IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA
CWPOA No.423 of 2019
Decided on: 25th April, 2026

Sansar Chand Awasthi **...Petitioner**

Versus

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

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

For the petitioner:	Mr. Subhash Sharma, Senior Advocate with Mr. Prantap Sharma, Advocate.
For the respondents:	Mr. Anup Rattan, Advocate General with Mr. Hemant Kumar Verma, Deputy Advocate General.

Jiya Lal Bhardwaj, Judge *(Oral)*

The petitioner, by way of present writ petition, has prayed for the following substantive reliefs:-

> *"(i) Annexure A-12 may kindly be quashed and set aside.*
> *(ii) Respondent-State may kindly be directed to uphold the legitimate claim of the applicant pertaining to the preponing of increment, as stated in the factual matrix of the above noted matter, by counting the period of 463 days which is evident from Annexure A-1.*
> *(iii) The respondent State may also kindly be directed to grant and release the monetary benefits admissible to the applicant under the relevant provisions of F.R.S.R. 49(i) for the*

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

remainder 306 days."

2. The facts which emerge from the pleadings are that the petitioner was appointed with the respondents-State as Deputy Labour Commissioner on 07.08.1986, and had been asked to perform the duties on the post of Joint Labour Commissioner on different spells of time and the total period of service is 463 days. The petitioner was promoted to the post of Joint Labour Commissioner on 12.06.1998. Since the petitioner was not granted the benefit of counting the period of service for increments on the post of Joint Labour Commissioner and salary when he served on the said post while discharging the duties of Deputy Labour Commissioner under Rule 26 and 49 of F.R.S.R, he preferred a representation on 10.06.2005 (Annexure A-1) requesting therein to accord necessary sanction for counting of 463 days past duty on the post of Joint Labour Commissioner. However, the said request made by the petitioner was turned down, vide communication dated 22.10.2005 (Annexure A-12).

3. The petitioner feeling aggrieved by the order rejecting his claim, has filed the instant petition on the ground that Rule 26 of F.R.S.R stipulates that once the petitioner while officiating on a post, holding a temporary post on a time scale of pay, was appointed to officiate in a higher post and thereafter he was re-appointed to the lower post on the same time scale of pay, the period has to be counted for increments in the time scale applicable to such lower post. Further, it has been averred that the necessity to appoint the petitioner was with a view to discharge the job and function of the higher office and in such similar circumstances, the State had already granted the benefit to one Sh. Manoj Tomar under F.R.S.R. 26, who at the relevant time being Deputy Chief University Employment Information and Guidance Bureau, Shimla-5, had performed the additional job functions of the higher post of Deputy Director, Employment, H.P. in addition to his own duties. He was allowed the additional remuneration @10% of the presumptive pay and also the preponing of his increment benefit on the post of

Deputy Director. However, the said benefit of the preponement of the increment has been denied to him. The petitioner has also raised a plea that under F.R. 49, he was entitled to the pay of the post of Joint Labour Commissioner and the respondents have not granted the said benefits, which has caused financial loss to him. The petitioner had been given the admissive pay for a period of 157 days only out of total 463 days for which he had actually worked as Joint Labour Commissioner on different spells of time.

4. Respondents No.1 and 2 filed reply to the petition and admitted that the petitioner had officiated in a higher post of Joint Labour Commissioner in short spells while being Deputy Labour Commissioner during leave period of Sh. J.L. Chauhan, the then Joint Labour Commissioner. The application filed by the petitioner dated 10.06.2005 to accord necessary sanction for counting past duty on the post of Joint Labour Commissioner, was also admitted. However, it is stated that the same was done at the Government level in consultation with the Finance

Department and the same was rejected by the Finance Department, vide communication dated 22.10.2005. Respondent No.2 had never opposed for granting the legitimate claim to the petitioner. It was also admitted that Sh. Manoj Tomar, while working as Deputy Chief UEIGB, was granted additional remuneration @10% of presumptive pay under F.R. 49 for holding the additional charge of higher post of Deputy Director (Employment), H.P. w.e.f. 16.09.1999 to 08.12.1999 in addition to his duties. However, the prior approval of government was sought while entrusting the work of Deputy Director to Sh. Manoj Tomar by respondent No.2 and the same was accorded/conveyed by respondent No.1. Respondent No.2 has not given specific reply with respect to preponing of the increment benefit granted to the aforesaid Sh. Manoj Tomar. It has been admitted that the petitioner had officiated in a higher post of Joint Labour Commissioner in short spells on different occasions, but the total period is of 460 days instead of 463 days.

5. Respondent No.3 filed separate reply to the petition and contended that F.R. 49 can be invoked, in case, the officer is authorized to officiate on the higher post as well as the entitlement of presumptive pay. The State Government has circulated instructions as to the orders for officiating under FR 49 on 18.04.1996 (Annexure R-A) and since no specific orders in the notification when the petitioner has been asked to perform the duties of Joint Labour Commissioner have been issued, the petitioner is not entitled to the benefit of F.R. 49. So far as the applicability of F.R. 26 with respect to preponement of date of increment taking into view various spells during which the petitioner had officiated on higher post i.e. for 460 days is not based on facts. As per the case received in the Finance Department on departmental file of the Administrative Department in January 2004 and again in August 2005, there was a proposal for counting various spells, as per the details which is only of 270 days. Since there were no orders of officiation on higher post specific as to the applicability of FR-49

and secondly as also not made as per the procedure of Recruitment and Promotion Rules, the petitioner could not be found eligible for being extended the benefit of FR-26 for preponement of annual increment on the higher post after the promotion of the petitioner on the said post. Further various spells having gaps and not in continuity can also not be taken into view for preponement of annual increment.

6. The petitioner has filed rejoinder to the reply filed by respondent No.3 and controverted the facts.

7. I have heard Mr. Subhash Sharma, learned Senior Counsel duly assisted by Mr. Prantap Sharma, learned counsel for the petitioner as well as Mr. Hemant Kumar Verma, learned Deputy Advocate General, for the respondents-State and also perused the record carefully.

8. It is not in dispute that during the pendency of the writ petition, the respondents have paid the salary of the post of Joint Labour Commissioner, when the petitioner had discharged the duties on the said post in addition to the duties performed

by him on the post of Deputy Labour Commissioner. The only dispute now remains to be adjudicated in the present petition is with respect to count the past duty days on the post of Joint Labour Commissioner for the purpose of increment of the period when the petitioner had served on the said post in addition to performing his duties. Before adverting to the facts of the case, it would be relevant to quote the provision of F.R.26(c)(i), which reads as under:-

> *"F.R.26 (c)(i) If a Government servant, while officiating in a post of holding a temporary post on a time-scale of pay, is appointed to officiate in a higher post or to hold a higher temporary post, his officiating or temporary service in the higher post shall, if he is reappointed to the lower post, or is appointed or reappointed to a post on the same time-scale of pay, count for increments in the time-scale applicable to such lower post. The period of officiating service in the higher post which counts for increment in the lower post is, however, restricted to the period during which the Government servant would have officiated in the lower post but for his appointment to the higher post. This clause applies also to a Government servant who is not actually officiating in the lower post at the time of his appointment to the higher post, but who would have so officiated in such lower post or in a post on the same time-scale of pay had he not been appointed to the higher post."*

9. A bare perusal of the provision clearly reveals that if a Government servant, while officiating in a post holding a

temporary post on a time scale of pay, is appointed to officiate any higher post or to hold a higher temporary post, his officiating or temporary service in the higher post shall, if he is reappointed to the lower post, or is appointed or reappointed to a post on the same time- scale of pay, count for increments in the time-scale applicable to such lower post. Since the petitioner has served on different spells on the post of Joint Labour Commissioner and thereafter Admittedly, the petitioner had officiated in a higher post of Joint Labour Commissioner on different spells and worked on the lower post of Deputy Labour Commissioner and thereafter promoted vide office order dated 12.06.1998 to the post of Joint Labour Commissioner on regular basis and thus, as per the ibid provision, he is entitled to count for increment of the period spent by him on the higher post in the time scale applicable to such lower post. There is no justification on the part of respondents-State to deny the said benefit to the petitioner.

10. The respondents have not disputed the fact that in

the past the benefit of F.R.26 was granted to an employee, who had also served on the higher post. The defence is only to the effect that firstly, the petitioner was not appointed on the higher post of Joint Labour Commissioner after following the proper prescribed procedure and in accordance with the provisions of R&P Rules and secondly, he had not served in one spell on the higher post. Once the respondents have paid the remaining salary of the period of service on the post of Joint Labour Commissioner to the petitioner during the pendency of the petition, the plea raised by them, that the petitioner was not appointed after following the prescribed procedure, cannot be countenanced. The second plea that the petitioner had served on the higher post on different spells is rejected for the reason that the rule does not stipulate that if the person had worked on different spells on the higher post, he is not entitled to count the period when the person had served on the higher post for count of increments. Once the respondents have granted the benefit of the pay of higher post of Joint Labour Commissioner

of 460 days in favour of the petitioner, the said period is also required to be counted for the purpose of giving him the benefit of increments. As already noticed above, the Rule does not stipulate that if there is any break in performing the duties on the higher post, the total period served on different spells will not be counted for the purpose of grant of benefit under F.R.26. Furthermore, once the respondents-State had extended the benefit of F.R. 26 to its employee, the petitioner who is similarly situated also deserve the same treatment. The petitioner could not have been denied the benefit of F.R. 26 and denying the same to him is violative of Article 14 of the Constitutions of India and thus, the impugned rejection of his claim is quashed.

11. The petitioner had filed the petition after rejecting of his claim vide communication dated 22.10.2005. Thus, he is entitled to arrears on account of grant of increments only three years prior to filing of the petition by him on 11.05.2006. However, it is made clear that the benefits have to be calculated from the due date.

12. Consequently, the present petition is allowed and the impugned order dated 22.10.2005 (Annexure A-12) is quashed and set aside and the respondents are directed to grant the benefit of F.R.26 to the petitioner, thereby counting of increments in the time scale applicable to the post of Deputy Labour Commissioner of the period when he had served on the post of Joint Labour Commissioner. However, the arrears shall be calculated and paid from three years prior to filing of the petition. In case, the arrears are not paid to the petitioner within three months from today, the respondents shall pay the interest on the arrears @6% per annum from today till its payment.

13. The petition is accordingly disposed of. Pending application(s), if any, shall also stand disposed of.

25th April, 2026 **(Jiya Lal Bhardwaj)**

(ankit) **Judge**