

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**CMP(M) No.1592 of 2026 in
LPA No.564 of 2026
Date of Decision:- 29.09.2026**

Chaudhary Sarwan Kumar Appellant
**Himachal Pradesh Krishi Vishvavidyalaya,
Palampur through its Registrar**

Versus

Shri S.N. Tewari and another Respondents

Coram

***The Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice
The Hon'ble Mr. Justice Bipin Chander Negi, Judge.***

Whether approved for reporting?¹

For the Appellant : Mr. Janesh Mahajan, Advocate.

G.S. Sandhawalia, Chief Justice (Oral).

CMP(M) No.1592 of 2026

Keeping in view the averments made in the application, duly supported by the affidavit of the official, delay of 118 days in filing the appeal is condoned.

2. The application stands disposed off accordingly.

LPA No.564 of 2026

3. Consideration in the present Letters Patent Appeal is sought of the order passed by the learned Single Judge in

CWPOA No.747 of 2019, titled as S.N. Tewari Vs. State of H.P.

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

and another, dated on 03.03.2026, wherein the learned Single Judge had allowed the said writ petition filed by respondent No.1-employee. Resultantly, directions were issued to grant the difference in salary between the post of Joint Comptroller (F&A) and the post of Comptroller to petitioner/respondent No.1-herein from the date of his joining till his service with the University. The arrears were directed to be paid to him within a period of two months from the date of the decision of the writ petition, along with interest @ 6% per annum from the date of institution of the petition till its realization.

4. The learned Single Judge had come to the conclusion that once the University had taken work from the petitioner/respondent No.1-herein as Comptroller, he was entitled to the pay-scale of that post. This entitlement remained irrespective of the fact that the Board of Management of the appellant-University had not approved his pay for the post of Comptroller and since the employee had fully discharged his duties, the pay for the said post could not be denied to him. The action of the appellant-University was, therefore, held to be arbitrary and wholly unjustified. Resultantly, the learned Single Judge had placed reliance upon the judgment of a three-Judge

Bench of the Apex Court in ***State of Punjab and Another Vs. Dharam Pal (2017) 9 SCC 395.***

5. The learned Single Judge had denied the claim to the post of Comptroller (Finance & Accounts) on the grounds that there was no vacant post was available. However, the learned Single Judge granted relief for the difference in the pay-scale between the post of Joint Comptroller (F&A) and that of Comptroller, which had been denied because the Board of Management of the appellant-University had not approved the pay for the post of Comptroller.

6. While placing reliance upon the judgment of the Apex Court in ***Dharam Pal's case (supra)***, the Apex Court has also clearly held that even if an employee gives an undertaking under a stop-gap arrangement stating that they will not claim any benefits pertaining to the post, it will not preclude them from claiming the salary of the post whose duties they have discharged. The relevant part of the judgment reads as under:-

"13. On a careful scrutiny of the aforesaid prescription, it is perceptible that the said Rule envisages a different situation altogether. The present factual matrix is quite different. We are inclined to so hold as the respondent herein was holding higher posts and further he was performing the duties of higher responsibility attached to the posts. Thus analysed, we arrive at the conclusion that the Rules do not bolster the proposition advanced by the learned counsel for the State.

7. Counsel for the appellant University has brought to our notice that the employee had been posted against the vacant post of Comptroller, while referring to the order dated 01.12.2009. At that time, he substantively held the post of Joint Comptroller (Finance & Accounts), having been promoted to it in the year 2007. Counsel has thus submitted that because the employee was posted against the vacant post of Comptroller in his own pay scale, he was bound by the said posting, and the appellant-University was not liable to pay him the pay-scale of a Comptroller. It is thus submitted that since the employee was merely deployed, the learned Single Judge had erred in granting the said reliefs.

8. Counsel for the appellant-University has thus placed reliance upon the judgment passed by the Coordinate Bench of this Court in **CWP No.1971 of 2011**, titled as **Faryad Bhatti Vs. High Court of Himachal Pradesh along with connected matter**, decided on 01.04.2016. In that case, a similar claim was raised by the Superintendents who had been deputed to discharge the functions of Court Secretaries in this Court and their subsequent demand for the salary and allowances payable to Court Secretaries was turned down, leading to the filing of the writ petition.

9. The Coordinate Bench of this Court had, thus, relied upon the judgment passed by the Apex Court in ***A. Francis Vs. Management of Metropolitan Transportation Corporation Limited, Tamil Nadu, (2014) 13 SCC 283*** and dismissed the writ petition.

10. The Coordinate Bench of this Court did not have the benefit of the judgment of a three-judge Bench of the Apex Court in the ***Dharam Pal's case (supra)***, decided on 05.12.2017. It however, considered and dealt with the judgment of the Apex Court in the ***A. Francis case (supra)***, which was rendered earlier.

11. In ***A. Francis case (supra)***, it was observed that the order dated 28.02.2001, by which the appellant was allowed to discharge duties in the officiating position, had made it clear that the appellant would not be entitled to claim any benefit therefrom, including a higher salary, and further that he would continue to draw his salary in the officiating position. The above was an express term of the order allowing him to discharge duties in the higher post, therefore, it is difficult to see how the said condition can be overlooked or ignored. It was further held that where the Rules do not prohibit the grant of a pay-scale, the benefit is liable

to be given once the employee holds or performs the duties of higher responsibility attached to the post.

12. It is apparent that the employee was claiming a promotion to the post of Comptroller but could not obtain the benefits due to lack of vacancy while working on the said post. It is averred that the employees earlier have been allowed the pay-scale of the Comptroller, and there is no denial of these specific pleadings. The only defense raised is that the pay-scale was not approved by the Management of University because the petitioner was posted on a secondment basis, as per the order dated 01.12.2009, in his own pay-scale.

13. In such circumstances, we are of the considered opinion that the view taken by the learned Single Judge does not deserve to be interfered with. The matter can be decided by relying upon the law settled by the Apex Court in ***Smt. P. Grover Vs. State Of Haryana and Another, (1983) 4 SCC 291*** therefore, nothing stated in the reply filed by the appellant in the writ petition alters this position. No Rule exists that bars an employee from seeking the pay-scale of a higher post to which they have been posted and in the absence of such a Rule, there can be no ground to deny the employee those benefits, in view of the law laid down by the Apex Court.

14. Resultantly, the present appeal is dismissed. Pending miscellaneous application(s), if any, shall also stands disposed of.

(G.S. Sandhawalia)
Chief Justice

(Bipin Chander Negi)
Judge

29th September, 2026
(Munish Thakur)