

IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA

CWP No. 14870/2024
Decided on: 10.12.2024

Som Dutt & Ors.

...Petitioners

Versus

State of H.P. & Anr.

....Respondents.

.....
Coram

Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting?¹

For the petitioners:

**Mr. Devender K. Sharma,
Advocate.**

For the respondents:

**Mr. Dalip Sharma, Additional
Advocate General .**

Jyotsna Rewal Dua , J

CWP No. 6977/2024 instituted by the petitioners was disposed of on 19.07.2024 with direction to the respondents to decide the representations dated 01.07.2023 of the petitioners within six weeks. Pursuant thereto, respondent No.2 passed an order dated Nil September 2024 (Annexure P-5) holding that contractual service rendered by the petitioners as Trained Graduate Teachers (TGT) followed by regular appointments, is to be counted for the purpose of pensionary benefits under the CCS (Pension) Rules 1972. Petitioners' prayer for counting of their contractual services for the

¹ Whether reporters of the local papers may be allowed to see the judgment?

purpose of increments was not allowed. Feeling aggrieved, the petitioners have preferred this writ petition.

2. Notice of this petition was issued on 09.12.2024, whereby direction was issued to the learned Additional Advocate General to have instructions vis-a-vis impugned order, wherein benefits of contractual service was allowed in favour of the petitioners only for the purpose of pension and not towards increments.

3. In light of law settled down in several pronouncements of this Court and also of Hon'ble Apex Court, there is no necessity for calling reply to the writ petition.

4(a) A Division Bench of this Court in ***Sheela Devi Vs. State of Himachal Pradesh & Ors***², held that service of an employee appointed on contractual basis is liable to be counted as qualifying for grant of pension after regularization of the service. Special Leave to Appeal (Civil) No. 10399/2020, preferred by the respondents against the said judgment was dismissed on 07.08.2023.

4(b) ***Jagdish Chand Vs. State of Himachal Pradesh & Ors alongwith connected matters***³ was decided by a Division Bench of this Court *inter-alia* holding that contractual service rendered by the petitioners (therein) as Junior Basic Trained Teachers shall be counted towards qualifying service for the purpose of pension under the CCS Pension Rules 1972 as well as for grant of the annual

²CWPOA No. 195/2019 decided on 26.12.2019

³CWP No. 2411/2019 decided on 10.01.2020

increments. Consequential benefits, however, were restricted in the said case to three years prior to the filing of the writ petition. SLP(C) No.8012-8013/2021 (***State of Himachal Pradesh Vs. Jagdish Chand***) was dismissed on 07.08.2023. The judgment in Jagdish Chand's case has attained finality.

4(c) In ***Prabha Kanwar through her legal heirs Vs. State of Himachal Pradesh & Ors***⁴ the issue raised was as to whether the persons, who were initially appointed on contract basis as lecturers and later on regularized, were entitled to count the period of their contractual services for the purpose of pensionary benefits as also the annual increments. Relying upon the decision rendered in ***Jagdish Chand & Ors Vs. State of Himachal Pradesh & Ors. alongwith connected matters***³ and the order passed in SLP(C) No.8012-8013/2021 instituted against the said decision, the petitioners were held entitled to annual increments with financial benefits confined to period of three years prior to the filing of the main petition. Relevant parts from the judgment read as under:-

“6. Relying on *Jogha Singh*, another batch of cases came to be filed being CWP No.2411 of 2019 and batch. The same were allowed on 10.01.2020 by the Division Bench of this Court to which one of us is a party (*Justice Jyotsna Rewal Dua*). Against this judgment, SLP(Civil) No.8012/8013/2021 was filed by the State of Himachal Pradesh in the Supreme Court, but the State withdrew the said SLP.

⁴CWPOA No. 3477/2020 decided on 08.11.2023

7. In this view of the matter, the original writ petitioner is held entitled to count the contractual service even for the purpose of annual increments.

8. Since the original writ petitioner has made the claim for the first time post her retirement on 31.03.2015 through a representation dt. 13.06.2016 and then filed OA No.4739 of 2017 before the Himachal Pradesh Administrative Tribunal, which was disposed of on 01.11.2017 directing consideration of her case, and thereafter her representation was rejected by the State on 04.04.2019, the financial benefit of such annual increments shall be confined to period of three years prior to the filing of OA No.4739 of 2017; and any other service benefits, other than due and admissible gratuity, to which the original writ petitioner is entitled to, shall also be confined for the said period only.”

4(d) In light of the above judgments rendered in Sheela Devi's and Jagdish Chand's cases', Hon'ble Division Bench of this Court in **Ram Chand & Ors. Vs. State of H.P. & Ors.**⁵ inter-alia held as under:-

“14. Undisputedly, **SLP(C) Nos.8012-8013 of 2021**, titled as **State of Himachal Pradesh vs. Jagdish Chand**, has also been dismissed on 7.8.2023 and, thus, judgment in **Jagdish Chand's** case has also attained finality.

15. Learned Additional Advocate General has contended that in **Sheela Devi's case** benefits of counting contract service for annual increment has not been granted and, therefore, has supported the impugned judgment.

17. Following the aforesaid judgments in **Sheela Devi's and Jagdish Chand's** cases, this Court in CWPOA No.5507 of 2020, titled as **Oma Wati and another vs. State of Himachal Pradesh and others**, has directed to extend benefit of annual increments and counting of period

⁵LPA No. 232/2024 decided on 02.09.2024

of contract service followed by regular appointment for the purpose of pensionary benefits, by observing as under:-

“8. Despite repeated observations as well as directions of the Courts in numerous cases that State must behave like a Model Employer, State, irrespective of persons in power and change in Guard, successively keeps on to formulate, adopt and practise exploitative policies as a device to avoid extension of legitimate rights of the employees for which they are otherwise entitled. On intervention of the Courts directing the State to extend such benefits like pay scale, increment, leave and counting of service etc., State every time tries to deprive the employee from such benefit by changing nomenclature of post and scheme to continue with practice of temporary/ad-hoc appointments. Appointment of Voluntary Teachers, ad-hoc Teachers, Vidya Upasaks, Contract Teachers, PARA Teachers, PAT, PTA and SMC Teachers are examples of clever phraseology devised by State to overcome directions of the Courts in order to avoid permanent appointments by appointing adhoc/Temporary Teachers depriving them of service benefits available to regular employees. When Courts upheld the entitlement of ad-hoc employees for service benefits, State came with Scheme for appointment of Voluntary Teachers. Again, on intervention of the Court, State continued changing the name of Policy but for appointment on exploitative terms. Therefore, we are of the opinion that all these terms are similar temporary appointments irrespective of their nomenclature. Therefore, verdict of the Court regarding extension of service benefits with respect to one kind of temporary appointment is equally applicable to similar temporary appointment with different nomenclature.”

18. Taking into consideration aforesaid judgment, a Division Bench of this High Court, vide judgment dated 29.8.2023, has decided **CWPOA No.5187 of 2020, titled as Sunil Dutt & others vs. State of Himachal Pradesh and others alongwith connected matters**, wherein petitioners have been held entitled for counting of contract service, followed by regularization on the same post without interruption, for the purpose of pensionary benefits as well as annual increments with following observations:-

*“17... ..Needless to say that for counting the service to extend the benefit thereof for pension, annual increment for the relevant period is an essential factor required to be considered for calculating pension. Observations by the Division Bench of this Court in this regard in **CWP No.850 of 2010**, titled **Paras Ram vs. State of HP and others**, Latest HLJ 2009 (HP) 887, as also referred in order dated 15.7.2010 passed by a Division Bench of this Court in **LPA No.36 of 2010**, titled **Sita Ram vs. State of H.P.**, are relevant wherein it has been stated that service counted for the purpose of annual increment will be counted for pension also. There is direction for counting the contractual service for pension/pensionary benefits. Counting of service for pension includes, counting of length of service for qualifying service for pension, as well as for quantifying the amount of pension payable by calculating it on the basis of basic pay with addition of increment. Therefore, direction to count service for pension also mandates calculation of pension by granting annual increment for relevant period either actual or notional basis.”*

20. In **Sheela Devi's case**, prayer made by the petitioner was only with respect to count past service of her husband, on contract basis, for the purpose of pension. However, it is apt to record that when past contract service is considered valid for counting for the purpose of pensionary benefits, the same period is also to be taken into consideration by granting annual increment because for calculation of pensionary benefits, last pay drawn, determined on the basis of annual increment drawn, is a decisive factor and last pay drawn also depends on the annual increments earned by the employee. Therefore, for calculating and determining pensionary benefits, annual increments and length of service are major relevant factors.

21. Entitlement or disentitlement for annual increments, for contract period service followed by regular appointment on the same post, without interruption, was not a issue and thus was not agitated and decided in **Sheela Devi's case** specifically and separately. Though, as discussed supra, at the time of taking into consideration

*contract service for the purpose of pensionary benefits, annual increments for the said service are also to be taken into consideration, however, even otherwise, settled position in **Paras Ram's, Sita Ram's, Joga Singh's and Jagdish Chand's** cases, mandatory entitlement of an employee for annual increments for the contract period of service followed by regular appointment on the same post, without interruption, cannot be unsettled on the basis of a judgment in which the said issue has not been discussed and decided, particularly when judgment in **Joga Singh's and Jagdish Chand's** cases have attained finality after dismissal of SLPs preferred by the State in those cases.*

22. *Judgment in **Sheela Devi's** case, which declared that contract service period is to be counted for the purpose of pension, cannot be taken a judgment as a denial of annual increments for the said period.*

23. *As evident from judgment in **CWPOA No.195 of 2019**, titled as **Sheela Devi v. State of Himachal Pradesh**, the moot question adjudicated and decided by the Court was that whether the services of an employee appointed on contractual basis, in temporary capacity, can be counted towards qualifying service for grant of pension after regularization of his services. The Division Bench has answered this issue by holding that service rendered by an employee on contract, prior to his regularization, shall be treated as qualifying service for grant of pension. Issue with respect to grant or non-grant of annual increments for the contract service period, after regularization, was neither in issue specifically nor discussed.*

26. *It is apt to record that the aforesaid judgment in **CWPOA No.5187 of 2020**, by the Division Bench, has been passed by taking into consideration judgment in **Sheela Devi's** case. In any case, as discussed supra, when contract service is to be taken into consideration for the purpose of pensionary benefits, then natural corollary*

thereof is that for the said period annual increments are also required to be granted. Therefore, learned Single Judge has fallen in error by inferring that in **Sheela Devi's** case, on regularization, annual increments for contract service have not been granted or have been denied.

27. On dismissal of SLP in **Sheela Devi's** case, the State did not contest the SLP filed in **Jagdish Chand's** case and had withdrawn the same, in terms of judgment passed in **Sheela Devi's** case.

28. From aforesaid facts, it is apparent that on adjudication of the issue with respect to counting of contract service for pensionary benefits by the Supreme Court, the State did not prefer adjudication of the issue of entitlement for annual increments for the contract service period, after regularization, but withdrew the SLP filed in **Jagdish Chand's** case.

29. As discussed supra, counting of contract service for pensionary benefits would entail grant of annual increments for the said period. Therefore, for judgment of Supreme Court in **Sheela Devi's** case, dismissing the SLP, and also for withdrawal of SLP by the State in **Jagdish Chand's** case, contractual period of service of an employee, followed by regularization on the same post, is to be counted for the purpose of pensionary benefits and annual increments.

32. Contract service of the petitioners was followed by regular service, without interruption, on the same post. Therefore, they are definitely entitled for counting their contract service for the purpose of annual increments as well as pensionary benefits.

33. The issue stands already settled in various judgments, including the cases of **Joga Singh** and **Jagdish Chand** cases and other matters, but it has not only been implemented by the State in respect of all similarly situated employees and employees are compelled to prefer identical petitions for getting the

benefit of judgments of the Supreme Court, which are judgments in rem and based on policy decisions of the State.

39. *Accordingly, judgment passed by learned Single Judge is modified with observation that reasoning assigned for deciding CWPOA No.5187 of 2020, shall be mutatis mutandi applicable to the present matter also and appellants shall be entitled for counting their contract service for the purpose of pensionary benefits as well as annual increments for the said period with all consequential benefits, but restricting actual consequential financial benefits to three years prior to filing of the writ petition.*

40. *Due and admissible benefits shall be released to the appellants within a period of four months from today. Needless to say that benefits given beyond three years prior to filing of writ petitions shall be extended to them on notional basis.”*

4(e) In **Satish Kumar Banyal & Ors Vs. State of Himachal Pradesh & ors.**⁶ the Hon'ble Division Bench considered the appeal preferred against a judgment where the relief of annual increments for the services rendered on contractual basis was declined to the writ petitioner/appellant. Placing reliance upon **Ram Chand & Ors. Vs. State of H.P. & Ors.**⁵, the petitioners-appellants were held entitled to the grant of annual increments by counting their contractual services. Relevant paras from the judgment read as under:-

“12.1 A similar view was also taken by the division bench in Ram Chand and others v. State of H.P. and others, 2024:HHC:8877.

⁶LPA No. 314/2024 decided on 03.10.2024

For convenience, the relevant paragraph of the judgment is extracted hereafter:

“32. Contract service of the petitioners was followed by regular service, without interruption, on the same post. Therefore, they are definitely entitled for counting their contract service for the purpose of annual increments as well as pensionary benefits.” [Emphasis is ours]

13. Therefore, the petitioners being entitled to the grant of benefit of the contractual service, shall have it taken into consideration for grant of annual increment.’

4(f) In ***Narayan Dutt Sharma Vs. State of H.P. & Anr.***⁷, the above position was reiterated that the contractual service is liable to be counted towards grant of annual increments.

5. In light of above pronouncements, the petitioners, subject to verification of the facts of their respective cases by the respondents, would be entitled for counting of the contractual services rendered by them prior to their regularization, in accordance with law, as qualifying service not only for the purpose of pension under the CCS Pension Rules 1972 but also for the purpose of grant of annual increments. The respondents/competent authority is directed to consider the factual position of individual cases of the petitioners in accordance with above legal position. In case, the petitioners are found to be situated similarly as the petitioners in the aforesaid cases then they shall be granted benefits of contractual service not only for the purpose of pension under the CCS Pensions

⁷LPA No. 338/2024 alongwith connected matters decided on 12.11.2024

Rules 1972 but also for the purpose of granting them annual increments on the same terms as in the aforesaid cases. This exercise shall be completed within a period of six weeks. The order so passed be communicated to the petitioners. The impugned order dated Nil September 2024 (Annexure P-5) shall stand modified to the above extent. This writ petition is disposed of in above terms. Pending miscellaneous application(s), if any, shall also stand disposed of.

Jyotsna Rewal Dua
Judge

10th December, 2024_(rohit)