

**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA**

CWPOA No. 5879 of 2019

Date of Decision: 30.09.2026.

Rameshwar Dass	...Petitioner.
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Versus

State of H.P. & others	...Respondents.
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Coram:

The Hon'ble Mr. Justice Ranjan Sharma, Judge.

Whether approved for reporting?¹ Yes.

For the petitioner	:	Mr. Nishant Khiddta, Advocate.
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For the respondents	:	Mr. Anup Rattan, Advocate General with Mr. Sumit Sharma, Deputy Advocate General.
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Ranjan Sharma, Judge:

Petitioner, Rameshwar Dass, had initially filed Original Application No. 3749 of 2015 before Learned State Administrative Tribunal, Shimla; and upon its abolition; the matter has been transferred to this Court as CWPOA 5879 of 2019, seeking the following reliefs:

“That the respondents may kindly be directed to consider the case of the applicant for regular appointment as Class-IV with effect from 01.01.2009, with all the consequential benefits including the arrear of salary etc.”

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

FACTUAL MARTIX:

2. Grievance of petitioner is that he was engaged as Chainman on daily wage basis and he rendered continuous service w.e.f. on 05.01.2001 in Forest Settlement Unit at Nahan. He continued working as a daily wagger, but his services were allegedly disengaged in September 2008. Feeling aggrieved, petitioner invoked remedy under the Industrial Disputes Act, leading to framing of a Reference No. 67 of 2010. The Reference was answered by the Industrial Tribunal-cum-Labour Court, Shimla by passing an Award on 20.12.2011, giving the benefit of past service, for continuity to the petitioner, but without back wages. After passing of the Award, the petitioner made a representation requesting for re-engagement with continuity in service but the petitioner was reinstated in service. It is averred that the petitioner had filed CWP No. 7652 of 2012 for reinstatement but Divisional Forest Officer issued an order on 17.01.2013 [Annexure A-3]/R-1] containing incorrect mandays, against which he submitted a representation on 10.03.2013 but since nothing was done, therefore, the petitioner filed a CWP No. 7708 of 2013, which was withdrawn, as the Respondents were considering case for refixing his seniority. Resultantly, Divisional Forest Officer, Nahan Forest Division, issued an order on 16.08.2014

[Annexure A-3], according benefit of seniority and continuity in service, without back wages to the petitioner.

It is in this backdrop instant petition has been filed with a prayer to consider his case of petitioner for regular appointment as Class-IV with effect from 01.01.2009 with all consequential benefits including arrears of salary, etc.

**STAND OF STATE AUTHORITIES-FOREST
DEPARTMENT:**

3. Upon issuance of notice, State Authorities have filed Reply Affidavit dated 15.06.2016 of Conservator of Forests, Nahan Circle.

3(i). Reply Affidavit, after discussing the factual aspects, admits that in terms of order dated 16.08.2014 [Annexure A-3/Annexure R-4], the benefit of continuity towards seniority was granted to the petitioner. Reply Affidavit states in clear terms that the daily wagers who were senior to the petitioner in Forest Department, were not regularized for want of vacancies in Forest Department, whereas petitioner was declared surplus and on the basis of the Government Decision dated 30.10.2012 [Annexure R-2], the services of the petitioner placed/deployed in the Respondent No.4-Excise Department on 03.05.2013. Reply states that the State Government took a decision on 12.03.2013 [Annexure A-4] directing to regularize the daily wagers in borrowing department, subject to eligibility,

strictly as per the regularization policy and in view of this, the petitioner was regularized as Class-IV-Peon by Commissioner Excise and Taxation on 31.10.2015 [Annexure R-V], with immediate effect. In these circumstances, the claim was opposed, as the daily wagers, who were even senior to the petitioner, were not regularized, in Forest Department, therefore, the claim of petitioner-junior for regularization was not tenable.

**SEPARATE REPLY BY RESPONDENT NO.4-ECISE
DEPARTMENT:**

4. Respondent No.4 has filed the Reply Affidavit dated 13.11.2020, stating that the petitioner served on daily wage basis in Forest Department after rendering continuous service from 2001. However, he was declared surplus in Forest Department and based on Government Decision, his services were placed on daily waged in Respondent-Excise Department on 30.04.2013 and he joined in May, 2013, and the rectified seniority stands given to the petitioner by Forest Department on 16.08.2014 also. In this backdrop, claim is opposed by the said respondent.

REBUTTAL BY PETITIONER:

5. Petitioner filed a rejoinder [at page 40] which is a reiteration of the order dated 16.08.2014 [Annexure A-3 /R-4 of Reply Affidavit]. Rejoinder nowhere points out that

vacant posts existed in the Forest Department and the petitioner being senior-most, was to be considered for regularization w.e.f. 01.01.2009 in Respondent Forest Department as per the applicable Rules/Policy.

6. Heard, Mr. Nishant Khiddta, Advocate, for the petitioner and Mr. Anup Rattan, Learned Advocate General with Mr. Sumit Sharma, Deputy Advocate General, for the respondents.

ANALYSIS:

7. Taking into account the entirety of the facts and circumstances and the material on record, this Court is of the considered view, that the claim of the petitioner for considering him for regularization w.e.f. 01.01.2009; does not stand the test of judicial scrutiny, for the *following reasons*:-

**REGULARIZATION RESPONDENT FOREST DEPARTMENT
DEHORS POLICY- UNTENABLE:**

8. Petitioner has claimed regularization w.e.f. 01.01.2009 i.e. the date of completion of eight years of continuous service rendered by him on daily waged basis from 2001 till 2014, as is borne out from communication/order dated 16.08.2014, [Annexure A-3/Annexure R-IV].

The above claim is untenable, for the reason, that this could take judicial notice of the fact that the State

Government had issued the regularization policies, which provided for considering cases of daily wagers on completion of eight years of continuous daily waged service and the pre-requisites for such consideration/regularization. Though, the State Authorities had notified the regularization policies of eight years, at different times, from 09.09.2008 and till 31.05.2011. A perusal of these policies, establish that mere completion of eight years service conferred an eligibility on daily wagers to be considered for regularization. These policies mandate that regularization is not automatic on completion of eight years service but is subject to the availability of vacant post in the departments. Even such a claim has to be tested subject to fulfillment of minimum qualifications prescribed in the Recruitment and Promotion Rules and fulfillment of other conditions in the policy, including adherence to the principle of seniority-cum-fitness; and for enabling consideration, no new post was to be created.

8 (i). In the present case, even if the petitioner had rendered eight years of continuous daily waged service as on 01.01.2009, yet, the claim for automatic regularization was not tenable. The policies of regularization nowhere contemplated automatic regularization, upon completion of eight years service, but the same was dependent upon and

subject to availability of vacant post and fulfillment of educational qualifications and adherence to principle of seniority-cum-fitness and other parameters. Respondent-Forest Department, in Reply-Affidavit has taken a categorical stand that the daily wagers, who are even senior to the petitioner were awaiting regularization, for want of vacancies. In these circumstances, acceding to the claim of petitioner, for regularization, despite being junior shall defeat the core principle of “seniority-cum-fitness” expressly spelt out in the regularization policies.

8 (ii). Regularising the petitioner, over and above the senior daily wagers, and that too in defiance of the terms/conditions of the regularization policy and in violation of the principle of seniority-cum-fitness shall negate the core principle of Article 16 of Constitution of India. Petitioner has not laid a challenge to any of the terms and conditions spelt out in the regularization policies of eight years, as detailed above. Claim for regularization dehors the policies for want of vacant-sanctioned posts; when senior daily wagers were awaiting regularization; and claim by giving a complete go-bye to the core principle of seniority-cum-fitness. However, this Court can neither direct regularization by creating posts nor can direct regularization, for want of sanctioned posts, is per-se contrary

to the mandate of Hon'ble Supreme Court, in the case of **Secretary State of Karnataka & others vs. Uma Devi & others (2006) SCC 01** and the reiteration of the said principle in the case of **Union of India & others vs. Ilmo Devi & Another, (2021) 20 SCC 290** and accordingly the claim is turned down.

**CLAIM FOR REGULARIZATION IN RESPONDENT-
EXCISE DEPARTMENT DEHORS POLICY-
IMPERMISSIBLE:**

9. Learned Counsel for petitioner submits that once the petitioner had worked in forest Department from 2001 till 2013 and was declared surplus and placed at disposal of Respondent No.4-Excise Department and he joined from May 2013 thus, the petitioner may be regularized from date of completion of eight years daily wages service w.e.f. 01.01.2009 but the denial is illegal.

The above contention is misplaced, for the reason, that the petitioner served as daily waged in Forest Department without sanctioned post. On winding up of Forest Settlement Work in Nahan Forest Division on 10.11.2011 [page 31 of paper book] and in view of his service rendered on vacant-sanctioned post, he was regularized on 31.10.2015 [Annexure R-5]. Claim for regularization from earlier date, in absence of vacant post, can be accepted, dehors the policy

and law. Even, the communication dated 12.03.2013, [Annexure R-4] disentitles the petitioner for relief, as this communication mandates regularization in borrowed department [Excise Department] strictly as per policy granting retrospective regularization, without there being a sanctioned posts and without adhering to seniority-cum-fitness was not tenable. Nothing has been placed on record that any junior was regularized above the petitioner in excise Department. In these circumstances, the claim of the petitioner for regularization earlier date is turned down.

CONCLUSION:

10. Based on the above discussion, the claim of the petitioner for regularization w.e.f. 01.01.2009, is not tenable, for the reasons; *firstly*, the petitioner had pursued his grievance, which led to passing of the orders on 16.08.2014 [Annexure A-3/Annexure R-4], giving benefit of past service to the petitioner; and *secondly*, mere according of past seniority will not ipso-facto entitle the petitioner to regularization; and *thirdly*, even regularization of the petitioner is to be governed by terms and conditions spelt out in the policy as notified by the State authorities; and *fourthly*, in view of the terms of applicable policies, for which this Court takes judicial notice, the regularization is subject to adherence to the principle of

seniority-cum-fitness and other parameters, besides the primary requirement of a vacant post in the department; and fifthly, the Respondents in preliminary submissions of Reply-Affidavit [at page 22] have taken a specific stand that for want of vacancies in the respondent-Forest Department, the petitioner could not be regularized in the year 2009; and sixthly, the stand of the State Authorities in Reply Affidavit [at page 22] has not been rebutted by placing any cogent and convincing material on record in instant proceedings to establish that vacancies were available as on 01.01.2009 against which, the petitioner was seeking a right to be considered for regularization and/or against which any junior incumbent(s) was regularized; and seventhly, no junior incumbent has been impleaded as party respondent, in instant case to establish his right for regularization [right for regularization against vacant post, if any]. In these circumstances, this Court is not inclined to interfere in the present petition and the same lacks merit and is accordingly dismissed.

STATEMENT BY LEARNED COUNSEL FOR PETITIONER:

11. At this stage, Learned Counsel for the petitioner submits that once the benefit of past service for seniority has been granted to petitioner on 16.08.2014 vide Annexure A-

3/Annexure R-4, then, the petitioner, as prayed, may be permitted to raise a fresh claim for regularization, upon pointing out the availability of a vacancy or for raising a claim for work-charge status. [*Statement taken on record*].

12. Per contra, Learned Advocate General submits that, in case the petitioner represents for regularization or work charge status, the matter shall be examined as per the applicable policies hereinafter in accordance with law.

13. No other point was raised/argued.

DIRECTIONS:

14. In view of above discussion and for reasons recorded hereinabove, the instant petition **is disposed of**, in following terms:-

- (i) CWPOA No. 5879 of 2019, titled as Rameshwar Dass vs. State of Himachal Pradesh & others for regularization w.e.f. 01.01.2009, is dismissed;
- (ii) Non-consideration and regularization for want of vacancies as on 01.01.2009 is affirmed;
- (iii) As prayed, petitioner may make a fresh representation within four weeks, for claiming regularization against subsequent vacancies [after

2009] or for work-charge status, which shall be examined/considered by State Authorities, in accordance with applicable policies and the law, within two months from receipt of representation;

(iv) Parties to bear respective costs.

In aforesaid terms, the instant petition and all pending applications, if any, shall accordingly, stand disposed of.

(Ranjan Sharma)
Judge

30th September, 2026.
(kck)