

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.7820 of 2019
Decided on: 20.08.2026

Nar Hari Prashad

...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: Ms. Rita Hingmang, Advocate.

For the respondents: Mr. Amit Kumar Chaudhary,
Deputy Advocate General, for
respondents No.1 and 2-State.

None for respondent No.3.

Jiya Lal Bhardwaj, Judge (Oral)

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

- “(i) *That the respondents may be ordered to count the entire service rendered by him on adhoc basis for the purposes pay fixation by adding the entire increments of the adhoc period and the benefits incidental thereof may also be ordered to be paid to the applicant.*
- (ii) *That the entire service rendered on adhoc basis may be ordered to be held as a qualifying service for the purposes of pension.*

- (iii) *That the respondents may be ordered to continue the GPF of the applicant and the period for which the applicant was ousted for the purposes of GPF for that period also the amount of GPF may be ordered to be realized."*

2. Briefly stated the facts of the case are that the petitioner was initially appointed as Chowkidar vide office order dated 20.11.2001 (Annexure P-1) on temporary/adhoc/stop-gap arrangement against the vacant post of Chowkidar, District Forum Mandi, till the post of Chowkidar is filled up on regular basis in the pay scale of Rs.2620-100-3220-110-3660-120-4140/-. Later on, vide office order dated 26.11.2002 (Annexure P-3), he was allowed an annual increment of Rs. 100/- in the pay scale of Rs. 2520-100-3220-110-3660-120-4140/- raising his basic pay from Rs. 2620 to 2720/-. Thereafter, on the recommendation of the Departmental Promotion Committee (in short 'DPC'), his services were regularized in the pay scale of Rs. 2520-4140/- with initial start of Rs. 2620/-. The petitioner was though appointed on temporary/adhoc/ stop-gap arrangement, but he was granted an annual increment and also allotted the GPF number. He started making contribution. However, later on the GPF contribution was

stopped. The petitioner has placed reliance upon judgment passed by Division Bench of Punjab and Haryana High Court on 31.08.2010 in CWP No. 2371 of 2010, titled, ***Harbans Lal vs. The State of Punjab and others*** and averred that the entire service rendered by the petitioner therein from the date of adhoc appointment has been counted for the purpose of pay fixation, increments and other incidental benefits and as such, has prayed that the respondents be directed to count the entire service rendered from the initial date of appointment on adhoc basis.

3. Respondents No.1 and 2 filed reply to the petition and averred that the petition is neither competent nor maintainable, since the same was earlier instituted before the erstwhile Himachal Pradesh Administrative Tribunal (in short 'the Tribunal'), which has now been registered as the present petition. It has also been averred that the petitioner is estopped to file the present petition on account of his own act, conduct, acquiescence etc. The petition suffers from delay and laches and further the petitioner has no enforceable right to take benefit of adhoc service for the purpose of pay fixation and pension, as his appointment was purely as a stop-gap arrangement. The

petition filed by him was barred by time/limitation. It has also been averred that the services of the petitioner were regularized on 31.12.2004 and after regularizing his services, he never approached or made any representation to respondents No.1 & 2 for re-fixing his pay after adding or counting the increments. Further, the petition is bad for suppression of material and vital facts. As a matter of fact, when the services of the petitioner were regularized, he made an application for final withdrawal of his GPF accumulations, knowing fully well that he was not entitled to contribute to GPF, having been appointed on regular basis after coming into force of Himachal Pradesh Civil Services Contributory Pension Rules, 2006.

4. On merits, it has been averred that the petitioner was appointed as Chowkidar in the pay scale of Rs. 2520-4100/- with initial start of Rs. 2620/- purely on temporary/adhoc/stop-gap arrangement basis, till the post of Chowkidar was filled up on regular basis. Since his appointment was purely on temporary/adhoc/stop-gap arrangement, the same does not confer any right upon him for counting of adhoc tenure for the purpose of regularization and as such, prayed for dismissal of the

petition.

5. Respondent No.3 filed separate reply and stated that no doubt GPF number was allotted to the petitioner on the recommendation of the respondents-Department, who continued to subscribe contributions in his GPF account till the issue of Government of Himachal Pradesh Finance Department, Notification dated 17.08.2006, according to which all the employees of the Himachal Pradesh Government, who were regularized on or after 15.05.2003 are to be covered under the Contributory Pension Scheme, 2006 and no CCS/GPF Rules, 1960 and CCS (Pension) Rules, 1972, will be applicable to them. Accordingly, no GPF subscription was to be deducted, as the petitioner was to be allotted PRAN for Contributory Pension Scheme by the respondents-Department. As regards counting of his adhoc service for the purpose of pay fixation etc., the matter relates to the respondents-Administrative Department and respondent No.3 has no role to play in this regard.

6. The petitioner filed rejoinder to the reply filed by respondents No.1 and 2 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 offered the appointment to the post of Chowkidar in the pay scale of Rs. 2620-4100/- purely on adhoc basis, but against the vacant post of Chowkidar, District Forum Mandi (HP), till the post of Chowkidar is filled up on regular basis as a stop-gap arrangement. It is also not in dispute that no person in between was appointed to the post of Chowkidar, where the petitioner had served till his services were regularized on the recommendations of the DPC, in the pay scale of Rs.2520-4140/-. Before regularizing his services, the petitioner was even granted the increment as evident from the perusal of office order dated 26.11.2002 (Annexure P-3), which fact has not been disputed by the respondents while filing reply to the petition. Once the services of the petitioner have been regularized taking into account the services rendered by him on adhoc/stop-gap arrangement with the respondent-Department, the entire service rendered by him has to be counted for the purpose of seniority and other incidental benefits in terms of the decision rendered by the Constitution Bench of the Hon'ble Supreme Court in ***Direct Recruit Class II Engineering***

Officers' Association vs. State of Maharashtra and others, (1990) 2 SCC 715, wherein it has been held that if the appointment is made against the sanctioned post after following the proper procedure, the period of officiating service will be counted. The relevant para of the judgment reads as under:-

"47. To sum up, we hold that:

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules, the period of officiating service will be counted.

(C) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly.

(D) If it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down.

(E) Where the quota rule has broken down and the

appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date.

(F) Where the rules permit the authorities to relax the provisions relating to the quota, ordinarily a presumption should be raised that there was such relaxation when there is a deviation from the quota rule.

(G) The quota for recruitment from the different sources may be prescribed by executive instructions, if the rules are silent on the subject.

(H) If the quota rule is prescribed by an executive instruction, and is not followed continuously for a number of years, the inference is that the executive instruction has ceased to remain operative.

(I) The posts held by the permanent Deputy Engineers as well as the officiating Deputy Engineers under the State of Maharashtra belonged to the single cadre of Deputy Engineers.

(J) The decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinised for finding out any possible error. It is not in the interest of Service to unsettle a settled position."

9. In the present case, the petitioner once having been appointed against the post of Chowkidar, which was lying vacant and was a sanctioned post, as per the dictum of the Constitution Bench of the Hon'ble Supreme Court, the period of service rendered by him on adhoc has to be counted for all intents and purposes. This very same issue

had come up before this Court in ***Paras Ram vs. State of Himachal Pradesh and another***, Latest HLJ 2009 (HP) 887, wherein it was laid down that if adhoc service is followed by regular service in the same post, the said service can be counted for the purpose of increments. Thereafter, the Division Bench of this Court in LPA No. 36 of 2010, titled ***Sita Ram vs. State of HP and others***, decided on 15.07.2010, after placing reliance upon the earlier judgment passed in ***Paras Ram's*** case (supra) has held that it is settled law that any service that is counted for the purpose of increment, will count for pension also.

10. Learned Deputy Advocate General has vehemently argued that since the petitioner did not approach the Tribunal immediately after regularization and further did not make any representation regarding re-fixation of his pay after adding/counting of increments, the claim made by him has to be rejected. However, the said contention cannot be accepted for the reason that non-counting of the service rendered by the petitioner on adhoc/stop-gap arrangement is affecting his salary per month and thus, he has a recurring cause of action and, as

such, his claim cannot be said to be stale, especially with respect to the re-fixation of his salary. The Hon'ble Supreme Court in ***Union of India vs. Tarsem Singh***, (2008) 8 SCC 648, has already held that the claim relating to payment or re-fixation of pay or pension can be granted in spite of delay, since it does not affect the rights of third parties. The petition cannot be dismissed construing as if it is a stale claim and further, the principles relating to recurring/successive wrongs will apply. But the Court can restrict the arrears normally to a period of three years prior to the date of filing the writ petition. The relevant para of the judgment reads 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."

11. The above view has again been reiterated in various judgments of the Hon'ble Supreme Court and thus, the plea taken by the respondents to reject the petition on delay and laches cannot be countenanced and as such is rejected.

12. Learned Deputy Advocate General has also vehemently argued that once the petitioner has withdrawn the GPF accumulation knowing fully well that he was not entitled to contribute to the GPF, having been appointed on regular basis after coming into force of the Himachal Pradesh Civil Services Contributory Pension Rules, 2006, he is not entitled to contribute towards GPF. However, the said contention cannot be accepted in view of the decision taken by the State Government while issuing memorandum dated

04.05.2023, whereby they have now granted even the pension to those persons, who had been recruited in service w.e.f. 15.05.2003 till 31.03.2023. Hence, the plea taken by the respondents is rejected.

13. Consequently, the present petition is allowed and the respondents are directed to count the entire service rendered by the petitioner from the initial date of his appointment w.e.f. 20.11.2001, on adhoc/stop-gap arrangement for the purpose of seniority, increments and other service benefits. However, the petitioner shall be entitled to the arrears three years prior to the date of filing of the petition till actual payment. In case the respondents do not pay the arrears within three months from today, they shall pay interest on the arrears at the rate of 6% per annum from today till actual payment. No order as to costs. Pending applications, if any, also stand disposed of.

20th August, 2026

(Anurag)

**(Jiya Lal Bhardwaj)
Judge**