

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.6834 of 2019
Decided on: 21.09.2026

Gaurav Rana

...Petitioner

Versus

State of Himachal Pradesh and another

...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

*Whether approved for reporting?*¹

For the petitioner:

Mr. Virbahadur Verma and Ms. Anu Minhas, Advocates.

For the respondents:

Mr. Anup Rattan, Advocate General and 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) *That the order dated 06.06.2014 contained in Annexure A-2 passed by respondent No.1 may kindly be quashed and set aside.*
- (ii) *That the respondent department may kindly be directed to consider the case of the applicant for counting the past services of the applicant w.e.f. 13.03.2006 to 27.09.2012 for the purpose of seniority, increments, promotion and pensionary benefits.*
- (iii) *That the respondents may kindly be directed to*

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

revise the pay scale and other allowances admissible from time to time to the applicant."

2. Shorn of unnecessary details, the key facts of the case are that the petitioner was appointed as Lecturer (Computer Application) in Government Polytechnic, Sundernagar, vide order dated 13.03.2006 on contract basis, which followed by his regularization as per office order dated 28.09.2012 (Annexure A-1). The grievance of the petitioner before this Court is that since his services rendered on contract basis have been followed by regular appointment, the past service rendered by him on contract basis be counted for the purpose of seniority, increments, promotion and pensionary benefits. Earlier, the petitioner had approached this Court by way of **CWP No.6196 of 2013-J**, seeking direction to the respondents to pay him minimum of the revised pay scale of substituted revision of pay scale and arrears with all other consequential benefits, which petition was disposed of on 23.08.2013. The Court had passed the order that leaving the questions of law open, it is open for the petitioner to approach the respondents and as and when any request is received by

the appropriate authority, the same shall be considered on merits, in accordance with law, within a period of three weeks. After the aforesaid order passed by this Court, the petitioner made a representation to grant him the revised pay scale from the date of appointment in accordance with the judgments passed by this Court in LPA No.105 of 2010 and CWP (T) No. 14232 of 2008. The representation, so made by him came to be rejected mainly on the ground that the petitioner was appointed on contract basis on 18.03.2006 as Lecturer (Computer Application) on a consolidated salary of Rs.7,880/- and he had executed an agreement with specific terms and conditions for a specific period, subject to renewal with the consent of both the parties and his appointment was for a specific period from the date of joining to 30.03.2006, on semester to semester basis with the condition that on completion of the ongoing semester, his engagement shall automatically stand terminated. The decision passed in CWP (T) No. 14232 of 2008, titled, ***Nek Ram and others vs. State of HP*** was though noticed, but it was held that the facts and circumstances of the case referred in the said petition are

different than that of the facts of the case of the petitioner and the judgment cannot be made applicable to the case of the petitioner. So far as the decision rendered in LPA No.105 of 2010 is concerned, the same was relating to the categories of JBT and School Cadre Lecturers only and the circumstances of the case of the petitioner are different and cannot be equated with the categories of JBT and Lecturer in Education Department and as such, rejected the representation so made by the petitioner.

3. The petitioner feeling aggrieved by the rejection of his representation, has approached this Court, *inter alia*, on the grounds that past service rendered by an employee is liable to be counted for the purpose of his seniority and pensionary benefits followed by his regular service. The contractual service is at par with the adhoc service and such type of services are required to be counted for the purpose of seniority, increments, promotion and pensionary benefits and in so many similarly situate persons, the benefits have already been given and the petitioner has been singled out by the respondent-Department, which has caused huge loss to him. It has

further been averred that the petitioner is entitled for the revised pay scale and other allowances from time to time from the date of his appointment and respondent-Department has wrongly rejected the claim of the petitioner and as such prayed for quashing the order of rejection of his representation and also for direction to the respondents to count the past service rendered by him for the purpose of seniority, increments, promotion and pensionary benefits.

4. The respondents filed reply to the petition and raised preliminary submissions. It has been averred that after the directions passed by this Court, the petitioner had made a representation and in compliance with the direction of this Court, the petitioner was heard in person on 30.01.2014 and thereafter passed an order on 06.06.2014 (Annexure A-2) rejecting his claim for the grant of the revised pay scale of the post and merger of 50% D.P. from the date of joining in accordance with the judgments of this Court passed in LPA No.105 of 2010 and CWP No.14232 of 2008. The petitioner was engaged as Lecturer (Computer Application) on contract basis (on semester to semester

basis) on a consolidated sum of Rs. 7880/- per month. The State Government vide O.M. dated 10.05.2005 had decided merger of Dearness Allowance equal to 50% of pay with the basic pay of the employees w.e.f. 01.04.2004. Since the Dearness Allowance is not admissible to the employees engaged on contract basis, the O.M. dated 10.05.2005 was not applicable to the petitioner. The contractual emoluments were revised by the State Government, vide letter dated 09.05.2006 read with clarification issued on 17.05.2006, whereby the maximum limit of emoluments of persons engaged on contract basis had been fixed equal to the amount of initial pay of the pay scale for the post plus dearness pay @50%. These orders have been given the prospective effect. The State Government vide office memorandum dated 03.12.2009 had revised the emoluments payable to the persons appointed on contract basis to a fixed amount equal to the minimum of the pay in the pay band plus grade pay applicable to the corresponding cadre of employees. As per the judgment passed in **Nek Ram's** case (supra), a direction was given that the emoluments, which the petitioners were getting

before 09.05.2006 including merger of 50% dearness allowance with basic pay shall not be reduced. Since the petitioner was engaged with specific terms and conditions and further he has already been paid contractual emoluments as per contract agreement and instructions of the Government issued from time to time, he is not entitled for any relief.

5. It was also averred that the claim of the petitioner has rightly been rejected for the grant of payment of revised pay scale of subsequent revision of pay scale applicable w.e.f. 01.01.2006 from the date of joining i.e. 18.03.2006. The petitioner has misled the Court by stating that he has been appointed on contract basis. The Division Bench of this Court in LPA No.105 of 2010 has set aside the direction in the judgment in Rakesh Chand's case in CWP(T) No.781 of 2008 for granting the running pay scale to the JBT teachers from the date of their initial appointment. However, it was held that the JBT teachers appointed on contract basis would be entitled to the minimum of the pay scale attached to the post of JBT. The petitioner was regularized on 28.09.2012 and his services

rendered after regularization can only be counted for the purpose of seniority, increments, promotion and pensionary benefits etc. and as such, prayed for dismissal of the writ petition.

6. The petitioner filed rejoinder to the reply and controverted the averments made therein.

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

8. It is not in dispute that the petitioner was appointed as Lecturer (Computer Application) vide office order dated 13.03.2006, who had joined his services on 18.03.2006. It is also not in dispute that while regularizing the services of the petitioner on the post of Lecturer School Education as per office order dated 28.09.2012 (Annexure A-1), the contract services rendered by him have been considered for regularization. The claim of the petitioner has been rejected by respondent No.1 vide order dated 06.06.2014 (Annexure A-2), considering the fact that the petitioner was though appointed on contract basis, but with specific terms and conditions and on semester to semester basis. It has not been denied by the respondents

while filing reply to the petition that the services rendered by the petitioner, on contract basis, have been taken into account for the purpose of regularizing his services and thus, the respondents cannot submit that the services rendered by the petitioner on contract basis cannot be counted for the purpose of increments and pensionary benefits.

9. Respondent No.1 while rejecting the representation preferred by the petitioner has taken note of the fact that the facts of the judgment in CWP (T) No. 14232 of 2008 are different than the facts to the case of the petitioner and further the judgment passed in LPA No.105 of 2010 relates to the categories of JBT and School Cadre Lecturers only and circumstances of the case are different from that of the petitioner and cannot be equated with the category of Lecturers in Education Department. Once the petitioner has also been appointed as Lecturer (Computer Application), the reasons assigned by respondent No.1 while rejecting his claim are unsustainable in law for the reason that in the cases of JBT and Lecturer in Education Department, they too were appointed on

contract basis, but this Court had directed the respondents to grant them the minimum of the pay scale of the post held by them. Thus, the petitioner ought to have been given the minimum of the pay scale on the post of Lecturer (Computer Application) and denying the said benefit to him is arbitrary, illegal, discriminatory and unconstitutional. Once the similar situate employees, who were also engaged on contract basis, have been granted the minimum pay scale, depriving the petitioner offends Articles 14 and 16 of the Constitution.

10. Learned counsel representing the petitioner has argued that since the period of contract service has led to the regularization of his services, he is also entitled to count the said period for the purpose of seniority and promotion. However, this submission cannot be accepted for the reason that the petitioner has not impleaded any person, who has been appointed between 18.03.2006 till the date of passing the order of regularizing his services i.e. on 28.09.2012. The other reason which weighed with the Court to not grant the relief is that the petitioner was appointed on contract basis and not on the basis of the

selection process adopted by the respondents for engaging the persons on regular basis and thus, he is not entitled to count his service on contract basis for the purpose of seniority and promotion. However, the petitioner cannot be denied the minimum of the pay scale of the post of Lecturer (Computer Application) from the initial date of his appointment and further counting the said period for the purpose of increments and pensionary benefits.

11. The petitioner had earlier approached this Court by way of CWP No.6196 of 2013-J and in the said petition, the petitioner had not pressed the petition on merits, but had only submitted to approach the respondents first and when he had approached the respondents through a representation, the same came to be rejected on 06.06.2014. Thereafter, the petitioner had filed the Original Application in the erstwhile Himachal Pradesh Administrative Tribunal in the year 2016 and, therefore, he cannot be granted the arrears from the initial date of his appointment, but he is held entitled to the arrears three years prior to the institution of the present petition in view of the law laid down by the Hon'ble Supreme Court in

***Union of India and others vs. Tarsem Singh*, (2008) 8**

SCC 648, wherein that if the issue relates to payment or refixation 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. However, the Court can restrict the arrears normally to a period of three years prior to the date of filing of the writ petition. The relevant paragraph is reproduced hereinunder:-

“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 refixation 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 is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the 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."

12. The aforementioned view has again been reiterated by the Hon'ble Supreme Court in **Rushibhai Jagdishbhai Pathak versus Bhavnagar Municipal Corporation**, (2022) 18 SCC 144 and since the petitioner is affected by the non-grant of the initial pay scale, the cause of action is a recurring one. Thus, he is entitled to the minimum of the pay scale of the post of Lecturer (Computer Application) from the date of his appointment on 18.03.2006, on notional basis and on an actual basis from three years prior to the date of institution of the present petition.

13. Consequently, the present petition is allowed and order dated 06.06.2014 (Annexure A-2) is quashed and set aside and the respondents are directed to grant the minimum of the pay scale of the post of Lecturer (Computer Application) to the petitioner from the initial

date of his appointment, on notional basis and on actual basis from three years prior to the institution of the present petition and further the period of contract services rendered by him shall be counted for the purpose of increments and pensionary benefits. However, it is made clear that the arrears on account of the grant of minimum of the pay scale, shall be paid only from three years prior to the date of filing the petition till actual payment. In case the arrears are not paid within six months from today, the respondents shall pay the same to the petitioner along with interest @ 6% per annum from today till its payment. The present petition is disposed of accordingly. Pending applications, if any, also stand disposed of.

21st September, 2026

(Anurag)

**(Jiya Lal Bhardwaj)
Judge**