IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.7581 of 2025
Decided on :28.04.2026

Pooja Chauhan

...Petitioner

Versus

State of HP and others

...Respondents

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

For the petitioner: Mr. Abhijeet Singh Chauhan, Advocate.

For the respondents: Mr. Hemant Kumar Verma, Deputy Advocate General.

Jiya Lal Bhardwaj, Judge (Oral)

By way of present petition, the petitioner has prayed for the following substantive reliefs:-

> *"(i) That a Writ of Certiorari may kindly be issued against the respondents setting aside the order dated 01.05.2025 for recovery of annual increments paid w.e.f. 01.09.2018.*
>
> *(ii) That a Writ of Mandamus may kindly be issued directing the respondents to re-fix the date of regularization as 04.09.2017 on the basis of date of joining on regularization with respect to the order dated 31.08.2017 and restoring the annual increments w.e.f from 01.09.2018."*

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

2. The facts as emerge from the pleadings are that the petitioner, vide office order dated 31.01.2012 (Annexure P-1), was appointed as Shastri on contract basis on fixed consolidated contractual amount of ₹13,500/- per month and was posted at Government Middle School, Nehar Swar U/c Government Senior Secondary School Beacher Ka Bag, where she joined her duties. Subsequently, vide order dated 31.08.2017 (Annexure P-2), the persons, who had completed three years continuous service on contract basis as on 31.03.2017, were regularized with immediate effect in the minimum of pay scale of ₹10,300-34800 + grade pay ₹3200/-, with the condition that they will have to improve their qualification within five years as per RTE Act, 2009 and in accordance with the latest Recruitment and Promotion Rules (for short 'R&P' Rules) of Language Teachers/Drawing Master/ Physical Education Teacher/Shastri (OT), failing which, their increments and financial benefits will be stopped. The name of the petitioner in this order figures at Serial No.13. Since the petitioner was having 41.75% marks in Shastri, which was below the minimum 45% marks prescribed for Scheduled Caste category, to which she belongs, and was not TET qualified, could not improve the

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same within the stipulated period of five years, thus made a representation on 22.08.2022 (Annexure P-3) to respondent No.4 and vide office order dated 23.01.2023, respondent No.3 had granted the ex-post facto permission to the petitioner, since she had already appeared in the examination. The petitioner acquired the said qualification by obtaining 52.58% marks on 13.03.2023 and by scoring 100 out of 150 marks in TET examination on 28.01.2023. However, since the petitioner had not obtained the requisite qualification as per the office order dated 31.08.2017, the benefits granted to her were withdrawn vide office order dated 16.07.2024 (Annexure P-5) and her pay was re-fixed, as on 13.03.2023, at ₹36,700/- basic pay, which was earlier fixed as on 01.09.2018. After issuance of the office order dated 16.07.2024, respondent No.4 had issued the show cause notice dated 11.04.2025 (Annexure P-6), calling upon her to reply within 15 days, with respect to the over payment of salary to her. Thereafter, vide order dated 01.05.2025 (Annexure P-7), the recovery of over payment amounting to ₹3,51,171/- was ordered and the petitioner was directed to confirm whether the recovery either in lump sum or in installments to be made within 15 days from the

date of issuing of the order.

3. The petitioner feeling aggrieved by the said order of recovery as well as re-fixation of her salary, has approached this Court by way of instant petition, on the plea that the annual increments as per the order of regularization was granted to her with immediate effect irrespective of the status of qualification at the time of implementation, and thus no recovery can be effected from her. The order does not mention that in case the employee does not acquire the qualification, the payment made to the employee will be recovered. It is further averred that the petitioner had never misrepresented the status of her qualification and thus, the recovery cannot be effected. Once the competent authority had granted the ex-post facto permission to her to improve the qualification, no recovery can be effected from her and further, the petitioner rightly held entitled to the annual increments w.e.f. 01.09.2018.

4. The respondents filed reply to the petition and not dispute the facts as narrated above. It has been averred that since the petitioner had acquired the qualification on 13.03.2023, as evident from perusal of order dated 23.01.2023, (Annexure P-4), the financial benefits had

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rightly been stopped w.e.f. 01.09.2022, which were re-fixed from 13.03.2023. It has further been averred that the condition of qualifying Shastri with 45%, within five years, was necessary and non-fulfillment of the required qualification within five years would lead to stoppage of financial benefits/increments. There is no formal approval or directive to extend five years' limit by any authority.

5. The petitioner filed rejoinder to the reply and controverted the facts in the reply.

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

7. It is not in dispute that the services of the petitioner were regularized vide office order dated 31.08.2017 (Annexure P-2), since she had completed three years' regular service as on 31.03.2017. No doubt as per office order dated 31.08.2017, the candidates, who were not having the requisite qualifications as per the RTE Act, 2009 and in accordance with the latest R&P Rules, were to acquire the same within five years, failing which their increments and financial benefits will be stopped. But in the case of the petitioner, she had made an application to grant her permission to acquire the requisite qualification and the

respondents-State had accorded the ex-post facto permission to her, vide office order dated 23.01.2023 and thereafter, she had acquired the same as on 13.03.2023. Once in the office order dated 31.08.2017, it was not stipulated that the candidates who had not acquired the qualifications within five years have to refund the excess payment, the action on the part of the respondents to issue order for effecting recovery is wrong and illegal. Further, once the respondents had grated the ex-post facto permission to the petitioner to acquire the qualification after five years period, the respondents at the most could have stopped the increments to the petitioner from 01.09.2022 to 13.03.2023, but the petitioner could not have been brought to the initial level of pay, which was granted to her and fixed at ₹36,700/-. If the said order is allowed to stand, it will cause grave injustice to the petitioner inasmuch as the period of service rendered by the petitioner will entirely be wiped out with effect from the date of regularizing her service in terms of the office order 31.08.2017 till 13.03.2023 and it was not even so stipulated in the office order dated 31.08.2017. The only condition, which was imposed, was that the increments and the financial benefits

will be stopped and it was nowhere mentioned in unequivocal words that the petitioner shall be brought to the initial stage, when her services were regularized. The respondents at the most can deny the benefit to the petitioner w.e.f. 01.09.2022 to 13.03.2023, but her pay cannot be re-fixed bringing the same to the level when her services were regularized vide office order dated 31.08.2017.

8. It is by now settled by catena of judgments of the Hon'ble Supreme Court as well as by this Court that in case there is no misstatement and misrepresentation made by a party at the time of receiving the payment, no recovery can be effected. In the present case, the petitioner being a class-III employee, would be put in great difficulty, in case the amount of recovery, as stated in the impugned order dated 01.05.2025, which is to the tune of ₹3,51,171/- is effected from her. In addition to this, the action on the part of the respondents to re-fix the pay of the petitioner at the initial level, when her services were regularized is also totally illegal and contrary to the office order dated 31.08.2017.

9. Consequently, the present petition is allowed and

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the impugned order dated 01.05.2025 (Annexure P-7) is quashed and set aside. The respondents are directed to re-fix the salary of the petitioner as per the office order dated 31.08.2017 excluding the period w.e.f. 01.09.2022 to 13.03.2023. Further, the respondents are directed to pay the arrears to the petitioner after re-fixation of her pay taking the date of regularization as per office order dated 31.08.2017 after excluding the aforesaid period 01.09.2022 to 13.03.2023 within three months from today. In case the arrears are not paid to the petitioner within three months from today, she shall be held entitled interest on the arrears @6% per annum from today, till its payment. 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