

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****CWP No. 2155 of 2022****Decided on: 07.04.2026**

Sudershan Kumar and othersPetitioners

Versus

State of H.P. and others ... Respondents

Coram***Hon'ble Mr. Justice Ajay Mohan Goel, Judge.*****Whether approved for reporting?¹**

For the petitioners : Mr. Prantap Sharma, Advocate.

For the respondents : Mr. Rahul Thakur, Deputy Advocate
General for respondents No. 1 and 2.

: Mr. Surender Sharma, Advocate for
respondent No. 3.

Ajay Mohan Goel, Judge *(Oral)*

By way of this writ petition, the petitioners have *inter alia* prayed for the following reliefs:-

"i. A writ in the nature of mandamus may kindly be issued directing the respondent department to protect the pay of the petitioners w.e.f. the year 1993;

(ii) Also, a writ in the nature of mandamus may kindly be issued directing the respondent department to release the arrears due and admissible to the petitioners after calculating their entitlement to the pay protection since 1st April, 1993 with interest @ 9% till date;"

3. A perusal of the contents of the writ petition

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



demonstrates that the petitioners were initially engaged in respondent No. 3-College and their services were taken over by the State Government when the school was taken over in the year 2012. Incidentally, with the writ petition, neither the order vide which the school was taken over nor the order vide which services of the petitioners were taken over by the government, are appended.

4. Be that as it may, record further demonstrates that the petitioners originally filed an Original Application No. 4871 of 2018 before the erstwhile Himachal Pradesh Administrative Tribunal, which as per the petitioners, was filed in the backdrop of the judgment passed by this Court in CWP No. 1201 of 2010, titled as Anil Kumar vs. State of H.P. and others, decided on 19.12.2011. The original application was disposed of by learned Tribunal on 08.08.2018, in the following terms:-

“8. In view of the above, the original application is disposed of in terms of the aforementioned judgement in CWP No.1201 of 2010-B, with a direction to the respondents/competent authority that subject to the above verification and on finding the applicants to be similarly situate as above, benefit of the said judgment, if the same has attained finality/implemented, shall also be extended to them alongwith consequential benefits, if any, as per law, within three months from the date



of AY production of certified copy of this order before the said authority by the applicants.”

5. Thereafter, the petitioners have now approached this Court praying for the reliefs already enumerated hereinabove. On the last date of hearing, the petitioners were called upon to place on record the copy of the original application filed by them to ascertain as to whether the prayer now made in the writ petition was prayed therein and, if not, whether any liberty was reserved in this regard to the petitioners in the said proceedings in light of the provisions of Order II, Rule 2 of the Code of Civil Procedure because admittedly, the cause which is being agitated by the petitioners now by way of this writ petition existed even in the year 2018 when original application was filed by them.

6. In compliance thereto, the petitioners have filed CMP No. 6489 of 2026, which is allowed and the copy of original application appended therewith is ordered to be taken on record.

7. A perusal of the contents of the original application demonstrates that neither the reliefs now being prayed for by the petitioners were prayed in the original application nor any liberty was sought by the petitioners to agitate the said reliefs separately.

8. Order II, Rule 2 of the Civil Procedure Code *inter alia*



provides the suit to include the whole claim. In terms of this statutory provision, a suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action, but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court. The provision further provides that where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. It further provides that a person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs, but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted. If we apply the said provision to the facts of this case, one finds that the cause, on which the present writ petition has been filed, has not accrued in favour of the petitioner after the filing of the earlier original application. This means that this cause was also available to the petitioner at that stage also when the original application was filed however, the petitioner omitted to claim the said relief in the first writ petition. Not only this, he did not take the leave of the Court that he shall be approaching the Court with regard to this relief.



9. In the light of this factual position, the present writ petition is hit by the provisions of Order II, Rule 2 of the Code of Civil Procedure and therefore, the same is dismissed as not maintainable. Pending miscellaneous application(s), if any also stand disposed of accordingly.

(Ajay Mohan Goel)
Judge

April 08, 2026
(*narender*)