



(2024:HHC:9292)

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.5486 of 2024

Date of Decision : 27.09.2024

Sumeet Kumar & Anr.

..... Petitioners

Versus

State of Himachal Pradesh and Anr.

..... Respondents

Coram:

The Hon'ble Mr. Justice Bipin Chander Negi, Judge

Whether approved for reporting?¹

For the petitioners : Mr. Yogesh Kumar Chandel, Advocate.

For the respondents : Mr. Diwakar Dev Sharma, Additional Advocate General.

Bipin Chander Negi, Judge (oral)

Petitioners have approached this Court seeking counting of their contract service for the purpose of annual increment, seniority and consequential benefits from the date of their initial appointment(s). Details of initial appointments of the petitioners are being given herein under:-

Sr. No.	Name of the Petitioner	Date of Joining
1	Sh. Sumeet Kumar	06.10.2017
2.	Sh. Vijay Kumar	14.09.2018

2. Admittedly, petitioners were appointed as Junior Office Assistant (IT) in the Office of Labour Commissioner-cum-Director of Employment (HP) on a contract basis as per the terms and conditions

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

of the R & P Rules applicable to the recruitment for the said post. Services of the petitioner No.1 was regularized on 01.04.2021 and petitioner No.2 on 01.10.2021 in Pay Band of Rs.5910-20200+1950 Grade Pay. Services of the petitioners were regularized after completion of requisite 03 years continuous contractual service, in accordance with the instructions issued by the Department of Personnel, Government of Himachal Pradesh, vide instructions dated 30.03.2021. On regularization, petitioners were placed at the minimum of the time scale of the post.

3. It is also undisputed that initial recruitment of the petitioners against the post of Junior Office Assistant (IT) in the years, 2017-2018 though on contract basis, but was made following procedure prescribed under R & P Rules framed by the Department, under the Proviso to Article 309 of the Constitution of India, and the process was undertaken by the Himachal Pradesh Staff Selection Board, the prescribed recruitment agency.

4. The petitioners were included in the select list on the basis of merit and were recommended to the Department for appointments by the Board, after participating in the process by way of open competition *along with* other eligible candidates, who had applied and participated in the said process.

5. Undoubtedly, the contract appointments of the petitioners were not a back door entry, but were made following R & P Rules framed by the respondents for direct recruitment against the said posts. The appointments of the petitioners on contract basis were fortuitous circumstances because the department took a decision not to grant regular appointments at initial stage.

6. In the aforesaid facts and circumstances, it is evident that initial appointments of the petitioners on contract basis, followed by regularization, were made by following Rules in force and were substantive appointments against the sanctioned posts through a process undertaken by the prescribed agency for recruitment under the Rules through a competitive process, wherein all eligible candidates were considered and evaluated.

7. There is no justifiable and plausible reason available on record for not offering regular appointment at initial stage but to offer appointment on contract basis, for initial three years, followed by regularization, despite availability of sanctioned posts and work and assignment and performance of identical nature of work and duties by the contract appointees as well as regular appointees. It appears, in order to avoid its liability to pay salary attached to the post and to deprive the employees from lawful service benefits available to them, exploitative policy of contract appointment for initial five years has been/

and is being adopted and practiced. It is not a case where, for sudden temporary increase in workload, employees were required and necessitated to be engaged to cope with emergent situation for a limited period but recruitment was for permanent sanctioned post created for performance of ever existing work.

8. Omissions and commissions on the part of the State are arbitrary and such conduct is antithesis the mandates of Article 14 of the Constitution of India, which does not behove to the State, being a Model Employer and protector of rights of people. State cannot and cannot be permitted to act as an exploitative master by cleverly devising a method under the garb of provisions of R & P Rules, by providing contractual appointment at initial stage but depriving service benefits. It is not expected from the State to deprive the employees from their lawful and just benefits emanating from the services rendered by them.

9. Recently Principal Division Bench of this High Court, referring and ***relying pronouncements of the Supreme Court and this Court in Registrar General of India and Another vs. V. Thipa Setty and Others, (1998) 8 Supreme Court Cases 690; R.K. Mobisana Singh vs. Kh. Temba Singh and Others, (2008) 1 Supreme Court Cases 747; Surendra Kumar and Others Vs. Greater Noida Industrial Development Authority and Others,***

(2015) 14, Supreme Court Cases 382; **Direct Recruit Class II Engineering Officer's Association Versus State of Maharashtra and Others**, (1990) 2 Supreme Court Cases 715; **State of West Bengal and Others Versus Aghore Nath Dey and Others**, (1993) 3 Supreme Court Cases 371; **Siraj Ahmad Versus State of Uttar Pradesh and Another**, (2020) 19 Supreme Court Cases 480; **CWPT No.6785 of 2008, titled as Narender Singh Naik Versus State of Himachal Pradesh and Others**, decided on 14.09.2010; **Letters Patent Appeal No.271 of 2011**, titled as **State of Himachal Pradesh and others Versus Narender Singh Naik**, decided on 09.04.2013; **Special Leave to Appeal (C) No(s). 34038 of 2012, titled as Surender Singh Versus State of H.P. Ors.**, has pronounced judgment dated 03.08.2023 in **CWP No. 2004 of 2017**, titled as **Sh. Taj Mohammad and others vs. State of H.P. and others alongwith connected matter**, wherein, in the identical circumstances petitioners therein have been held entitled for seniority from initial date of appointment on contract basis with all consequential benefits.

10. The claim of petitioners for counting their contract service is squarely covered by aforesaid judgment in **Taj Mohammad's case** and judgments referred and relied therein. Therefore, the reasons and the grounds assigned for deciding the aforesaid **CWP No. 2004 of 2017**

shall be applicable *mutatis mutandis* in the present case for all intents and purposes.

11. Accordingly, petitioners are held entitled for counting their services from date of initial appointments on contract basis for the purpose of seniority and all consequential benefits as initial appointments of the petitioners on contract basis after following a procedure prescribed in R & P Rules. In sequel to entitlement for counting contract service for seniority, petitioners shall also be entitled for counting the said contract service for the purposes of granting annual increments and consequential benefits.

12. Judgments passed by Supreme Court and various Benches of this Court, in numerous cases, including **CWP No.850 of 2010**, titled **Paras Ram vs. State of HP and others**, latest **HLJ 2009 (HP) 887**; **LPA No.36 of 2010**, titled **Sita Ram vs. State of H.P.**, decided on **15.07.2010**; **CWP No.4550 of 2010**, titled **Ravi Kumar vs. State of HP and another** along-with connected matters, on 16.12.2010; **CWP No.5400 of 2014**, titled **Veena Devi vs. Himachal Pradesh State Electricity Board Ltd & another**, decided on 21.11.2014; **Special Leave to Appeal CC No(s) 18898 of 2015**, titled as **H.P. State Electricity Board Ltd. and another vs. Veena Devi**; **CWP No.8953 of 2013**, titled as **Joga Singh and others vs. State of Himachal Pradesh and others and connected matters connected matters**;

SLP(C)No. 183 of 2016 titled **State of H.P. & Others vs. Joga Singh and others**, **Review Petition (Civil) No. 274 of 2017**; CWPOA No.195 of 2019, titled **Sheela Devi vs. State of H.P. and others**, decided on 26.12.2019; **Jagdish Chand vs. State of Himachal Pradesh & others**, decided on 10.01.2020 alongwith connected matters; **SLP (Civil) No. 10399 of 2020**, titled **State of Himachal Pradesh & another vs. Sheela Devi**; SLP(C) Nos.8012-8013 of 2021, **in State of Himachal Pradesh vs. Jagdish Chand**; **CWPOA No. 5507 of 2020** titled **Oma Wati & another vs. State of Himachal Pradesh and others**; and **CWPOA No. 5187 of 2020**, titled **Sunil Dutt & others vs. State of Himachal Pradesh alongwith connected matters**, decided on 29.08.2003, are also relevant, wherein it has been held that contract service shall be counted for the purpose of annual increment and pensionary benefits. Petitioners therein, who were appointed on contract basis by following the Policy adopted by the State, but de hors the R & P Rules, have been held entitled for counting of contract service for the purpose of pension and annual increments, whereas petitioners herein are on better footing than the petitioners in those petitions, who have been appointed by following prescribed procedure provided under R & P Rules. Therefore, petitioners herein are also entitled for counting of their contract service from their initial date of appointments for the

purpose of seniority as well as annual increments *along with* all consequential benefits.

13. Petition is allowed and disposed of in aforesaid terms with direction to the respondents to undertake entire exercise and extend consequential benefits to the petitioners. All benefits including seniority shall be settled and extended to the petitioners on or before **31st March, 2025** and payment of arrears of monetary benefits may be disbursed by the respondents in terms of instructions of Finance Department, including instructions dated 07.01.2012 and 17.09.2022.

Pending miscellaneous application(s), if any, shall also stand disposed of.

27th Sept, 2024
(manish)

(Bipin Chander Negi)
Judge