

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**CWPOA No. 6959 of 2020 a/w CWPOA Nos.
6963, 6966, 6967 and 6970 of 2020**

Reserved on: 13.05.2025

Decided on: 20.05.2025

1. CWPOA No. 6959 of 2020

Rajeev Sharma

...Petitioner

Versus

State of H.P. and others

...Respondents

2. CWPOA No. 6963 of 2020

Beli Ram

....Petitioner

Versus

State of H.P. and others

....Respondents

3. CWPOA No. 6966 of 2020

Arun Kumar

...Petitioner

Versus

State of H.P. and others

...Respondents

4. CWPOA No. 6967 of 2020

Virender Kumar

...Petitioner

Versus

State of H.P. and others

....Respondents

5. CWPOA No. 6970 of 2020

Ashok Kumar

...Petitioner

Versus

State of H.P. and others

...Respondents

Coram

The Hon'ble Mr. Justice Satyen Vaidya, Judge

¹ *Whether approved for reporting? Yes*

For the petitioner(s)

:Mr. B.S. Attri, Advocate, with Mr. Ashish Verma, Advocate.

For the respondents:

Mr. Gautam Sood, Deputy Advocate General, for respondents No. 1 and 2.
Mr. Anil Chauhan, Advocate, for respondent No.3.

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

Satyen Vaidya, Judge

All these petitions have been heard together and are being decided by a common judgment as the common questions of facts and law arise.

2. The petitioners in all these petitions are the employees of Special Area Development Authorities (for short, "SADA"). The details, in respect of petitioners, necessary for the issue involved herein can be summarized as under:

Sr.No.	Case No.	Name of petitioner(s)	Date of appointment on contract basis/regularisation	Category of post	Name of SADA
1	CWPOA No.6959 of 2020	Rajeev Sharma	26.02.2007/25.8.2015	Accountant	Kufri
2	CWPOA No. 6963 of 2020	Beli Ram	25.09.2001/25.8.2015	Chainman	Kufri
3.	CWPOA No. 6966 of 2020	Arun Kumar	20.11.2006/25.8.2015	Sanitary Inspector	Shoghi
4.	CWPOA No.6967 of 2020	Virender Kumar	20.11.2006/25.8.2015	Sanitary Inspector	Ghanahatti
5.	CWPOA No. 6970 of 2020	Ashok Kumar	10.01.2005/25.8.2015	Sanitary Inspector	Dhalli

3. All the petitioners were initially engaged on contract basis. Their services were regularized w.e.f. 25.08.2015 in pursuance to the communication dated

27.05.2015 issued by the Director, Town & Country Planning Department, Himachal Pradesh.

4. Petitioners are seeking their regularization in terms of relevant regularisation policy of the State Government which *interalia* provided for consideration of services of contractual employees for regularisation on completion of six years of contractual service.

5. Respondents No. 1 & 2 have filed their reply. It has been submitted that the petitioners had accepted the regularization of their services w.e.f.25.08.2015 without any objection and hence they cannot go now back on the terms and conditions of their regularization. The petitions have also been challenged being time barred.

6. Respondent No.3 has filed its separate reply. It has been submitted that as per communication dated 28.06.2014, the eligibility of contractual employees for regularization was subject to availability of vacancies and the regularization was also to be with prospective effect. It has been submitted that the SADAs were constituted in furtherance of the objective of Section 70 of the Himachal Pradesh Town and Country Planning Act. The respective

SADAs had engaged the services of petitioners on contract basis without there being any vacancy or existing post.

7. It has also been projected by respondent No.3 that requests were made by respondent No.3 to respondent No.2 for creation of posts of different categories in SADAs. Respondent No.1 conveyed its approval for creation of 26 posts of different categories in various SADAs in order to regularize their services. Thereafter, the services of petitioners were regularized *vide* office memorandum dated 25.08.2015 with immediate effect.

8. I have heard learned counsel for the parties and have also gone through the records of the case carefully.

9. Noticeably, the State Government has been coming up with repeated regularization norms for its contractual employees and one such communication can be found on record as Annexure R-2 with the reply of respondents No. 1 and 2. It is a communication dated 4.4.2013 from the Principal Secretary (Personnel) to the Government of Himachal Pradesh conveying the decision of the State Government to regularize the services of all such contractual appointees who had completed six years of

contract service as on 31.3.2013. Another communication on record is Annexure A-3 dated 28.6.2014, which also conveyed the decision of the Government to regularize the services of contractual appointee on completion of six years as on 31.3.2014. Prior to these communications also, the regularization norms have been notified by the State Government for regularization of its contractual employees from time to time.

10. It cannot be disputed that all the petitioners had completed more than six years contract services as on 31.03.2013.

11. The stand taken by the respondents is that in terms of regularisation policy the eligibility of the contractual employee for regularization was subject only to availability of vacancies. Since, according to the respondents, there were no existing posts in the SADAs till 19.05.2015, the petitioners were not entitled to claim the regularization on completion of 6 years of service as on 31.3.2013.

12. Learned Counsel for the petitioners has contended that the petitioners were appointed on contract

basis in different SADAs because their services were required and they all were qualified. Their selection was made after adoption of due process.

13. It is evident from the documents relied upon by respondents that different SADAs had sent requisitions for creation of posts in the year 2013. The said requisitions were forwarded to the Secretary, Town and Country Planning, Himachal Pradesh by the Director, Town and Country Planning on 01.01.2014 followed by repeated reminders dated 07.06.2014, 20.09.2014 and 27.10.2014. Another communication with respect to creation of posts for contractual employees of the SADAs was made by the Director, Town and Country Planning to the Principal Secretary, Town and Country Planning on and 20.01.2015. Efforts thereafter fructified only on 19.05.2015 when the approval for the creation of 26 posts was accorded by the Government of Himachal Pradesh.

14. In the above backdrop, it becomes clear that despite imminent requirement and need for creation of posts in SADAs, the respondents had delayed the creation of posts inordinately.

15. Learned counsel for the petitioners has placed reliance on judgment passed by Hon'ble Division Bench of this Court on 29.05.2024 in **LPA No. 115 of 2021**, titled as **Ram Singh and another vs. State of H.P. and others** alongwith connected matter, in which, it has been held that the delay in creation of posts cannot affect the rights of the daily wage or contract employees of consideration for regularisation on completion of the requisite period provided under the regularization norms of the State Government. It will be relevant to reproduce the following abstract from the judgment in **Ram Singh** (supra):

“22. It was finally on 14.3.2012, approval for creation of 2 posts of Sanitary Inspectors was conveyed by the Principal Secretary (Urban Development), Government of H.P.

23. Narration of sequence of events, as mentioned above, go to indicate that it was the Corporation which was in dire need of the services of the petitioners. This is evident from the communications addressed by the Corporation to the Director, Urban Development from time to time and is further evident from its affidavit filed before the court in CWP No. 792/2011, having been quoted in para 2 of the decision rendered by this Court on 27.4.2011, which reads as under:-

“2. The Municipal Corporation has filed reply wherein it is stated that they have taken up the matter before

the Government and the matter is now pending before the Government. Paras- 6 and 10 of the reply read as follows:-

“6. That in reply this para it is submitted that the replying respondent has taken up the matter with the respondent State for reviving the cadre of the sanitary inspector in the respondent Corporation with a view to fill up the vacant posts of the Sanitary Inspectors and the matter is still under consideration before the respondent State as no sanctions has been conveyed in the matter. It is pertinent to mention here that the services of the Sanitary Inspectors are required essentially so as to supervise the sanitation work within the jurisdiction of the respondent Corporation and accordingly the State Government was requested through Director, Urban Development to the Government of H.P. to regularize the services of the petitioner on the analogy of the Junior Engineers who were working in the Corporation on contract basis through their cadre exists with the H.P. Public Works Department. In view of these facts it would not be possible for the answering respondent to take steps to regularize the services of the petitioner especially when there exist no cadre of Sanitary Inspector with the respondent Corporation.

10. That the contents of this para are admitted to the extent that the letter dated 17.7.2010 (Annexure P-5) has been written by the replying respondent. It is submitted here that the matter is still under consideration before the respondent State. Till the time the decision in the matter is not

taken by the respondent state the replying respondent cannot initiate any steps to regularize the services of the petitioners especially when the cadre of the Sanitary Inspector stands merged with the respondent State”

24. Now in the given facts and circumstances, we really wonder how the Corporation can take any exception to the directions passed by the learned writ court directing regularization of the services of the petitioners on completion of 8 years of service. It needs to be noticed if the decision of regularization was to be taken by the Corporation itself, then obviously, it would not have hesitated to take such decision but since the decision did not lie in its hand therefore, it had taken up the matter with the competent authority i.e. Director, Urban Development. Clearly, in these circumstances, the Corporation is estopped from assailing or rather contesting claim of the writ petitioners.

25. That apart, it needs to be noticed that the petitioners were duly qualified at the time of their appointment and having worked for such a long time, they were entitled to regularization of their services.

26. After all, as held by the Hon’ble Supreme Court in Nihal Singh and Ors. Vs. State of Punjab and Ors., (2013) 14 SCC 65, sanctioned posts do not fall from heaven. It is for the State to create them by a conscious choice on the basis of some rational assessment of the need. The Corporation or for that matter the State does not have licence to exploit the petitioners who would be otherwise entitled for equal pay for equal work.

27. The action of the respondents in not regularizing services of the petitioners, who had rendered services for more than 12 years, was not only arbitrary but was

sheer exploitation and, therefore, violative of articles 14 and 16 of the Constitution of India. It also amounts to unfair labour practice.

28. The Corporation or the State cannot be permitted to exploit the petitioners by keeping them on contract basis for more than a decade given the fact that it was the State itself that has notified its policies from time to time providing for regularization of not only its daily waged, contractual, but even part time employees, thus, such benefit cannot, therefore, legitimately be denied to the petitioners.”

16. The case of the petitioners herein, in my considered view is squarely covered by the judgment in ***Ram Singh*** (supra). It is evident from the documents placed on record by the respondents alongwith their replies, that the process for creation of posts in various Special Area Development Authorities had been initiated in the year 2013. It took two years for the State Government to create the posts, whereas, such creation was imminent as is evident from the records. The SADAs were constituted without there being any provision for work force. Petitioners and others were engaged on contractual basis. Thus, had the posts been created within reasonable time, the petitioners would have been eligible for regularization even

in terms of the communication dated 4.4.2013 as all of them have completed 6 years of service as on 31.3.2013.

17. As regards the limitation, it can be noticed that the cases of petitioners are now been considered in exercise of jurisdiction under Article 226 of the Constitution of India, where no specific limitation is provided. It cannot be overlooked that the petitioners were already sufferers of undue bargaining power held by the employer. Once, they got delayed orders of regularization in their favour, it must have taken quite a time for them to have mustered courage to stand against their employer. The petitioners were regularized in the month of August, 2015 and these petitions have been filed in the month of May, 2019 for such reason also, the petitions cannot be said to be inordinately delayed. There is nothing on record to suggest that the petitioners had abandoned their rights at any stage.

18. In light of above discussion, all the petitions are allowed. The respondents are directed to regularize the services of petitioners from 01.04.2013 in terms of communication dated 04.04.2013 (Annexure R-2). It is, however, clarified that the petitioners will get only notional

benefits for the purpose of seniority and will not be entitled to any monetary benefits.

19. The petitions stand disposed of in above terms, so also the pending miscellaneous application(s), if any.

20th May, 2025
(GR)

(Satyen Vaidya)
Judge