IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No.75 of 2022

Reserved on: 16.10.2026
Date of Decision: 30.10.2026
Uploaded on: 30.10.2026

The Secretary I&PH to the
Government of H.P. Shimla .....Appellant

Versus

Sh. Vijay Chauhan and Others ....Respondents

Coram:

Hon'ble Mr. Justice Yogesh Jaswal, Judge.

Whether approved for reporting? [1] *Yes.*

For the appellant: Mr. Mandeep Thakur, Deputy Advocate General.

For the respondents: Mr. Ajay Chandel, Senior Advocate, with Ms. Ridhi Verma and Mr. Sidhant Jamwal, Advocates.

Yogesh Jaswal, Judge:

The present appeal is directed against the order dated 22.06.2019 passed by the learned Commissioner under the Employee's Compensation Act, Sarkaghat, District Mandi, H.P. in W.C.A No.13 of 2013, vide which the claim petition filed by the respondents (petitioners/claimants before learned trial Court) was allowed and compensation of ₹3,12,940/- along with

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[1] *Whether the reporters of the local papers may be allowed to see the judgment? Yes.*

interest at the rate of 12% per annum from the date of the accident till final payment was awarded in favour of respondents No.2 and 3. (Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned trial Court for convenience).

2. Briefly stated, the facts giving rise to the present appeal are that the Assistant Engineer, I&PH Sub Division, Sarkaghat forwarded non-fatal and fatal accident reports dated 20.07.2006 and 21.07.2009 along with Rapat Roznamcha dated 20.07.2006 to the learned Commissioner under the Employee's Compensation Act, 1923 **(for short, 'the Act')**. As per the record, on 20.07.2006 at about 1:20 PM, deceased Jaswant Singh, who was working as a Fitter in the I&PH Department, fell down from the second floor of the departmental building while repairing a water pipe. He was immediately shifted to the hospital where he succumbed to his injuries. At the time of the fatal accident, deceased was drawing monthly wages to the tune of ₹4,260/- plus allowances and was aged 49 years and 6 months. The legal heirs of deceased, namely, Vijay Chauhan (son), Meera Devi (widow) and Shashi Bala (daughter), claimed

compensation under the provisions of the Act on account of the untimely demise of the breadwinner of their family.

3. The appellant-department resisted the claim petition on the premise that deceased was a regular government servant governed by the Civil Services Rules and Fundamental Rules. It was asserted that upon his demise, his entire terminal and service benefits, including ex-gratia payment of ₹21,300/-, leave encashment of ₹15,848/-, GPF of ₹1,25,952/-, death-cum-retirement gratuity (DCRG) of ₹98,916/- and group insurance sum of ₹31,302/-, were disbursed to his family members, besides sanctioning family pension in favour of his widow. Furthermore, employment on compassionate grounds had already been provided to his son, namely, Vijay Chauhan. It was contended that late Jaswant Singh, being a regular government employee, could not be termed as a workman under the Act and therefore the claim petition was not maintainable.

4. The learned Commissioner called upon the parties to produce their evidence. The petitioners examined Vijay Chauhan (PW-1), who placed on record the post mortem report (Ex.C1), legal heirs certificate (Mark X) and copy of the Pariwar register (Mark Y). On behalf of the department, two witnesses

stepped into the witness box, namely, RW-1 Balak Ram, Senior Assistant and RW-2 Dalip Chand, Junior Engineer. The departmental witnesses produced the statement of payments (Ex.RW1/A), fatal accident report (Ex.RW1/B) and non-fatal accident report (Ex.RW1/C).

5. Learned trial Court, upon appreciating the evidence on record, held that deceased died while on duty during the course of his employment with the department. Learned trial Court further held that petitioner No.1, Vijay Chauhan, was major at the time of the death of Jaswant Singh and was employed on compassionate grounds and as such, did not fall within the definition of 'dependent' under Section 2(1)(d) of the Act. Finding petitioner No.2 (widow) and petitioner No.3 (daughter) entitled to compensation, the learned Commissioner applied the statutory wage ceiling of ₹4,000/- per month under Explanation II to Section 4(1)(a) of the then Workmen's Compensation Act, 1923 and assessed 50% thereof at ₹2,000/-. Multiplying the same by the statutory factor of 156.47 applicable to the age of 49 years and 6 months under Schedule IV of the Act, compensation of ₹3,12,940/- was awarded along with interest at the rate of 12% per annum from the date of the

accident till realization, to be shared between petitioner No.2 (60%) and petitioner No.3 (40%). No penalty was imposed in view of the compassionate employment extended to the son.

6. Being aggrieved by the order passed by the learned trial Court, the appellant-department preferred the present appeal on the grounds that the claim was barred by limitation under Section 10 of the Act; that no formal opportunity was granted to file a written reply; and that a regular Government servant receiving pensionary and retiral benefits could not be treated as a workman under the Act.

7. This Court framed the following substantial questions of law on 16.10.2026:

> "1. Whether deceased Sh. Jaswant Singh, being a regular employee of the IPH Department, was not a workman, as provided under Section 2(1)(n) of the Workmen Compensation Act?
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> 2. Whether the Commissioner was not justified in law in awarding the compensation of Rs.312940/- along with interest at the rate of 12% per annum in favour of the petitioners from the date of accident till actual realization of the respondents?
>
> 3. Whether the impugned order passed by the Commissioner is liable to be set aside and quashed as no opportunity to file reply to the claim petition had been afforded to the appellants?"

8. I have heard Mr. Mandeep Thakur, learned Deputy Advocate General, for the appellant and Mr. Ajay Chandel, learned Senior Counsel assisted by Ms. Ridhi Verma and Mr. Sidhant Jamwal, learned counsel for the respondents and have carefully gone through the records.

9. Mr. Mandeep Thakur, learned Deputy Advocate General, submitted that late Jaswant Singh was a regular employee of the State Government governed by the statutory Civil Services Rules. All retiral dues, gratuity, ex-gratia grants and family pension had been paid to his family and compassionate employment was provided to his son. He argued that a regular government servant does not fall within the ambit of a workman under the Act. He further contended that the claim was filed after a period of five years and was barred by limitation under Section 10 and that the department was prejudiced for want of an opportunity to file a formal reply.

10. On the other hand, Mr. Ajay Chandel, learned Senior Counsel, for the respondents supported the impugned order and submitted that deceased was working as a Fitter on a water pipe and fell squarely within the definition of a 'workman' under Section 2(1)(n) read with Schedule II of the Workmen's

Compensation Act, 1923 (now Employee's Compensation Act). He submitted that receipt of service benefits under pension rules does not deprive a workman of statutory compensation under this welfare enactment. He further pointed out that the accident and duty were admitted by the department's own witnesses and the department had fully participated and led evidence before the Commissioner, leaving no room for grievance.

11. At the outset, it is well-settled that an appeal under Section 30 of the Act lies before the High Court strictly on a substantial question of law. The Commissioner is the final Court on facts and this Court cannot re-appreciate the evidence unless the findings recorded by the learned Commissioner suffer from perversity. The Hon'ble Supreme Court in ***Golla Rajanna v. Divl. Manager, (2017) 1 SCC 45***, observed as under:

> "10. Under the scheme of the Act, the Workmen's Compensation Commissioner is the last authority on facts. Parliament has thought it fit to restrict the scope of the appeal only to substantial questions of law, being a welfare legislation. Unfortunately, the High Court has missed this crucial question of limited jurisdiction and has ventured to reappreciate the evidence and recorded its own findings on the percentage of disability for which also there is no basis. The whole exercise made by the High Court is not within the competence of the High Court under Section 30 of the Act."

12. This principle was reiterated in ***North-East Karnataka Road Transport Corporation v. Sujatha, (2019) 11 SCC 514*** and ***Fulmati Dhramdev Yadav v. New India Assurance Co. Ltd., 2023 SCC OnLine SC 1105,*** holding that the appellate jurisdiction under Section 30 is not like a Regular First Appeal under Section 96 of the Code of Civil Procedure and is restricted to examining substantial questions of law.

Substantial Question of Law No.1:

13. This question relates to whether deceased Jaswant Singh, being a regular employee of the I&PH Department, was not a workman under Section 2(1)(n) of the Workmen's Compensation Act. Since, the accident occurred on 20.07.2006, prior to the coming into force of the Workmen's Compensation (Amendment) Act, 2009 [which took effect in 2010, renaming the enactment as the Employee's Compensation Act and substituting the term 'employee' in Section 2(1)(dd)], the provisions of the then Workmen's Compensation Act, 1923 apply in the present case.

14. Section 2(1)(n) of the Workmen's Compensation Act, 1923 defined a workman as any person who is employed in any such capacity as is specified in Schedule II of the Act.

Furthermore, Section 2(2) of the Act contains a deeming provision making it clear that the exercise and performance of the powers and duties of a local authority or of any department acting on behalf of the Government shall, for the purposes of the Act, be deemed to be the trade or business of such authority or department.

15. Turning to Schedule II of the Act, clause (x) [which corresponds to the enumerated categories of workmen] specifically covers persons:

> *"employed in the construction, working, repair or demolition of any aerial ropeway, canal, pipe-line or sewer;"*

16. Admittedly, deceased Jaswant Singh was employed as a Fitter in the Irrigation and Public Health (I&PH) Department and was actively engaged in repairing a water pipe at the time of the fatal fall. His nature of duties squarely brought him within the statutory category specified in Schedule II.

17. The question whether a regular government servant covered by pension, provident fund and family benefit rules is excluded from the definition of a workman was considered by a Division Bench of the Kerala High Court in ***State of Kerala v. Khadeeja Beevi, 1989 ACJ 332***. In that case, a regular government mahout in the Forest Department met with an

accident and died. Rejecting the State's contention that regular government servants are excluded from the Act, the Division Bench held:

> *"2. ...The only question seriously pressed before us was that the deceased Abdul Khadir, being a Government servant, cannot be considered to be a workman within the meaning of Section 2(1)(n) of the Act. We are of the view that this contention is without substance. Section 2(1)(n) of the Act taken along with Schedule II, item (xxii) states that persons employed in the training, keeping or working of elephants or wild animals are workmen within the meaning of Section 2(1)(n) of the Act. In the light of Schedule II, item (xxii), it is futile to contend that deceased Abdul Khadir was not a workman employed by the appellants. On this short ground the only plea of the appellants fails."*

18. Similarly, in ***District Forest Officer, Madurai Division v. P. Ganesan and Ors., 2007 ACJ 1521***, the Madras High Court, while dealing with a government employee who had received D.C.R.G. under the Tamil Nadu Pension Rules, 1978, approved the rulings in ***State of Gujarat v. R.K. Deshdia, 1991 LLN 536*** and ***The State of Tamil Nadu v. P. Chellam, 2003 (3) LW 634*** to hold that holding a post in the civil services of the State or being eligible for death-cum-retirement benefits does not exclude an employee from the definition of a workman under the Act if the duties fall within Schedule II.

19. Therefore, the regular employment of late Jaswant Singh and the receipt of service benefits by his family members did not take him out of the definition of a workman under the Act. Deceased Jaswant Singh was very much a workman within the meaning of Section 2(1)(n) of the Act. Substantial Question of Law No.1 is accordingly answered in the negative, in favour of the respondents and against the appellant.

Substantial Question of Law No.2:

20. This question addresses whether the learned Commissioner was not justified in law in awarding compensation of ₹3,12,940/- along with interest at the rate of 12% per annum. In this context, the plea of limitation under Section 10 raised by the appellant also merits consideration. The accident occurred on 20.07.2006. The departmental authorities themselves forwarded the accident reports and Rapat Roznamcha to the learned Commissioner. Under Section 10 of the Act, the lack of a formal notice does not bar proceedings where the employer had knowledge of the accident from any source at or about the time of the occurrence. Furthermore, the fourth proviso to Section 10(1) confers discretion upon the Commissioner to entertain a claim petition even beyond the

period of two years if satisfied that there was sufficient cause. Since, the department's own communication dated 21.07.2009 was placed before the Commissioner, the learned Commissioner rightly entertained the matter and no question of limitation survives to defeat a legitimate claim under a welfare statute.

21. Coming to the calculation of compensation, deceased was earning ₹4,260/- per month. Under Explanation II to Section 4(1)(a) of the Act as applicable on the date of accident, monthly wages exceeding ₹4,000/- were deemed to be ₹4,000/- only. The learned Commissioner correctly took 50% of the deemed wage, which came to ₹2,000/-. Deceased was 49 years and 6 months old at the time of the accident, for which the relevant factor specified in Schedule IV of the Act is 156.47. Multiplying ₹2,000/- by 156.47, the total compensation works out to ₹3,12,940/-. The learned Commissioner also rightly excluded petitioner No.1 (the major son who was granted compassionate employment) and allocated the compensation between the widow (60%) and the daughter (40%).

22. Under Section 4A(3)(a) of the Act, where an employer is in default in paying compensation within one month from the date it fell due, the Commissioner is statutorily mandated to

direct payment of simple interest at the rate of 12% per annum from the date of the accident. The award of interest at 12% per annum is in strict conformity with statutory provisions and settled law. Therefore, the learned Commissioner was fully justified in law in awarding compensation of ₹3,12,940/- along with interest at the rate of 12% per annum. Substantial Question of Law No.2 is answered in the negative, in favour of the respondents and against the appellant.

Substantial Question of Law No.3:

23. Regarding the grievance that no opportunity to file a reply had been afforded to the appellant, the record of the learned Commissioner reveals that the department was duly represented by an Assistant District Attorney. The department actively participated in the trial, cross-examined the claimant's witness and produced two official witnesses (RW-1 and RW-2) along with departmental files and exhibits (Ex.RW1/A to Ex.RW1/C) to place its complete defence before the Court. No prejudice was shown to have been caused to the department. Having actively participated and led its evidence in defence, the department cannot now turn around and raise a hyper-technical plea of lack of opportunity. Substantial Question of Law No.3 is

answered in the negative, in favour of the respondents and against the appellant.

24. There is no misreading or misappreciation of evidence on the part of the learned Commissioner, nor does the impugned order suffer from any perversity or illegality. The findings arrived at by the learned Commissioner are reasonable, just and fully supported by the record.

25. In view of the above discussion, the present appeal fails and the same is dismissed. The order dated 22.06.2019 passed by the learned Commissioner under the Employee's Compensation Act, Sarkaghat, District Mandi in W.C.A No.13/2013 is upheld.

Pending miscellaneous applications, if any, shall also stand disposed of.

(Yogesh Jaswal),
Judge

October 30, 2026
(Rajeev Raturi)