

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.6688 of 2019
Decided on: 24.09.2026

Phula Dassi

...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. Hirdaya Ram and Mr. Suresh Singh Saini, Advocates.

For the respondents: Mr. Balvinder Singh Ballu, Deputy Advocate General.

Jiya Lal Bhardwaj, Judge (Oral)

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

- I. *To quash **Annexure A-9** order dated 30/10/2014 passed by Respondent No.2 whereby the legitimate claim of the Applicant for making her eligibility for GPF and Pension has been illegally rejected.*
- II. *Directing the Respondents No.2 to bring the Applicant under GPF Scheme from the date of her initial appointment in the light of Rule 4 of General Provident Fund(Central Services) Rules, 1960 applicable in the case of H.P. Govt. Employees with further prayer to count the entire regular service of the Applicant i.e. from 6/10/1994 onwards in the light of Rule 13 of CCS(Pension) Rules 1972 for purpose of Pension.*

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

III. *Hold and declare that Notification dated 13/9/2006 or 17/8/2006, as mentioned in the impugned order Annexure A-9, is not applicable in the case of the Applicant as the Applicant is pre- 2003 regular appointee. "*

2. Shorn of unnecessary details, the key facts as emerge from the pleadings are that the petitioner was offered appointment as Peon (Class-IV) on compassionate grounds, vide office order dated 06.12.1994 (Annexure A-1) by the Project Director Desert Development Programme at Pooh, Distt. Kinnaur, HP, which project was undertaken by Rural Development Department of the respondents-State. The husband of the petitioner, who was working with the respondents-State, as per office order dated 18.02.1994, absorbed along with other four persons in Rural Development and Panchayati Raj Department, but unfortunately he died on 16.03.1994 before his joining. The petitioner after her appointment as Peon (Class-IV) served with the Desert Development Programme (in short 'DDP') till 23.06.2009. Thereafter, she was appointed on secondment basis in Development Block Rampur and later on her services were regularized on 29.06.2012 (Annexure A-4).

3. The grievance of the petitioner is that since her

appointment on compassionate grounds was on regular basis in the regular pay scale of Rs.750-1350/- as evident from a perusal of office order dated 06.12.1994, she was fully eligible as per GPF Rules to be brought under GPF scheme and the respondents having failed to comply with the said provisions of GPF Rules had deprived her of making regular contribution/subscription to GPF. It has also been averred that the petitioner had sought information under the Right to Information Act and she was supplied with the same. As per letter dated 16.11.2011 (Annexure A-5) that one Smt. Pushpa Devi, widow of late Sh. Raghubir Singh, Clerk who was offered appointment as Class-IV in the Block Development Rampur, in the year 1999 was granted the benefit of GPF and pension eligibility, whereas, the petitioner, who was appointed in the year 1994, was deprived of the said benefits. It has also been averred in the petition that the husband of Smt. Pushpa Devi remained appointed/posted in the DDP Pooh during his entire service till his death and he was never absorbed in the respondent-Department nor there was any order of his absorption issued by the respondent-Department despite this fact she (his wife Pushpa Devi) was absorbed in the Rural

Development Department. The petitioner had made representations dated 28.05.2013 and 12.11.2013 to grant her the similar benefits as granted to Smt. Pushpa Devi, relating to GPF and pension eligibility and when no action was taken by the respondents she had approached this Court by way of CWP No.5334 of 2014, titled, ***Phula Dessi vs. State of Himachal Pradesh and another.*** The said petition was disposed of on 12.08.2014, directing respondent No.2 to decide the representations made by her within a period of four weeks. Respondent No.2 in compliance with the direction given by this Court, rejected the claim of the petitioner vide order dated 30.10.2014 (Annexure P-9) observing that the husband of the petitioner was working in the DDP and not in the Rural Development Programme and further as per office order dated 18.02.1994 a decision was taken to absorb five Peons in Rural Development and Panchayati Raj Department and it was clearly mentioned that if the terms and conditions are acceptable, then the candidates could join at the place of appointment within a period of 20 days and the husband of the petitioner did not join at the place of appointment and in the meantime he died on

16.03.1994 and hence husband of the petitioner never remained an employee of the Rural Development Department and thus the contention of the petitioner that she was given compassionate appointment in the Rural Development Department is wrong. It has also been observed that the Government of Himachal Pradesh vide Notification dated 13.09.2006 has notified the Central Civil Services (Pension) Rules 1972, which were made applicable to all the appointments made in the State of HP on or after 15.05.2003 and the petitioner was not entitled for the deduction of GPF as she falls within the purview of the said Notification. So far as the comparison made by the petitioner that one Smt. Pushpa Devi was appointed as Peon on compassionate grounds in Rural Development Department in the year 1999 and her case has not been considered for appointment w.e.f. 1994 in the Department on the same analogy is concerned, it was observed that Smt. Pushpa Devi was offered appointment on compassionate grounds in Rural Development Department after the approval of the competent authority whereas, the petitioner was offered appointment on compassionate grounds in a specific Programme i.e. DDP and the same

was accepted by her without any objection and later on she was regularized in the Rural Development Department on 29.06.2012.

4. The petitioner feeling aggrieved by the rejection of her claim vide order dated 30.10.2014 (Annexure P-9) has approached this Court *inter alia* on the ground that once she was appointed on regular basis in the regular pay scale of Rs. 750-1350/- vide office order dated 06.12.1994, she was fully eligible for the benefit of GPF and pension from the date of her initial appointment as per the prevailing Rules and regulations and thus grave irregularity and illegality has been committed by the respondents depriving her of the said benefits.

5. Further as per Rule 4 of the GPF (Central) Services Rules 1960, all temporary Government employees after continuous service of 1 year or re-employed pensioners or permanent Government servants may subscribe to the GPF and thus the respondents were under legal and moral duty/obligation to bring the petitioner under the GPF Scheme in order to comply with the said provisions. Such glaring omission on part of the respondents amounts to flagrant violation of Rules and

procedure which resulted into the miscarriage of justice to the petitioner. Once the respondents had already granted similar benefits to Smt. Pushpa Devi, who is a similarly situate person, the respondents cannot apply different set of rules in the case of the petitioner, especially when she is senior to Pushpa Devi in the matter of appointment. The respondents cannot take hyper-technical view in the matter and further the Notification dated 13.09.2006 is not applicable to the case of petitioner, since she was appointed as per office order dated 06.12.1994 on regular basis. The respondents have also not considered the case of the petitioner by taking into account the important and vital facts that she being a widow, is a Class-IV employee belonging to a poor starta of society and thus prayed for quashing the order dated 30.10.2014 (Annexure P-4) passed by respondent No.2, whereby the legitimate claim of the petitioner for making her eligibility for GPF and pension has been illegally rejected and further to bring her under GPF Scheme and also to declare the Notifications dated 19.09.2006 or 17.08.2006 as mentioned in the impugned order Annexure A-9 to be not applicable in the case of petitioner.

6. The respondents filed reply to the petition and in preliminary submissions averred that the Government of Himachal Pradesh vide notification dated 13.09.2006 has notified the Central Civil Services (Pension) Rules, 1972, which were made applicable to all the appointments made in the State of Himachal Pradesh on or after 15.05.2003 and the petitioner is not entitled for deduction of GPF, as she falls within the purview of the said notification.

7. On merits, it has been averred that the petitioner was appointed as Peon on compassionate ground in DDP at Pooh, District Kinnaur after the death of her husband Sh. Sadhu Ram in the pay scale of Rs.750-1350/- on 06.12.1994 in consonance with the decision taken by the State Level Coordination and Sanctioning Committee on 07.09.1994 and the said terms and conditions were accepted by her. As per office order dated 18.02.1994 a decision was taken to absorb five Peons in Rural Development and Panchayati Raj Department, clearly mentioning that if the terms and conditions are acceptable, then the candidates should join the place of appointment within a period of 20 days. The husband of the petitioner did not join at the place of appointment and

in the meantime died on 16.03.1994. Since the husband of the petitioner was never an employee of Rural Development Department, the contention of the petitioner that she was given compassionate appointment in Rural Development Department is patently wrong. The petitioner after her appointment on compassionate ground was later on appointed on secondment basis on 23.06.2009 in Development Block Rampur and subsequently was absorbed in the Department on 29.06.2012. It was further averred that three more employees were absorbed in the Rural Development Department, Shimla, vide office order dated 22.02.2010 and these employees were regulated under the Contributory Pension Scheme of the State Government and since Pushpa Devi was appointed as Class-IV on compassionate ground in the Rural Development Department in the year 1999, when the Contributory Pension Scheme was not in existence, she became eligible for all the benefits of GPF and Pension etc. The petitioner was given appointment as Class-IV on compassionate ground in DDP and not in the respondents-Department and later on was absorbed in the Rural Development Department on 29.06.2012 i.e. after the

Contributory Pension Scheme, which was introduced vide Notification dated 13.09.2006 and given retrospective effect w.e.f. 15.05.2003. She is only entitled for Contributory Pension Scheme of the State Government and not GPF/Pension, which was applicable before 15.05.2003 and thus prayed for dismissal of the writ petition.

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

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

10. It is not in dispute that the husband of the petitioner was working with the respondents and was serving in the DDP which programme was being run by the respondents-State. As per office order dated 18.02.1994 (Annexure A-2) a conscious decision was taken by the respondents-State to absorb five Peons in Rural Development and Panchayati Raj Department, in which the name of the husband of the petitioner Sh. Sadhu Ram (Peon) was also mentioned. Unfortunately before joining in the Rural Development Department, he died on 16.03.1994. But fact of the matter is that the petitioner

was offered the appointment on compassionate grounds after the death of her husband, vide office order dated 06.12.1994 (Annexure A-1) in the pay scale of Rs. 750-1350/- and other allowances, which are payable to other employees of the State Government from time to time. Thereafter her services were taken on secondment basis with the Rural Development Department on 23.06.2009 and later on she was absorbed in the respondents-Department, vide office order dated 29.06.2012 (Annexure A-4). It is also not in dispute that the appointment of Smt. Pushpa Devi, whose husband was also working in DDP at Pooh, was made in the Rural Development Department in the year 1999 and she was given the benefit of GPF and pension, which was applicable, before issuance of the Notification dated 13.09.2006, which was made applicable in the State w.e.f. 15.05.2003. Once the respondents-State had offered appointment on compassionate grounds to a person, who had died after the death of the husband of the petitioner, the petitioner cannot be denied the benefit of the GPF/Pension inasmuch as the period of service rendered by her with the respondents-Department, though in DDP, cannot be ignored, more particularly when the

respondents had taken her services on secondment basis on 23.06.2009 in Development Block Rampur of the Rural Development Department and thereafter her services were absorbed in the respondents-Department on 29.06.2012.

11. Learned counsel for the petitioner has vehemently argued that the petitioner being widow of late Sh. Sadhu Ram, who was a Class-IV employee, had no option except to accept the terms and conditions of the office order dated 06.12.1994, whereby, she was appointed as Class-IV employee in the DDP, which was being run by the respondents-State.

12. Learned counsel for the petitioner has placed reliance upon the judgment of the of the Hon'ble Supreme Court in ***Central Inland Water Transport Corporation Limited and another vs. Brojo Nath Ganguly and Another***, (1986) 3 SCC 156, ***Chairman and MD, NTPC Ltd. vs. Reshmi Constructions, Builders & Contractors***, (2004) 2 SCC 663 and ***Civil Appeal No.2275 of 2019***, titled, ***Pani Ram vs. Union of India and Ors.***, to contend that the Constitution was enacted to secure social and economic justice for all the citizens and Article 14 of the Constitution guarantees to all persons

equality before law and equal protection of law. The person, who has no choice or rather no meaningful choice except to give his assent to a contract or to sign on the dotted line in a prescribed or standard form, however unfair, unreasonable and unconscionable cannot be deprived of his legitimate claim. In the present case since the husband of the petitioner had died, she had no choice except to serve in the DDP, which otherwise was the project of the respondents-State and thus the petitioner cannot be denied the benefit of the service rendered by her with the respondents-State since 06.12.1994, though in DDP, which was being run by the respondents-State.

13. As per the judgments referred above, the Hon'ble Supreme Court in the judgment in **Pani Ram's** case (supra) has considered the judgment passed in **Central Inland's** case (supra) and the respondents in that case were directed to grant the disability pension and in present case, since the petitioner was subsequently taken on secondment basis and thereafter her services were regularized, the period of services rendered by her in the DDP cannot be ignored and rejection of her claim is not sustainable in the eyes of law.

14. Respondent No.2 while rejecting the claim of the petitioner had taken note of the fact that the husband of the petitioner could not join the place of appointment within a period of 20 days, but the fact of the matter remains that as per office order dated 18.02.1994, a decision was taken to absorb the services of the husband of the petitioner in Rural Development and Panchayati Raj Department and unfortunately he died on 16.03.1994 and, therefore, could not join with the respondents. Though the husband of the petitioner was put to condition in the office order dated 18.02.1994, that the persons whose services were to be absorbed in the Rural Development and Panchayati Raj Department had to join the services within 20 days, but since the respondents have not placed on record any document, whereby the absorption of the husband of the petitioner has been rescinded/cancelled, the plea taken in the rejection order that since the husband of the petitioner did not join, he never remained an employee of Rural Development Department, cannot be accepted, especially when in the case of other employee, who was also working in the same project, where the husband of the petitioner was working, his wife has been

offered the appointment in the Rural Development Department in the year 1999, denial of the said benefit to the petitioner offends Articles 14 and 16 of the Constitution of India. Had the person died earlier to the husband of the petitioner and offered the appointment to his wife/spouse in the Rural Development Department, the said relief could have been denied to the petitioner, but once the husband of Pushpa Devi had died after the husband of the petitioner and the petitioner was offered the appointment earlier to said Pushpa Devi in the year 1999, the petitioner could not have been denied the benefit of service rendered by her taking the plea that she was appointed in DDP and not in the Rural Development Department. Since the petitioner has worked with the respondents-State and discharged her duties in the Rural Development Department, the period of service rendered by her in the DDP has also to be counted for all service benefits and further she has to be brought under the GPF Scheme, since her appointment in the DDP was as per office order dated 06.12.1994.

15. Learned counsel representing the petitioner has submitted that the petitioner has now retired on

31.03.2026 and since the petitioner has retired, she is entitled to the pensionary benefits, counting the entire service rendered by her w.e.f. 06.12.1994 till her retirement for the purpose of pensionary benefits only.

16. Consequently, the present petition is allowed and the impugned order dated 30.10.2014 (Annexure A-9) passed by respondent no.2 is quashed and set aside and the respondents are directed to calculate the pension of the petitioner on the basis of the entire service rendered by her w.e.f. 06.12.1994 till 31.03.2026. The respondents are further directed to pay the arrears of pension and other service benefits to the petitioner within a period of six months from today, failing which they shall pay interest at the rate of 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.

24th September, 2026

(Anurag)

**(Jiya Lal Bhardwaj)
Judge**