2009, who was under transfer to the office of the Deputy Director of Higher Education, Bilaspur (Annexure A-7). It is apt to note that the petition instituted by the petitioner came up for final disposal before this Court on 23.10.2009, when the same was disposed of with a direction to the respondents that the salary

of the petitioner shall be paid to her within four weeks. After the aforesaid order passed by this Court, the petitioner had requested the respondents to release her salary for the period from 01.08.2008 to 08.01.2009 along with interest, but the said prayer was rejected vide office order dated 18.12.2014 (Annexure A-9), and the period mentioned above was regularized, but subject to the leave of the kind due, if any, as per Government letter No. EDN-A-Ka(9)-6/2014 dated 25.09.2014.

6. The petitioner feeling aggrieved by the said office order, whereby the period of her absence was treated to be as leave of the kind due after regularizing the period of absence, preferred a representation dated 28.01.2015, stating therein that there is no fault on her part as she in compliance with the transfer orders had gone to join at the transferred stations every time, but since other incumbents had already joined before the petitioner, she could not join. Thus she should not suffer for no fault of her and the period of absence may be regularized without any condition and the salary of the period be paid to her. However, no decision was taken by the respondents.

7. The petitioner feeling aggrieved by the impugned order dated 18.12.2014 (Annexure A-9), has approached this Court *inter alia* on the grounds that the impugned order is highly unjust, illegal,

arbitrary and against the principles of natural justice as well as against the service jurisprudence. It has further been averred that there is no fault on the part of the petitioner in any manner, which could entail issuance of office order dated 18.12.2014. The petitioner had gone to join at the transferred stations, but the other incumbents, who were also transferred to the same stations, had already joined and the petitioner was forced to stay on the road. Even at GSSS, Dumehar, where the petitioner had already joined on 09.01.2009, the incumbent Shri Surender Singh Patial was already serving there and he was relieved of his duties only by her on 14.01.2009, who was under transfer to the office of Deputy Director of Higher Education, Bilaspur as per Notification dated 01.11.2008. It has also been averred that the petition instituted by the petitioner was pending before this Court and thus, the period regularized vide impugned order dated 18.12.2014 with a rider that the intervening period is regularized as leave of the kind due is illegal, and as such, prayed for quashing the said order.

8. The respondents filed reply to the petition and averred that the claim raised by the petitioner is contrary to the provisions of Government instructions dated 25.09.2014, by which, it has been directed to regularize the intervening period of absence as leave of the kind due. The averments to the effect that the petitioner had

reported for her joining at the transferred places in sequel to the Notifications issued by respondent No.1 from time to time, have not been denied. It has further been averred that the petitioner has failed to produce any documentary proof, by which, she had made representation time and again before the Department for her adjustment, when she came to know that the post of Principal at GSSS Dumehar, Bilaspur is not vacant. The plea of the petitioner to adjust her at GSSS Bani, Hamirpur, H.P. was rejected by this Court vide order dated 24.10.2008. Since the petitioner had failed to report to her immediate Controlling Officer for redressal of her grievances for non-joining at the stations, where she was transferred, her claim for regularizing the intervening period of absence without leave of kind due is not acceptable.

9. The petitioner filed rejoinder to the reply filed by the respondents and controverted the averments made therein.

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

11. Mr. K.S. Banyal, learned senior counsel duly assisted by Mr. Uday Singh Banyal, Advocate appearing for the petitioner has vehemently argued that there is no fault on the part of the petitioner and further in sequel to the Notification issued by respondent No.1 on 13.08.2008, the petitioner had gone to join at

GSSS Tarwar, District Bilaspur, H.P., but one Smt. Asha Goel had already joined in the said station. The petitioner thereafter had approached this Court by way of CWP No.1696 of 2008 to adjust her at GSSS Bani, District Hamirpur, H.P., but the said request was not acceded to. However, vide Notification dated 26.09.2008, she was adjusted at GSSS Dumehar, Bilaspur, where she was asked to submit her joining on or after 01.10.2008 with TTA/joining time, but when she went to join at GSSS Dumehar, one Shri Surender Singh Patial, Principal had already joined at that place. The petitioner could not join at the transferred place only on account of the aforesaid fact, which was beyond her control, and she had ultimately joined at GSSS Dumehar, District Bilaspur, H.P. on 09.01.2009 and relieved Shri Surender Singh Patial, Principal who was under transfer to the office of the Deputy Director of Higher Education, Bilaspur on 14.01.2009(Annexure A-7).

12. Learned senior counsel further vehemently argued that one Shri Surender Singh Patial, who had joined on 30.09.2008, was under transfer vide Notification dated 01.11.2008, but he did not join in the office of the Deputy Director of Higher Education, Bilaspur, H.P., and he was got relieved by the petitioner on 14.01.2009, after her joining on 09.01.2009.

13. It is not in dispute that the petitioner could not join only due to the fact that other incumbents had already joined wherever she was transferred and gone to join her duties. The respondents have not disputed this fact in their reply. The plea, which has been taken by the respondents is that the claim submitted by the petitioner, is contrary to the provisions of Government instructions issued on 25.09.2014. The said instructions cannot be made applicable to the petitioner, in view of the fact that the matter was pertaining to the year 2008 and on the said year, there were no such instructions in place. The respondents have not even placed on record the said instructions and thus, the order under challenge to regularize the period of absence of the petitioner subject to the leave of the kind due is not sustainable in law.

14. The another plea, which has been taken by the respondents that the petitioner has failed to produce any documentary proof that she had represented time and again to the Department for her adjustment, cannot be countenanced for the reason that the Department, before issuing the transfer orders, ought to have seen whether at the station, where an employee is being transferred, the post is lying vacant or not or some other person has already been transferred to that place. The petitioner has made a specific averment in the petition that when she went to

join at GSSS, Tarwar (Bilaspur), one Smt. Asha Goel had already joined, who was also under transfer to the said school, which has not been denied. Even the fact that Sh. Surender Singh Patial had already joined on 30.09.2008 at GSSS, Dumehar has not been disputed, where the petitioner had to join on 01.10.2008.

15. The petitioner thereafter had approached this Court by way of CWP No. 1696 of 2008 to get her adjusted in Government Senior Secondary School, Bani, District Hamirpur, H.P. and this fact was in the knowledge of the respondents. It is true that her request was not accepted by this Court, but in the meantime, respondent No.1 had issued the Notification on 26.09.2008, when the petitioner, who was under transfer to GSSS Tarwar (Bilaspur) was adjusted at GSSS Dumehar, (Bilaspur), where she had to join on or after 01.10.2008 with TTA/joining time. Surprisingly, when she went to join at the transferred place i.e. GSSS Dumehar, one Shri Surender Singh Patial, Principal had already joined his duties in the school on 30.09.2008. Once the petitioner was adjusted at GSSS Dumehar, District Bilaspur, it was for the respondents to ensure that no other person is posted at the said place. It is not the case of the respondents that Shri Surender Singh Patial was not posted at GSSS Dumehar. Rather, it has been averred in the reply that as per Notification dated 01.11.2008, Shri Surender Singh Patial, Principal

was adjusted in the office of Deputy Director of Higher Education, Bilaspur, who did not join till 14.01.2009. The petitioner had joined at GSSS, Dumehar, on 09.01.2009 and thereafter, she relieved Shri Surender Singh Patial, Principal, who was transferred and adjusted in the office of Deputy Director of Higher Education, Bilaspur.

16. It is also apt to note that the petitioner had made a request to adjust her at GSSS, Bani and the petition instituted by her was pending adjudication before this Court and the same was disposed of on 23.10.2009 with the direction to the respondents to pay her salary if the same has not been paid within four weeks. The respondents did not comply with the said direction and ultimately passed an office order on 18.12.2014 (Annexure A-9), whereby the period of absence was regularized, subject to leave of the kind due as per Government letter dated 25.09.2014.

17. As already discussed above, the decision contained in the letter dated 25.09.2014 could not have been made applicable to the petitioner, since the period of her non-joining the duty was between 01.08.2008 to 08.01.2009, which was due to above circumstances, which were beyond her control and, therefore, the non-joining and absence of period cannot be regularized subject to leave of the kind due. Had the petitioner not gone to join pursuant to the transfer orders issued by the respondent-State, the period

would have been regularized, subject to leave of the kind due, but once the petitioner was prevented to join due to the fact that other persons who were also transferred had already joined, she cannot be denied salary and further the order regularizing her period of absence as leave of the kind due is bad in law. Hence, she is entitled to the salary of the entire period and the impugned office order dated 18.12.2014 is accordingly quashed to the extent of regularizing her period of absence as leave of the kind due.

18. Consequently, the present petition is allowed and the impugned office order dated 18.12.2014 is quashed to the extent of regularizing her period of absence as leave of the kind due. The respondents are directed to pay the salary of the petitioner for the period w.e.f. 01.08.2008 to 08.01.2009 within three months from today and in case the salary is not paid within three months from today, she shall be entitled to interest on the said amount @ of 6% per annum from today till actual payment. No order as to costs. Pending applications, if any, also stand disposed of.

5th August, 2026
(naveen)

(Jiya Lal Bhardwaj)
Judge