IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.404 of 2024

Decided on: 29th October, 2025

Puran Singh **.....Petitioner**

Versus

State of H.P. and others **.....Respondents**

Coram

Ms. Justice Jyotsna Rewal Dua

Whether approved for reporting?[1]

For the Petitioner: Mr. Bonit Thakur, Advocate vice Mr. A.K. Gupta, Advocate.

For the Respondents: Ms. Menka Raj Chauhan, Deputy Advocate General, for respondents No.1 to 3.

Ms. Komal Chaudhary, Advocate, for respondent No.4.

Jyotsna Rewal Dua, Judge

With the consent of learned counsel for the parties, the matter is heard at this stage.

2. The case set up by the petitioner is that he was engaged as Part-Time Worker in the respondent-Education Department on 25.09.1997. His services were brought on Whole Time Contingent paid establishment on 07.12.2009. He served as such till 18.01.2012, when his services were regularized. Petitioner retired from service on 30.04.2021.

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[1]**Whether reporters of print and electronic media may be allowed to see the order? Yes.**

In view of petitioner's regular service of 09 years and 03 months, falling short of requisite service of 10 years, he has not been released pension under the CCS (Pension) Rules, 1972. Petitioner has instituted this writ petition claiming pension.

3. Learned counsel for the petitioner placed reliance upon ***Bimla Devi Vs. State of H.P. & Ors.***[2] for counting Whole Time Contingent paid service rendered by the petitioner as qualifying service towards pension. The question involved in the said case was whether Whole Time Contingent paid service will add towards the qualifying service under the CCS (Pension) Rules. It was held that service rendered as full time contingent paid worker till regularization, is liable to be counted as qualifying service for grant of pension. Relevant portion from the decision reads as under: -

> *"8. The question required to be determined is whether the whole time contingent paid service will add towards the qualifying service under the CCS (Pension) Rules?*
>
> *9-10. ……..*
>
> *11. No doubt, Rule 2 of the CCS (Pension) Rules excludes the applicability of such rules to the person paid from contingency. Noticeably, the person in casual and daily rated employment also stands excluded. Further, by taking into consideration the first proviso to Rule 13 of the Rules it has been interpreted in such a manner that the service rendered by a person on daily*

[2] CWP No.6688/2021 decided on 20.06.2025

wage, work charge or contract basis has been considered on temporary service and when it is followed without interruption by substantive appointment in the same or another post, such service has been held to add towards qualifying service. This conclusion has been drawn from the judgment noticed above.

12. In ***Balo Devi Vs State of Himachal Pradesh 2022 SCC Online SC 2430*** *Hon'ble Supreme Court explaining its earlier judgment on CA 6309/2017 titled Sunder Singh Vs State of Himachal Pradesh has held that if the regular service of class IV employee is less than eight years and by counting his previous daily wage service of five years equal to one year, the total service exceeds eight years, it will be considered as total ten years of qualifying service.*

13. Hon'ble Division Bench of this Court ***in CWP No. 2384 of 2018,*** *titled as,* ***State of H.P. & others vs. Matwar Singh & another****, decided on 18.12.2018 has held that the work charge status followed by regular appointment will be counted as component of qualifying service for the purpose of pension and other retiral benefits.*

14. In ***State of H.P. and another Vs Sheela Devi 2023 SCC Online SC 1272****, while considering the issue of counting of contract service before regularization as component of qualifying service, Hon'ble Supreme Court after considering the plea of the State regarding exclusions under Rule 2 of the CCS(Pension) Rules, 1972 has held as under:*

"7. The State, in justification of its appeal contends through the Learned Advocate General that the High Court's reasoning is erroneous. It is submitted that Rule 17 of the CCS Pension Rules, 1972 (hereafter called the Pension Rules) is inapplicable, having regard to the exclusionary definition in Rule 2(g). It is further stated that one of the express terms of contract which the employees voluntarily entered into, was that barring specified statutory rules, no other service rules applicable to the regular or permanent employees were applicable to them.

8. At the outset, it would be necessary to extract Rules 2 and 17 of the CCS (Pension) Rules, 1972

(hereinafter "Pension Rules") which reads as follows:—

"2. Application-Save as otherwise provided in these rules, 1[these rules shall apply to Government servant appointed on or before the 31st day of December, 2003] including civilian Government servants in the Defence Services, appointed substantively to civil services and posts in connection with the affairs of the Union which are borne on pensionable establishments, but shall not apply to-

(a) railways servants;
(b) person in casual and daily rated employment; (c) persons paid from contingencies;
(d) persons entitled to the benefit of a Contributory Provident Fund;
(e) members of the All India Services;
(f) persons locally recruited for service in diplomatic, Consular or other Indian establishments in foreign countries;
(f) persons employed on contract except when the contract provides otherwise; and
(h) persons whose terms and conditions of service are regulated by or under the provisions of the Constitution or any other law for the time being in force.

17. Counting of service on contract.- (1) A person who is initially engaged by the Government on a contract for a specified period and is subsequently appointed to the same or another post in a substantive capacity in a pensionable establishment without interruption of duty, may opt either-

(a) to retain the Government contribution in the Contributory Provident Fund with interest thereon including any other compensation for that service;
(b) to agree to refund to the Government the monetary benefits referred to in Clause (a) or to forgo the same if they have not been paid to him and count in lieu thereof the service for which the aforesaid monetary benefits may have been payable.

(2) The option under sub-rule (1) shall be communicated to the Head of Office under

intimation to the Accounts Officer within a period of three months from the date of issue of the order of permanent transfer to pensionable service or if the Government servant is on leave on the day, within three months of his return from leave, whichever is later.

(3) If no communication is received by the Head of Office within the period referred to in sub-rule (2), the Government servant shall be deemed to have opted for the retention of the monetary benefit payable or paid to him on account of service rendered on contract.

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."

15. By applying the principles laid down in ***Balo Devi, Sheela Devi and Sunder Singh*** *(supra), the case of full-time workers paid from contingency cannot be distinguished merely because it falls in excluding clause of Rule 2. The first proviso to Rule 13 being a substantive provision will be read in the instant case in the similar manner as Rule 17 has been construed in* ***Sheela Devi****. The explanation has been carved out in the 1st proviso to Rule 13, as noticed above.*

16. In ***Prem Singh*** *(supra), the Hon'ble Supreme Court had struck down Rule 3 (8) of U.P. Retirement Benefits Rules, 1961 and had also struck down regulation Civil Services Regulations of U.P., whereby the period of work charge service was excluded from computation of qualifying service for grant of pension.*

The Hon'ble Supreme Court has considered the factual aspect as under:-

"33. The question arises whether the imposition of rider that such service to be counted has to be rendered in between two spells of temporary or temporary and permanent service is legal and proper. We find that once regularization had been made on vacant posts, though the employee had not served prior to that on temporary basis, considering the nature of appointment, though it was not a regular appointment it was made on monthly salary and thereafter in the pay scale of work-charged establishment the efficiency bar was permitted to be crossed. It would be highly discriminatory and irrational because of the rider contained in Note to Rule 3(8) of 1961 Rules, not to count such service particularly, when it can be counted, in case such service is sandwiched between two temporary or in-between temporary and permanent services. There is no rhyme or reason not to count the service of work-charged period in case it has been rendered before regularisation. In our opinion, an impermissible classification has been made under Rule 3(8). It would be highly unjust, impermissible and irrational to deprive such employees benefit of the qualifying service. Service of work-charged period remains the same for all the employees, once it is to be counted for one class, it has to be counted for all to prevent discrimination. The classification cannot be done on the irrational basis and when respondents are themselves counting period spent in such service, it would be highly discriminatory not to count the service on the basis of flimsy classification. The rider put on that work-charged service should have preceded by temporary capacity is discriminatory and irrational and creates an impermissible classification.

34. As it would be unjust, illegal and impermissible to make aforesaid classification to make the Rule 3(8) valid and non-discriminatory, we have to read down the provisions of Rule 3(8) and hold that services rendered even prior to regularisation in the capacity of workcharged employees, contingency paid fund employees or non- pensionable establishment shall also be

counted towards the qualifying service even if such service is not preceded by temporary or regular appointment in a pensionable establishment."

16. Applying the same principle, it can be seen that except for payment being made to Ranbir Singh from contingency, all other benefits taken into consideration in ***Prem Singh*** *(supra****), Balo Devi, Sheela Devi, Matwar Singh*** *are found present. Ranbir Singh had rendered continuous full-time service w.e.f. 14.2.2002 till 30.9.2003 and thereafter w.e.f. 1.10.2003, his services were regularized. Admittedly, it was not the case of fresh appointment given to Ranbir Singh w.e.f. 1.10.2003 on the substantive post of Class-IV as a result of some selection process. Undoubtedly, he was given the benefit of regularization by considering his continuance in past service initially as part time contingent paid and w.e.f. 14.2.2002 as full time contingent paid worker. In this view of the matter, to ignore the service of Ranbir Singh as fulltime contingent worker w.e.f. 14.2.2002 will be travesty. He was paid on monthly basis and there was no break in his service after upgradation of his service as full time contingent paid worker. Thus, in my considered view, the ratio of judgment in* ***Prem Singh*** *(supra) applies to the facts of the case.*

17. Once the full time contingent paid service of Ranbir Singh qualifies for pension, he completes ten years qualifying service. Simultaneously, his inclusion in terms of the CCS (Pension) Rules, as amended in the State of Himachal Pradesh w.e.f. 15.5.2003 will not have relevance by application of first proviso to Rule 13 of the Rules.

18. At the time of hearing, Learned Additional Advocate General had raised an objection that the petitioner was not entitled to relief on account of delay and laches. Needless to say, that denial of claim of pension is a continuing wrong. Moreover, the husband of petitioner being only a class IV employee, who died in harness, must have left lots of woes for petitioner and for such reason also she cannot be non-suited on the issue of delay in her claim for pension.

19. In result, the petition is allowed. The service rendered by Ranbir Singh w.e.f. 14.2.2002 as full time contingent paid worker till his regularization is held eligible to be counted towards qualifying service.

> *Consequently, the respondents are directed to consider and decide the case of the petitioner for grant of family pension, in light of what has been held above, within eight weeks from the date of passing of this judgment.*
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> *20. The petition is accordingly disposed of. Pending applications, if any, also stand disposed of."*

4. Learned counsel for the petitioner submitted that the above decision has been implemented by the respondents. Reliance has also been placed upon in ***Kamna Ram Vs. State of H.P. & Ors.***[3], wherein relying upon *Bimla Devi*[2], respondents were directed to consider the case of the petitioner therein for grant of pension taking into consideration the Whole Time Contingent period of his service as qualifying service. Learned counsel further submitted that the petitioner has to his credit 09 years and 03 months of regular service w.e.f. 18.01.2012 to 30.04.2021 and in addition 25 months and 12 days of Whole Time Contingent paid service rendered by him, which is liable to be counted in view of *Bimla Devi*[2], would take his total qualifying service to more than 10 years, thereby making the petitioner eligible for pension. In view of law laid down in *Bimla Devi*[2], *prima facie*, grievance of the petitioner appears to be justified. However, factual aspects of petitioner's case are required to be examined by the

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[3] CWP No. 8483/2025 decided on 13.08.2025

respondents. At this stage, learned counsel for the petitioner submitted that petitioner would be satisfied, in case, respondents are directed to consider petitioner's case afresh for counting Whole Time Contingent service rendered by him w.e.f. 07.12.2009 to 18.01.2012 as qualifying service towards pension and pensionary benefits in accordance with the CCS (Pension) Rules, 1972. This prayer is not opposed by learned Deputy Advocate General.

5. In view of the decision in *Bimla Devi*[2] and *Kamna Ram*[3], this writ petition is disposed of with direction to the respondents to consider the case of the petitioner afresh for counting Whole Time Contingent Service rendered by him w.e.f. 07.12.2009 to 18.01.2012 as qualifying service towards pension and pensionary benefits, in accordance with law and in light of above decisions within a period of six weeks from today. The order so passed be also communicated to the petitioner.

The writ petition stands disposed of in the above terms, so also the pending miscellaneous application(s), if any.

Jyotsna Rewal Dua
Judge

October 29, 2025
Mukesh