

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****CWPOA No.2662 of 2020****Decided on :20.04.2026**

Jaffar Ali

...Petitioner

Versus

The HPSEB Ltd. & another

...Respondents

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

For the petitioner: Mr. A.K. Gupta, Advocate.

For the respondents: Mr. Virender Singh Kanwar,
Advocate.**Jiya Lal Bhardwaj, Judge (Oral)**

The petitioner by way of present petition has
prayed for the following substantive relief(s):-

- "a. That the respondents may be ordered to grant pay scale and other allowances to the applicant after completion of 240 days of service and his pay may be fixed accordingly and the entire benefits may be ordered to be paid to the applicant.*
- b. That the services rendered by the applicant in temporary capacity from the date the applicant completed 240 days of service, may be ordered to qualify for the purpose of pension and other retiral benefits."*

2. The grievance of the petitioner as emerges from

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



the pleadings is that the respondents-Board ought to have granted him pay scale and other allowances, after completion of 240 days of service and his pay ought to have been fixed accordingly; and further the service rendered by him in temporary capacity, from the date he completed 240 days of service, may be considered as qualifying for the purpose of pension and other retiral benefits.

3. It has been averred that the petitioner was engaged as T-mate with the respondents-Board in its Division Nahan in the year 1981, and since then he completed 240 days of service in each calendar year and his services were regularized in the year 1994. The petitioner has placed on record Himachal Pradesh State Electricity Board Industrial Establishment Standing Orders and covered under Factories Act, 1948, issued by the respondents-Board. As per these Standing Orders, the respondents-Board shall have the following classes of workmen in its different establishments:-

- “(a) Regular establishment having temporary and permanent workmen.*
- (b) Workcharge establishment having workcharge workmen.*
- (c) Casual establishment having Casual/Temporary Workmen*
- (d) Apprentices.”*



4. The petitioner has further averred that once he was employed and continuously worked as a T-mate with the respondents-Board, which has a regular establishment having temporary and permanent workmen, he was entitled to regular pay scale and other benefits. There is no daily wage establishment in the Board as per the Standing Orders governing the service conditions of the petitioner and thus, he was wrongly kept on daily wage establishment.

5. The respondents-Board filed reply to the petition and averred that the petitioner has approached this Court without any cause of action and the petition is not maintainable. Further the services of the petitioner were brought on regular establishment in the year 1994, and once he accepted the same without any protest and demur and filed the instant Original Application during the year 2017 after lapse of 23 years, the claim raised by him is hit by delay and laches. On merits, the respondents have not disputed the engagement of the petitioner as a T-mate with them in the year 1981, and further that the petitioner had completed 240 days of service in each calendar year. It is averred that the petitioner was offered the post of T-mate purely on a temporary basis in the pay scale of ₹750- with



initial start of ₹770/- 30-950-35-1160-40-1320-45-1410, from the date of joining, on the terms and conditions as mentioned in the Memorandum "A", that too in pursuance of the orders of the Hon'ble Supreme Court dated 10.05.1991 in the matter of daily wagers and consequent upon the negotiated settlement being arrived at with the HPSEB Employees Union on 29.06.1991.

6. I have heard the learned counsel for the parties and also perused the record carefully.

7. As per the Standing Orders, issued by the respondents-Board, it has regular establishment, having temporary and permanent workmen. Once the respondents-Board have the regular establishment, having temporary and permanent workmen and further have not disputed the fact that the petitioner was engaged in the year 1981, as a T-mate and has continuously worked for 240 days in each calendar year, he is at least entitled for counting of the said period, for the purpose of pension, since the petitioner is affected every month when he receives pension and thus, has a recurring cause of action. The plea of the petitioner that the said period from his initial engagement be considered for grant of pay scale and other allowances after



completion of 240 days of service, cannot be countenanced at this stage, especially when he did not raise the issue when his services were regularized in the year 1994 and for the first time, he has raised the issue in the year 2017. The said relief cannot be granted to him, but at the same time, so far the counting of the period prior to his regularization, cannot be ignored for the purpose of granting him pension, more particularly, when there was no daily wage establishment with the respondent-Board. Further as per the standing orders, a Temporary Workman in casual establishment shall mean a workman, who has been engaged for a work, which is essentially of a temporary nature and likely to be finished within a limited period. However, in the case of the petitioner, he had continuously served with the respondents-Board from the year 1981 till his regularization and thus, he cannot be termed as temporary workman. The standing orders have force of law which, do not provide engagement of an employee on daily wage basis.

8. The Standing Orders also provide that the workmen on regular establishment shall be governed by F.R.S.R. It is also not disputed by the respondents-Board that



the Central Civil Services (Pension) Rules, 1972 are not applicable to its employees. As per the Central Civil Services (Pension) Rules, 1972, the qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed, whether substantively or in an officiating or temporary capacity. The relevant provision of Rule 13 of the Central Civil Services (Pension) Rules, 1972 is reproduced herein below:-

“13. Commencement of qualifying service.

Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity:

Provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post:

Provided further that-

- (a) in the case of a Government servant in a Group ‘D’ service or post who held a lien or suspended lien on a permanent pensionable post prior to the 17th April, 1950, service rendered before attaining the age of sixteen years shall not count. for any purpose, and*
- (b) in the case of a Government servant not covered by clause (a), service rendered before attaining the age of eighteen years shall not count, except for compensation gratuity.*
- (c) the provisions of Clause (b) shall not be applicable in the cases of counting of military service for civil pension under Rule 19.”*



9. In the present case, the respondents-Board have not disputed that the petitioner was not appointed with them in the year 1981 as a T-Mate. As per the Standing Orders, once there was no daily wage establishment with the respondents-Board, the petitioner cannot be said to have been engaged on daily wage basis and the period of his service from 1981 to 1994, cannot be wiped out. The respondents-Board had also not disputed that the petitioner had not completed 240 days in each year from the date of his engagement in the year 1981 till his regularization in the year 1994 , and thus the period of service rendered by him from 1981 to 1994 is required to be considered only for the purpose of granting him the pension.

10. Learned counsel for the petitioner has drawn the attention of this Court to the judgment passed by this Court in CWP No.5400 of 2014, titled, ***Veena Devi vs. Himachal Pradesh State Electricity Board Ltd. and another***, to contend that the case of the petitioner is similar. In that case, the dispute was regarding counting of contract service. However, keeping in view the fact that the respondents-Board had framed the Standing Orders, which do not provide engaging the persons on daily wage basis,



the period of service rendered by the petitioner w.e.f. 1981 to 1994, cannot be obliterated for the purpose of granting the pensionary benefits to him. It is settled law that in the cases of continuing wrong, relief can be granted even if there is a long delay in seeking remedy. Reference in this regard is made to the judgment of the Hon'ble Supreme Court in ***Union of India and others versus Tarsem Singh, (2008) 8 SCC 648*** and relevant para reads as under:

"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of



filing of the writ petition.”

11. The above view has again been followed in **Rushibhai Jagdishbhai Pathak versus Bhavnagar Municipal Corporation, (2022) 18 SCC 144** and the relevant paras are reproduced as under:

“10. At the same time, the law recognises a “continuing” cause of action which may give rise to a “recurring” cause of action as in the case of salary or pension. This Court in M.R. Gupta v. Union of India¹³, has held that so long as the employee is in service, a fresh cause of action would arise every month when they are paid their salary on the basis of a wrong computation made contrary to the rules. If the employee’s claim is found to be correct on merits, they would be entitled to be paid according to the properly fixed pay scale in future and the question of limitation would arise for recovery of the arrears for the past period. The Court held that the arrears should be calculated and paid as long as they have not become time-barred. The entire claim for the past period should not be rejected.

11. Relying upon the aforesaid ratio, this Court in the case of Union of India and Others v. Tarsem Singh¹⁴, while referring to the decision in Shiv Dass v. Union of India¹⁵, quoted the following passages from the latter decision: (Shiv Dass case¹⁵, SCC p.277, paras 8 & 10)

8. ...The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third- party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

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10. In the case of pension the cause of action



actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. ... If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years.

12. In *Tarsem Singh*¹⁴, reference was also made to Section 22 of the Limitation Act, 1963, and the following passage from *Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneshwar Maharaj Sansthan*¹⁶, which had explained the concept of continuing wrong in the context of Section 23 of the Limitation Act, 1908, corresponding to Section 22 of the Limitation Act, 1963, observing that: (*Balakrishna Savalram Pujari Waghmare case*¹⁶, SCC OnLine SC para 31)

31. ...It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury.

13. Accordingly, in *Tarsem Singh*¹⁴ it has been held that principles underlying “continuing wrongs” and “recurring/successive wrongs” have been applied to service law disputes. A “continuing wrong” refers to a single wrongful act which causes a continuing injury. “Recurring/successive wrongs” are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. Having held so, this Court in *Tarsem Singh*¹⁴ had further elucidated some exceptions to the aforesaid rule in the following words: (SCC p.651, para 7)

7. To summarise, normally, a belated service related claim will be rejected on the ground of



delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

14. *In Tarsem Singh¹⁴, the delay of 16 years in approaching the courts affected the consequential claim for arrears and thus, this Court set aside the direction to pay arrears for 16 years with interest. The Court restricted "the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser". Further, the grant of interest on arrears was also denied."*

12. In the present case, since it is a continuous wrong, the petition cannot be held to be barred and hit by



the principle of delay and laches. The petitioner has raised the issue regarding the counting of his service for the purpose of pensionary benefits, in the year, 2017 and thus, he is held entitled, to count the period of service from 1981 to 1994 only for the purpose of granting him pension from the date of his retirement and no benefits are being extended to him other than this. The plea taken by the respondents-Board that the petitioner was appointed on daily wage basis cannot be accepted, once the respondents-Board had issued the Standing Orders which had the binding force and do not provide engaging the persons as T-Mate on daily wage basis. Thus, the period of service rendered by the petitioner from the date of initial appointment has to be counted only for the purpose of pension and not for grant of the pay scale as prayed by the petitioner in the petition.

13. Resultantly, the present petition is allowed to the extent that the respondents-Board shall count the entire service rendered by the petitioner w.e.f. 1981 till the date of his retirement, only for the purpose of granting pension to him. The said period will be counted on notional basis till the date of his retirement and the actual benefits be paid to



him for the purpose of calculating the pension only.
However, there shall be no orders as to cost. Pending
application(s), if any, also stand disposed of.

20th April, 2026

(Anurag)

**(Jiya Lal Bhardwaj)
Judge**