

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**CMP(M) No.1613 of 2026 in
LPA No.570 of 2026
Date of Decision:- 30.09.2026**

State of Himachal Pradesh and Others Appellants

Versus

Rajinder Kumar Respondent

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 Appellants : Mr. Rakesh Dhaulta, Additional
Advocate General.

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

CMP(M) No.1613 of 2026

Keeping in view the averments made in the application, duly supported by the affidavit of the official, delay of 126 days in filing the appeal is condoned.

2. The application stands disposed off accordingly.

LPA No.570 of 2026

3. Consideration in the present Letters Patent Appeal is sought of the order passed by the learned Single Judge in ***CWPOA No.1670 of 2019***, titled as ***Rajinder Kumar Vs. State of Himachal Pradesh and Others***, dated 26.02.2026, wherein

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

the learned Single Judge had allowed the said writ petition filed by the respondent-employee and the order dated 23.04.2009 (**Annexure P-5**) was quashed and set-aside. The respondents were directed to fix the pay of the petitioner in terms of FR 22(1) (a) (1) by granting one increment to the petitioner w.e.f. 21.06.2007, when he had joined the respondent-Department. The necessary exercise was to be completed within a period of two months and in case the arrears are not paid to the petitioner within two months, the same would carry interest @ 6% per annum from the date the amount, fell due to the petitioner till the actual payment.

4. The arguments raised by the counsel for the appellants-State are based on the grounds that the appointment was an open competitive process to a new department, thereby for acquiring a vested right to the pay fixation benefit under FR 22(1)(a)(1), the respondent-employee had to be promoted or appointed within the same department in accordance with the prevailing service Rules. It is pertinent to notice that this fact was never pleaded before the learned Single Judge, nor was any objection taken that the provisions claimed in the initial writ petition were inapplicable. This petition was initially filed before this Court, eventually transferred to the State Administrative

Tribunal, and then re-transferred back and decided on 26.02.2026. Therefore, in a Letters Patent Appeal (LPA), this new argument cannot be permitted, since no such defence was previously taken or pleaded.

5. On merits, looking into the factual matrix of the case, it is apparent that the respondent-employee was appointed as a Constable in the Himachal Pradesh Police Department in the year 1998, and was thereafter promoted to the post of Head Constable in the year 2006. Having acquired a higher qualification during his service period, he became eligible for the post of TGT (Non-Medical) and was offered an appointment to the said post on batch-wise basis vide office order dated 20.06.2007 (**Annexure P-1**). Accordingly, he was relieved from his duties and directed to join the post of TGT (Non-Medical) w.e.f. 21.06.2007 (afternoon). Upon his joining in the Education Department, his pay was fixed as on 21.06.2007 at Rs.6,200/-, keeping in view the fact that as a Constable/Head Constable, he was in the pay scale of Rs.4020-6200/- whereas the pay scale for the post of TGT (Non-Medical) was Rs. 5480-8925/-. Accordingly, his pay was fixed in accordance with FR 22(I)(a)(2), which governs pay protection for an employee who was drawing the same scale in the Police Department.

6. According to the petitioner/respondent-herein, his case was sent to the concerned office as per **Annexure P-2**, which stipulated that he be granted the benefits of FR 22(1)(a)(1) and that his pay be fixed at Rs.6,400/- as on 21.06.2007. The learned Single Judge has reproduced these provisions in paragraph 12 of the judgment. This Rule talks about a government servant promoted or appointed in a substantive, temporary, or officiating capacity to another post carrying duties and responsibilities of greater importance than those of his previous post, shall have his initial pay fixed by receiving one increment in the level from which they were promoted/appointed subject to fulfilling the eligibility conditions prescribed in the relevant Recruitment Rules.

7. However, the appellants-State had denied these benefits vide an order dated 23.04.2009, instead, they fixed his pay at Rs.6,200/- under FR 22(1)(a)(2). This Rule talks about the pay protection and applies to appointments to a new post that does not involve the assumption of duties and responsibilities of greater importance. Therefore, the purpose of this Rule is strictly to safeguard the government servant's existing pay. This fact was admitted by the appellants-State in their written statement, which noted that while pay is protected under the provisions of the

FRSR Part-I General Rules, there is no provision for granting seniority. The provisions of FR 22(1)(a)(2) read as under:-

“(2) When the appointment to the new post does not involve such assumption of duties and responsibilities of greater importance, he shall draw as initial pay, the stage of the time-scale which is equal to his pay in respect of the old post held by him on regular basis, or, if there is no such stage, the stage next above his pay in respect of the old post held by him on regular basis:

Provided that where the minimum pay of the time-scale of the new post is higher than his pay in respect of the post held by him regularly, he shall draw the minimum as the initial pay:

Provided further that in a case where pay is fixed at the same stage, he shall continue to draw that pay until such time as he would have received an increment in the time-scale of the old post, in cases where pay is fixed at the higher stage, he shall get his next increment on completion of the period when an increment is earned in the time-scale of the new post.

On a appointment on regular basis to such a new post, other than to an ex cadre post on deputation, the Government servant shall have the option, to be exercised within one month from the date of such appointment, for fixation of his pay in the new post with effect from the date of appointment to the new post or with effect from the date of increment in the old post.”

8. However, the respondent-employee was aggrieved on account of the fact that he had been appointed to another post carrying duties and responsibilities of greater importance, and he thus claimed benefits under **FR 22(1)(a)(1)**. Resultantly, the

learned Single Judge had allowed the writ petition while placing reliance upon the three-Judge Bench judgment of the Apex Court in ***Syed Abdul Qadir and Others Vs. State of Bihar and Others (2009) 3 SCC 475***. In that case, it was held that the fixation of the pay-scale on promotion of Assistant Teachers of Government-taken-over schools (the Nationalised Schools) in the State of Bihar shall be governed by Fundamental Rule 22(1)(a) (2) instead of Fundamental Rule 22-C. The judgment passed by the Division Bench was thus modified only to the extent where directions had been issued that the excess amount paid to the employees be recovered without interest in at least 50 installments, provided that such an employee had a remaining tenure of 50 months or more so that they did not suffer the unnecessary brunt of a salary cut. That portion of the order was set aside.

9. Conversely, the other part of the Division Bench judgment, which was the subject matter of the appeal, was upheld. It affirmed that the amended provisions of Fundamental Rule 22-C would apply to the appellants-teachers, based on findings that the post of Assistant Teacher on promotion to a higher selection grade did not carry duties and responsibilities of greater importance than those attached to the post held regularly

prior thereto. It also held that when a Government servant is promoted and appointed to a higher post, they must be given the benefit of a financial increment over the lower post regularly held by them.

10. In such circumstances, once the matter is squarely covered by the decision of the Apex Court and from a plain reading of the Rules, we are of the considered opinion that the appellants-State had correctly fixed the pay of the respondent-employee at Rs.6,200/- but did not grant the benefit of FR 22(1) (a)(1), which the respondent-employee was entitled to on account of joining a post carrying higher responsibilities. Resultantly, the learned Single Judge did not err in any manner in granting the said relief.

11. Resultantly, the present appeal is devoid of merit and accordingly stands dismissed. Pending miscellaneous application(s), if any, shall also stand disposed of.

(G.S. Sandhawalia)
Chief Justice

(Bipin Chander Negi)
Judge

30th September, 2026
(Munish Thakur)