



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA
ON THE 29th DAY OF DECEMBER, 2021

BEFORE

HON'BLE MR. JUSTICE MOHAMMAD RAFIQ,
CHIEF JUSTICE

&

HON'BLE MS. JUSTICE JYOTSNA REWAL DUA
CIVIL WRIT PETITION (ORIGINAL APPLICATION)
No.6830 of 2020

Between:-

1. PREM LAL
S/O SHRI SURAT RAM SHARMA,
R/O VILLAGE BAG, POST OFFICE PAHAL,
DISTRICT SHIMLA, H.P.
PRESENTLY WORKING AS
LECTURER (POLITICAL SCIENCE) IN
GSSS SHOGI, SHIMLA,
DISTRICT SHIMLA, H.P.
2. NARESH KUMAR
S/O PANNA LAL,
R/O VILLAGE JAG JARELI JAGTARLI,
TEHSIL ROHROO, DISTRICT SHIMLA,
PRESENTLY WORKING AS
LECTURER (COMMERCE),
GSSS BIACHRI, DISTRICT SHIMLA, H.P.

.....PETITIONERS

(BY MR. KARAN SINGH PARMAR, ADVOCATE)

AND

1. STATE OF HIMACHAL PRADESH
THROUGH SECRETARY (EDUCATION)
TO THE GOVERNMENT OF HIMACHAL
PRADESH, SHIMLA-2
2. DIRECTOR HIGHER EDUCATION,
HIMACHAL PRADESH, SHIMLA

.....RESPONDENTS

(BY MR. ASHOK SHARMA, ADVOCATE GENERAL
WITH MR. NAND LAL THAKUR, ADDITIONAL
ADVOCATE GENERAL)

*This petition coming on for admission this day,
Hon'ble Ms. Justice Jyotsna Rewal Dua, passed the following:* ◇

ORDER

The petitioners seek regularization on completion of eight years of service.

2. Facts:-

2(i). The case of the petitioners is that they were engaged as Lecturers on contract basis in the respondent-Education Department in the year 1998. Their services were terminated w.e.f. 11.05.2000 and 19.05.2000, respectively, on joining of regular incumbents. Petitioners were re-engaged in the year 2001 after the decision in CWP No.415 of 2000, titled Baldev Singh & others Versus State of H.P. & others.

2(ii). Subsequently, in view of the orders passed by this Court, the respondents regularized the services of the petitioners by taking the dates of their initial engagement as starting point of their service. The regularization order was issued by the respondents in favour of the petitioners in July, 2018.

2(iii). The grievance of the petitioners in the instant petition is that their services have been regularized on completion of 10 years

of service, whereas, they were required to be regularized on completion of eight years of service at par with similarly situated persons. The substantive prayer made in the petition is as under:-

“(i) That regularization order of the applicant issued in July, 2018 (Annexure A-2) may kindly be quashed and set aside to the extent it regularize the services of the applicants on completion of ten years of service with further direction to respondents to regularize the services of the applicants on completion of eight years of service i.e. with effect from 1.1.2006/1.1.2007 which may deem fit by this Hon’ble Court.”

3. During hearing of the case, learned counsel for the petitioners placed on record a judgment dated 10.04.2013, rendered in **CWP No.1853 of 2009**, titled **Arpana Bali Versus The State of Himachal Pradesh & Others**. In the said case, the respondents-State had declined to regularize petitioner’s (therein) services on the ground that there was break in her service w.e.f. 22.03.1999 till 19.05.1999. The State had asserted that the petitioner therein was re-engaged on 20.05.1999, therefore, she had not completed eight years of continuous service on 10.11.2006. This was the reason given by the respondents-State for not regularizing the services of said Arpana Bali. The petitioner therein had claimed that break in her service w.e.f. 22.03.1999 to 19.05.1999 was on account of act, conduct and deeds attributable to the respondents and not on account of any fault on her part. The Court held that the period from 22.03.1999 to 19.05.1999 cannot be treated as break in service of

the petitioner-Arpana Bali. That she had completed eight years of continuous service as on 10.11.2006. The Court held the petitioner therein entitled to regularization of her services on completion of eight years of service, i.e. with effect from 10.11.2006. Relevant paras from the judgment read as under:-

- "15. True it is that as per the policy dated 9.6.2005, Annexure-I, the services of those contractual appointees like the petitioner, who had completed eight years of service on 31.12.2004 and those likely to complete eight years of service as on 31.12.2005 had to be regularized w.e.f. 1.1.2005 and 1.1.2006 respectively. The petitioner admittedly had completed eight years of service after 31.12.2005 i.e. 10.11.2006. This Court, however, is not in agreement with the submissions that the case of the petitioner being not covered under this policy and that only those contractual appointees having completed eight years of service as on 31.12.2004 or 31.12.2005 have been regularized for the reason that as per the own stand of the respondent-department in the reply to the writ petition, the services of those incumbents, who had completed eight years of continuous service as on 10.11.2006 were regularized and as the petitioner had also completed such services as on 10.11.2006, therefore, her services have also been regularized w.e.f. 10.11.2006/31.12.2006. The non-regularization of her services leads to the only conclusion that she has been denied the benefit of regularization from 10.11.2006/31.12.2006 illegally, arbitrarily and rather discriminating against similarly situated persons on account of there being break in her service which stand of the respondent department has not been approved by this Court as per the findings recorded hereinabove and rather has been held as illegal. It has further been held that the period w.e.f. 22.3.1999 to 19.5.1999 cannot be said to a break in her service and rather has to be counted towards the continuity in service and seniority. The petitioner, therefore, is entitled to regularization of her services on the completion of eight years of service i.e. 10.11.2006.*
- 16. This court is also not satisfied with the arguments that after completion of eight years of service by the petitioner, she has rightly been considered as per the policy dated 9th September, 2008, Annexure-II, for the reason that as per this policy, the services of those incumbents, who had completed eight years*

of continuous service as on 31.3.2008, were to be regularized. The petitioner, however, had already completed eight years of service as on 10.11.2006, therefore, was entitled to be considered for regularization immediately thereafter having acquired the requisite service well before 31.12.2008, and during the currency of the policy dated 9.6.2005, Annexure-I referred to hereinabove.

17. There is again no substance in the arguments addressed on behalf of the respondent-State that there was no policy in existence during the year 2006 or 2007 and that the petitioner could have only been considered on coming into being the new Policy viz the policy dated 9th September, 2008 for the reason that in a bunch matter of daily wagers (CWP No.2735 of 2010, titled Rakesh Kumar vs. State of H.P. & Others and its connected matters) decided by the Principal Bench of this Court vide judgment dated 28.7.2010, while holding that the Policy of 2000 was in existence till the new one was introduced on 9th June, 2005, the daily wagers, who had acquired the requisite number of working years in the interregnum were also held liable to be brought on work charge establishment as per the old policy framed in the year 2000. Therefore, applying these principles in the present case, the services of the petitioner should have been regularized on completion of the eight years of service.
18. The upshot of the above discussion would be that the petitioner is entitled to be regularized as Lecturer Music (Vocal) w.e.f. 1.1.2007 instead of 31.12.2008, however, only on notional basis from the said date and entitled to the actual financial benefits from the date she has joined as Lecturer Music (Vocal) on regular basis pursuant to impugned order Annexure P-13. The impugned order is hereby ordered to be modified, accordingly.”

Learned counsel for the petitioners also submitted that original petitioner No.7, Sh. Mahender Kumar S/o Shri Pyare Lal, was deleted from the array of parties in the instant case. Said Sh. Mahender Kumar filed CWP No.3273 of 2019 seeking his regularization on completion of eight years of services with effect from the date of his first engagement in the year 1998. The said writ

petition was disposed of on 17.07.2020 in the following terms:-

"Learned counsel for the petitioner states that the issue in question is squarely covered by the judgment rendered in CWP No. 1853 of 2009-D, titled as Arpana Bali vs. The State of Himachal Pradesh and others, decided on 10th April, 2013 and the said judgment, in turn, stands implemented by the respondents. This is a matter which is required to be considered by the employer.

- 2. Accordingly, the present petition is disposed of with a direction to respondent No. 2 to consider and decide the case of the petitioner in light of the averments made in this petition and, more particularly, the judgment rendered in Arpana Bali's case, which stands implemented. Needful be done within four weeks and in case the petitioner is similarly situated to Arpana Bali's case, then consequential action be taken within two weeks."*

Learned counsel further submitted that the judgment dated 17.07.2020 has already been implemented by the respondents. Order dated 22.01.2021 was passed in this regard, regularizing the services of said Sh. Mahender Kumar w.e.f. 01.01.2007 on notional basis. Due and admissible monetary benefits were restricted to him from the date he had actually joined the duties. Office order dated 22.01.2021 has been placed on record by the petitioners, relevant portion of which reads as under:-

"Now therefore, facts and circumstances of the case Smt. Arpana Bali was engaged in the year 1998 and petitioner namely Sh. Mahender Kumar was also engaged in the year 1998 having completed 08 years services as on 31.12.2006. Smt. Arpana Bali has been allowed regularization w.e.f. 01.01.2007 notionally. Hence the regularization is hereby allowed to Sh. Mahender Kumar w.e.f. 01.01.2007 on notional basis. However, the due and admissible monetary benefits be restricted from the date he had joined duties pursuant office order dated 27.07.2010. The Principal Govt. Sr. Sec. School Behli is further directed that arrear be released as per Finance

Department instructions dated 07.01.2012 & 15.12.2011 and the entry in this regard may also be made in the service book of the petitioner. May inform the parties accordingly."

The petitioners contend that they are similarly situated as the said Sh. Mahender Kumar and are entitled for the same benefits as have been released in favour of Sh. Mahender Kumar.

4. In view of the above submissions and taking note of the judgment passed in CWP No.1853 of 2009, titled Arpana Bali Versus The State of Himachal Pradesh & Others as well as the judgment passed in CWP No.3273 of 2019, titled Mahender Kumar Versus State of H.P. & Ors., and the order dated 22.01.2021 passed by the respondents, regularizing the services of said Sh. Mahender Kumar on completion of eight years of services, we direct the respondents to decide the cases of the petitioners for their regularization on completion of eight years of continuous service by passing speaking orders in accordance with law, within a period of four weeks from today.

The petition stands disposed of in the above terms, so also the pending miscellaneous application(s), if any.

(Mohammad Rafiq)
Chief Justice

(Jyotsna Rewal Dua)
Judge

December 29, 2021
Mukesh