

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

CWPOA No.8017 of 2019

Decided on: 31.08.2026.

Shakuntla Devi

...Petitioner

Versus

State of H.P. & Others

...Respondents

Coram

Hon'ble Mr. Justice Ranjan Sharma, Judge

¹*Whether approved for reporting?. No.*

For the petitioner: Ms. Archana Dutt, Advocate.

For the respondents: Mr. Sumit Sharma, Deputy
Advocate General.

Ranjan Sharma, Judge

Petitioner, Shakuntla Devi, had initially filed an Original Application i.e. OA No.3860 of 2016 before Learned Himachal Pradesh State Administrative Tribunal and upon abolition of the Tribunal, the same was transferred to this Court as *CWPOA No.8017 of 2019*, seeking the following relief(s):

“(a). That the impugned order dated 4th April, 2016 passed by respondent No.2 may kindly be quashed and set-aside.

(b). That the respondents may kindly be directed to count the services of the applicant rendered on contract w.e.f. 1997 to 2006 for the purpose of

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

pensionary benefits.”

FACTUAL MATRIX:

2. Case as set up by Learned Counsel is that the petitioner had rendered continuous and un-interrupted service, on the post of JBT [Junior Basic Training] Teacher under the respondents w.e.f. 1997 to 2006. Her services were regularized with effect from 01.01.2006. It is averred that the aforesaid contractual service followed by regular service may be treated as qualifying service for pensionary benefits from the date of superannuation on 30.11.2015 in accordance with Rule 17 of the CCS (Pension) Rules. It is averred that the petitioner had submitted representations, but her case was rejected by the Respondent No.2-Director of Elementary Education on 27.04.2016 [*Annexure A-7*], primarily on the ground that, as per Rule 2 of the CCS (Pension) Rules, 1972, the contractual service is not to be counted as qualifying service, whereas the qualifying service is to commence only from the date of substantive-regular appointment, which in instant case, was after 15.05.2003. The petitioner has

assailed the rejection orders, with the prayer for, counting the uninterrupted and continuous contractual service rendered on the post of JBT, followed by regular service, as qualifying service for pensionary benefits w.e.f. 01.12.2015 or with the alternative prayer w.e.f. 01.04.2023 in view of the Notification dated 04.05.2023 issued during the pendency of the writ petition [whichever is earlier] with all consequential benefits.

STAND OF STATE AUTHORITIES:

3. Pursuant to the issuance of notice, the respondents have filed the Reply-Affidavit dated 03.10.2016 of Director of Elementary Education, Himachal Pradesh.

3(i). Perusal of the Reply-Affidavit admits that, though the petitioner had rendered the continuous and uninterrupted contractual service from 1997 to 2006 and her services were regularized with effect from 01.01.2006, but the said service cannot be counted for as qualifying service for pensionary benefits on the ground that the Respondent-Department ceased to be pensionable from

15.05.2003 till 31.03.2023 and once the petitioner was substantively appointed-regularized on a post after 15.05.2003 coupled with the fact that contractual service was not countable as qualifying service for pension as per Rule 2 (h) of the CCS (Pension) Rules and in this backdrop, the claim of the petitioner was opposed by the State Authorities, with the prayer to dismiss the petition.

4. Heard Ms. Archana Dutt, Learned Counsel for the petitioner and Mr. Sumit Sharma, Learned Deputy Advocate General, for the respondents.

ANALYSIS:

5. Taking into account the entirety of the facts and circumstances, this Court is of the considered view, that the claim of the petitioner, a contractual appointee, who has rendered continuous and uninterrupted service, on a post coupled with the fact that said contract service was followed by regular appointment/regularization is to be counted as qualifying service for pensionary benefits under Rule 17 of the CCS (Pension) Rules, for the following reasons:

5(i). The issue as to whether the service rendered by an employee, who has rendered continuous/un-interrupted contractual service on a post, upon regularization, shall count as qualifying service for pension/retiral benefits stands adjudicated by the Hon'ble Supreme Court in ***State of Himachal Pradesh & Another versus Sheela Devi, 2023 SCC OnLine SC 1272***, decided on 07.08.2023, and this principle was followed in the case of ***S.D. Jayaprakash and Others Versus Union of India and Others, 2025 SCC OnLine SC 973***.

5(ii). The declaration of law in the case of ***Sheela Devi*** and ***S. D. Jayaprakash*** (*supra*) has been reiterated by the Division Bench of this Court in ***Shiv Saran Sharma versus State of Himachal Pradesh and Others, CWP No.2045 of 2016***, decided on 07.05.2025, upholding the entitlement of contractual employee, for counting the contractual service rendered on a post followed by substantive/regular service on the same or another post to be counted, as qualifying service for pension, in the

following terms:

“**11(vi).**The issue as to whether the contractual service was countable as qualifying service for pension upon regularization on same or other post of a person on superannuation became the subject matter of in **State of Himachal Pradesh & Anr. Versus Sheela Devi, 2023 SCC OnLine SC 1272** wherein, the Hon’ble Supreme Court has affirmed that past service rendered as contractual employee is followed by service rendered on same or another post in a substantive capacity, in a pensionable establishment is to be treated as qualifying service by exercising an option, if any, as may be prescribed by the State Authorities, for purposes of extending benefit of pension, *in the following terms: -*

“9. The Learned Advocate General is correct in his interpretation, inasmuch as a facial reading of Rule 2(g) would indicate that contractual employees are excluded from the pale of Pension Rules. However, what is significant is that the rule itself in its opening terms saves the application of other provisions of the pension rules: “Save as otherwise provided in these rules”. If the opening phrase of Rule 2 were to be understood in this context, any interpretation of Rule 17 as is urged by the State would render such substantive provision redundant. **Rule 17 was engrafted essentially to cater to the eventuality, where the employees working on contract basis were regularized at a later stage. It is only for the purposes of pension that the past service as a contractual employee is to be taken into account.**

10. So far as the other arguments with respect to the voluntariness when the employees enters into contractual services is concerned, this Court is unpersuaded by the submission because those terms were applicable as long as the employees remained on contract. However, his or her status ceased upon regularization.

11. In view of the above reasoning, **this court is of the opinion that there is no merit in the appeal however, the following directions are issued:—**

- (i) The state shall take **immediate steps to indicate the mode and manner of exercising option by all the employees concerned (who had been regularized after spells of contractual employment) regardless of the dates on which they were engaged i.e. prior to the year 2003 or subsequently, within a time frame,** of within eight weeks from today.
- (ii) After receiving the options within the time indicated in the notice, the concerned employee(s) who exercise the relevant options should be notified about the amounts they would have to remit in case any amount towards contribution is required, clearly.
- (iii) The options should be processed and completed within eight weeks from the last date of receiving options.
- (iv) Time limit for payment too should be indicated and entire process should be completed within four months and all orders fixing pensions or family pension as the case may be, shall be issued.”

11(vii).A similar issue as to whether contractual

service upon regularization on the same or other post was to be counted for pension under Rule 17 of CCS [Pension] Rules, was re-affirmed by the Hon'ble Supreme Court in the case of **S.D. Jayaprakash and Others Versus Union of India and Others, 2025 SCC OnLine SC 973**, in the following terms :-

“3. The short facts that are necessary are as follows. **The appellants were appointed as Data Entry Operators** under the Plan Scheme called ‘Rationalization of Data Processing Facilities’ **on temporary and contractual basis between 1996 and 1999**. Pursuant to an order of the Central Administrative Tribunal 3 dated 01.04.2013 the respondents issued an Office Memorandum dated 5.1.2015 to regularise the appellants’ service from a prospective date, i.e., from the date of issuance of this order. Pursuantly, the appellants were appointed on a regular basis by order dated 01.04.2015, w.e.f. 05.01.2015. The appellants preferred an Original Application before the CAT, with a prayer to regularize their services from the date of initial appointment or at least from the date of completing 10 years of service, **and to protect their pay and to grant seniority, service benefits and pension by counting their period of contractual service.** The CAT allowed the same by order dated 19.01.2016 and directed as follows:

“31. Therefore, after considering the entire facts and circumstances of the case, we order as follows:

1. The pay and other allowances drawn by the applicants prior to their appointment on regular basis on 1.4.2015 shall be protected and they shall be allowed the pay being drawn by them immediately prior to their regularisation as their basic pay as on 1.4.2015. Their annual increment shall be

determined accordingly.

2. The applicants from whose salary, the GPF and other contributions made right from the date of their appointment on contract basis shall be entitled to come under the old pension scheme and the **entire period of service right from the date of initial appointment on contract basis shall be counted towards pensionary benefits.**
3. For the purpose of seniority, ACP and other service benefits etc., **the regular service of the applicants shall be reckoned from the date of completion of 10 years of service from their initial appointments on contract basis.**
32. The Respondents are directed to fix the salary of the applicants and grant the consequential benefits in terms of the above direction within a period of two (2) months from the date of receipt of a copy of this order.”
4. The respondents challenged the above order by way of a writ petition, which was partly allowed by the impugned order. The High Court set aside the CAT’s directions to the extent of counting the period of contractual service for grant of seniority, service benefits, and pension on the ground that the initial appointment was on a contractual basis and not pursuant to the recommendation of the Staff Selection Commission. It held that the appellants will be entitled to regularisation and its consequential benefits only from 01.04.2015. However, the Court upheld the CAT’s direction regarding protection of pay while fixing

the pay scale.

9. **In light of the clear language of Rule 17 of the Pension Rules as well as its interpretation in Sheela Devi (supra), the contractual service period rendered prior to the appellants' regularization in 2015 must be counted towards the payment of their pensionary benefits in accordance with the mechanism set out in Rule 17. In line with the directions issued in Sheela Devi (supra) extracted hereinabove, we direct the respondent Union of India to take immediate steps and indicate the mode and manner for the appellants to exercise the option provided under Rule 17 of the Pension Rules as well as to notify the amounts that the appellants would have to remit in case they opt for grant of pension under the Rules."**

11(viii). A similar claim came up for adjudication before this Court in CWPOA No. 5507 of 2020 **Oma Wati and another** versus **State of Himachal Pradesh and others**, decided on 21.08.2023, upholding the claim for pension by counting the service rendered on a post uninterruptedly, which was followed by substantive-regular service rendered on another post as qualifying service for pension, as under:

2. Petitioner No.1 Oma Wati was initially appointed on contract basis against the post of Junior Basis Teacher (JBT) on 24.7.1998 and served as such till 24.8.2000. Thereafter, she was appointed as Shastri on regular basis and she is serving as such since 25.8.2000.
8. Despite repeated observations as

well as directions of the Courts in numerous cases that State must behave like a Model Employer, State, irrespective of persons in power and change in Guard, successively keeps on to formulate, adopt and practise exploitative policies as a device to avoid extension of legitimate rights of the employees for which they are otherwise entitled. On intervention of the Courts directing the State to extend such benefits like pay scale, increment, leave and counting of service etc., State every time tries to deprive the employee from such benefit by changing nomenclature of post and scheme to continue with practice of temporary/ ad-hoc appointments. Appointment of Voluntary Teachers, ad-hoc Teachers, Vidya Upasaks, Contract Teachers, PARA Teachers, PAT, PTA and SMC Teachers are examples of clever phraseology devised by State to overcome directions of the Courts in order to avoid permanent appointments by appointing ad-hoc /Temporary Teachers depriving them of service benefits available to regular employees. When Courts upheld the entitlement of ad-hoc employees for service benefits, State came with Scheme for appointment of Voluntary Teachers. Again, on intervention of the Court, State continued changing the name of Policy but for appointment on exploitative terms. Therefore, we are of the opinion that all these terms are similar temporary appointments irrespective of their nomenclature. Therefore, verdict of the Court regarding extension of service benefits with respect to one kind of temporary appointment is equally applicable to similar temporary appointment with different nomenclature.

9. The claims of the petitioners are squarely covered by the judgments

in **Sheela Devi, Jagdish Chand as well as Youdhishter Kumar Sharma**, referred *supra*. Therefore, the aforesaid judgments shall mutatis mutandis be applicable to the present cases also, subject to clarification that petitioner No. 1 shall be entitled for counting of contract service only for the purpose of pensionary benefits, whereas, benefits to the husband of petitioner No 2 shall be extended by counting his contract service for the purpose of annual increments as well as pensionary benefits.

10. Present petition was filed on 30.10.2018. The **actual consequential financial benefits** shall, however be restricted to three years prior to filing of the writ petition. Due and admissible benefits be released to the petitioners within a period of three months from today.

11(ix). A coordinate Division Bench of this Court in CWPOA 7216 of 2020, in Re: **Kewal Singh versus State of Himachal Pradesh**, decided on 10.07.2024 allowed the pension by counting the contractual service rendered as JBT on contract basis which was followed by service rendered on substantive-regular basis as drawing teacher till retirement as qualifying service for pension on the basis of Rule 17 and the mandate of law in the case of **Sheela Devi** [supra] in the following terms:-

2. Petitioner was initially appointed on contract basis against the **post of Junior Basis Teacher (JBT)** on 24.09.1996 and served as such till 13.7.2003. Thereafter, he was **appointed as Drawing Teacher on regular basis** and he served as such since 14.7.2003 till the date of his superannuation i.e. 31.05.2018.

14 The claim of the petitioner is squarely covered by the judgments in *Sheela Devi*, *Jagdish Chand* as well as *Youdhishther Kumar Sharma*, cases referred *supra*. Therefore, ratio of the aforesaid judgments as well as reasons assigned therein for extending the benefits of contract service to the employee shall *mutatis mutandis* applicable to the present case also, and **petitioner shall be entitled for counting of contract service for the purpose of all pensionary benefits.**

15 Present petition was filed on 10.7.2019. The actual consequential financial benefits shall, however, be restricted to three years prior to filing of the writ petition. Due and admissible benefits be released to the petitioner within a period of three months from today.”

5(iii). Based on factual matrix and the mandate of law as declared by the Hon’ble Supreme Court in the case of ***Sheela Devi***, reiterated in the case of ***S. D. Jayaprakash*** and followed by the Hon’ble Division Bench of this Court, in the case of ***Shiv Saran Sharma*** (*supra*) the petitioner is held entitled for counting of continuous and uninterrupted contractual service rendered by the petitioner, on the post of JBT, which was followed by regular/substantive appointment on the same post as qualifying service under Rule 17 of the CCS (Pension) Rules.

5(iv). Besides the above, indisputably once the State Authorities have restored the CCS (Pension) Rules 1972 entitling the employees appointed between the period from 15.05.2003 to 31.03.2023, in terms of Notification No. Fin (Pen) A (3)-1/2023, dated 04.05.2003 for pension, therefore, the claim of petitioner for pension/retiral benefits by extending benefit of continuous/un-interrupted contractual service followed by regular service on same post till retirement needs to be reconsidered, subject to exercising an option by the petitioner within four weeks from today, in case, not exercised earlier.

5(v). Moreover, once the initial appointment of petitioner on contract basis as Junior Basic Training [JBT] Teacher was in accordance with the Statutory Rules and such continuous and un-interrupted contract service was followed by regular appointment on the same post, therefore, upon regularization/substantive appointment, the entire service rendered from date of initial appointment shall count as qualifying service for pensionary benefits.

Consequent upon the entitlement of

counting of contractual service, as qualifying service for retiral benefits, the petitioner is held entitled for revised retiral benefits, including pension and other retiral benefits, from the due date of retirement w.e.f. 01.12.2015 or w.e.f. 01.04.2023 [whichever is beneficial] in terms of Notification dated 04.05.2023 issued during pendency of instant petition, as referred to above.

6. No other point has been argued/raised by the parties.

DIRECTIONS:

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

- (i). Impugned order dated 27.04.2016 [Annexure A-7] rejecting the claim of the petitioner for counting of contractual service as qualifying service towards pension and other retiral benefits, is quashed and set aside;
- (ii). State Authorities are directed to count the contractual service followed by regular/substantive service on the same or another post by the petitioner as qualifying service for pension and all admissible retiral benefits, w.e.f. 01.12.2015 or w.e.f.

01.04.2023 [whichever is beneficial] in terms of Notification dated 04.05.2023 (*supra*) subject to exercising an option in terms of Notification dated 04.05.2023, on or before 30.09.2026;

(iii). Upon exercising of option, necessary action for extending benefits be taken within next four weeks thereafter and not later than 31.10.2026.

(iv). No order as to costs.

8. In aforesaid terms, the instant petition and all pending miscellaneous application(s), if any, shall also stand disposed of, accordingly.

(Ranjan Sharma)
Judge

August 31, 2026
[Shivender]