IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.33 of 2019 a/w
CWP Nos.7140 of 2021,
1569 of 2023 and 2803 of 2023
Decided on: 28.04.2026

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1. CWPOA No.33 of 2019
Raj Kumar and others ...Petitioners

Versus

State of HP and another ...Respondents

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2. CWP No.7140 of 2021
Vinod Kumar ...Petitioner

Versus

State of HP & another ...Respondents

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3. CWP No.1569 of 2023
Sandeep Kumar and others ...Petitioners

Versus

State of HP & another ...Respondents

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4. CWP No.2803 of 2023
Karam Singh and another ...Petitioners

Versus

State of HP & another ...Respondents

Coram
Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge
Whether approved for reporting? [1]

For the petitioner(s): Mr. R.L. Chaudhary and Mr. H.R. Sidhu, Advocates, in CWPOA No.33 of 2019.

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

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None for the petitioner(s) in CWP Nos. 7140 of 2021, CWP No. 1569 of 2023 and CWP No.2803 of 2023.

For the respondents: Mr. Anup Rattan, Advocate General with Mr. Hemant Kumar Verma, Deputy Advocate General, for the respondents-State, in all the petitions.

Jiya Lal Bhardwaj, Judge (Oral)

CMP-T No.1033 of 2023 in CWPOA No.33 of 2019

By way of present application, the applicant Vinod Kumar has prayed for impleading him as petitioner No.43 in the present petition, on the ground that he has acquired degree of Bachelor of Physical Education in the year 2002, from Amravati University Maharashtra and, thereafter got his name enrolled with the employment exchange.

2. Since, the applicant is similarly situate as that of other petitioners, the application is allowed and he is ordered to be impleaded as petitioner No.43 in the writ petition. Application accordingly stands disposed of.

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3. All these petition(s) have been filed with the identical prayers, one set of such prayers in CWPOA No.33 of 2019 is reproduced hereunder:-

> *"(i) That writ of mandamus may kindly be issued, directing the respondent department to fill up 80 posts of DPEs in Education Department by way of direct recruitment (the backlog of DPEs from 25% quota), since from 1997 till date, these posts were not filled up as per the Recruitment & Promotion Rules, whereas the Education Department has filled up 70% post of DPEs by way of promotion as per the Recruitment & Promotion Rules.*
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> *(1-a) That writ of mandamus may kindly be issued, directing the respondents to give appointment to the petitioners from the due date by way of direct recruitment against the posts of DPEs by taking their names from Employment Exchanges, with all consequential benefits, as the same and similar appointments have been given by this mode to 152 junior persons like Sumesh Kumar Dogra and Umesh Kumar, since the petitioners senior, but deprived from such appointments.*
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> *(ii) That writ of mandamus may kindly be issued, directing the respondents department to appoint the petitioners as DPEs on contract basis as per batch-wise seniority by relaxing the Recruitment & Promotion Rules in the same manner as has been relaxed by the Education Department in case of DPEs appointed on PTA basis without holding any commission and now they are being treated at par with the contractual appointees or in alternative, all the irregular appointments of DPEs in the Education Department may kindly be quashed and set aside."*

4. Learned counsel for the petitioners have not pressed the prayers made vide Serial No. (i) and (ii) and

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thus, this Court is considering only the prayer No. (1-a).

5. The precise grouse of the petitioners as prayed in the writ petitions and also highlighted by the learned counsel for the petitioners, is that though the petitioners were eligible for the post of Diploma Holder in Physical Education (DPEs) as per the Recruitment and Promotion Rules (for short R&P Rules), however, the respondents without taking the recourse as per the R&P Rules had filled up the said posts through the Employment Exchanges. As per information received by the petitioners under RTI, there were about 237 posts of DPEs lying vacant and the respondents had appointed the persons, who were juniors to the petitioners against the posts of DPEs from the year 2000 onwards. It has been averred that the petitioners had acquired their diplomas from the year 2000 to 2008 and 2013 and the respondents-Department had filled up 328 posts of DPEs as per PTA policy, 2006. No direct recruitment has been made from the year 1997 and hence the appointment of 328 candidates made, is contrary to the R&P Rules. The petitioners have not been given chance for appointment by way of direct recruitment against these posts. It has further been averred in the amended writ

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petition that since the respondents have offered the appointment by relaxing the R&P Rules to the PTA appointees to treat them as contractual appointees as DPEs, the same treatment be given to them.

6. The respondents filed reply to the petition and averred that at present the total cadre strength of DPEs is 1527 and as per R&P Rules, 25% i.e. 382 posts are to be filled up by Direct Recruitment and 75% i.e. 1145 posts by way of promotion. Against 382 posts of direct recruitment, 645 DPEs have been appointed and the direct quota has already been occupied over and above the due quota. 32 posts of DPEs have been filled up through Commission in the year 2000. 89 DPEs were engaged under the Para Teacher Policy in the year 2003. The services of these Para Teachers engaged as DPEs have been regularized in the year 2014 by the Department as per Government approval. 333 DPEs were engaged under the PTA GIA Rules 2006. The services of PTA engaged as DPEs were taken over on contract basis in the year 2015 as per Government approval. The services of PTA (GIA) DPEs whose services were taken over on contract basis in the year 2015, have been regularized w.e.f. 01.04.2018 instead of 2020, after

the approval by the Government. It has been averred that out of 152 posts of DPEs, 101 posts during the period 1996 to 2001 were filled up through Employment Exchanges, 42 posts of DPEs during 2005-2011 were filled up by way seeking applications from local Employment Exchanges and the remaining 8 posts were filled during 2012-2013 by way of taking over from 95% aided schools and one post of DPE was filled up through sports quota. None of the appointments were made on batch wise basis. The recruitments made under Para Teachers and PTA policies are also not batch wise recruitments and there is no provision of batch wise recruitments in R&P Rules of DPEs. For the appointments made through Employment Exchanges, names of eligible candidates were sought from all the Employment Exchanges in Himachal Pradesh.

7. Learned counsel for the petitioners have not filed any rejoinder to the amended writ petition.

8. I have heard the learned counsel for the parties and also gone through the record carefully.

9. It is not in dispute that the respondents-State has offered appointment to 42 DPEs, when their names were recommended by the Employment Exchanges, as

admitted in the reply during the year 2005-2011. The petitioners have neither impleaded the selected persons, who were offered appointment during this period nor the petition was filed immediately after their appointments. The petition was filed before this Court on 03.09.2014 and this Court without the persons, who have been selected during the period 2005-2011, cannot go into the question of their illegal appointments. The petitioners have though placed on record the information that the vacancies were in existence in the year 2015, but if the reply to the amended petition is perused, the respondents in their preliminary submissions have categorically mentioned that though 382 posts are to be filled up from direct recruitment, but 645 DPEs were appointed and once there is already excess quota, this Court cannot give directions to consider the candidature of the petitioners.

10. No doubt, there is no period of limitation prescribed to entertain the writ petition under Article 226 of the Constitution of India, but at the same time the petition has to be entertained within some reasonable time. As already noticed above, the petitioners have filed the petition on 03.09.2014 and there is no murmur in the

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petition that why did they not come before the Court immediately after the appointments of the selected person through employment exchanges from the year 2005 to 2011, who were juniors to them. Further, the petitioners have not impleaded any of the selected candidates in the petition. It is settled law that no order can be passed against a person until, he is heard in the matter. Since the petitioners have not impleaded any of the DPEs, who have been selected from the year 2005 to 2011, this Court is refraining itself to go into the legality of their appointments.

11. Learned counsel for the petitioners has tried to persuade the Court that since the respondents have stated in the reply that the appointments have been made during the year 2005 to 2011, when 42 persons were engaged as DPEs through Employment Exchanges, the petitioners, who were seniors to the persons who have been offered the appointment, the respondents may also be directed to consider their case. However, the learned Advocate General has submitted that so far the appointment of these persons is concerned, it was on regular basis from the year 2005 to 2011 and earlier to that they were engaged as per the contract policy of 1994 from 1995 to 1999. Since the

petitioners have failed to point out any illegality having been committed by the respondents, coupled with the fact that the persons, who have been selected have not been arrayed as party respondents in the present petition, no relief can be granted in favour of the petitioners.

12. Learned counsel for the petitioners vehemently argued that since the petitioners are senior to the selected candidates, a direction be issued to the respondents-State to offer them appointment. Firstly, this Court cannot issue mandamus to fill up the vacancies, which are meant for direct recruitment, even if the posts are lying vacant and secondly, once the R&P Rules do not envisage the provision to fill up the posts on batch wise basis. Further this Court cannot direct the respondents-State to fill up the posts of DPEs dehors the R&P Rules and as such, no relief can be granted to the petitioners in these petitions.

13. Consequently, I do not find any merit in these petitions and the same are accordingly dismissed. However, there shall be no orders as to cost. Pending application(s), if any, also stand disposed of.

28th April, 2026
(Anurag)

(Jiya Lal Bhardwaj)
Judge