

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**LPA No. 356 of 2024 a/w LPA Nos. 311
& 472 of 2024, CWPOA Nos. 5155 and
6713 of 2020 & Ex.P(T) No. 72 of 2024**

Reserved on: 06.01.2025

Date of decision: 09.01.2025

1. LPA No. 356 of 2024

State of H.P. & another Appellants

Versus

Kartar ChandRespondent

2. LPA No.311 of 2024

State of H.P. & anotherAppellants

Versus

Laiq Ram Sharma and anotherRespondents

3. LPA No.472 of 2024

State of H.P. & another Appellants

Versus

Ram Nath SoniRespondent

4. CWPOA No. 5155 of 2020

Bimla DeviPetitioner

Versus

State of H.P. and anotherRespondents



5. CWPOA No. 6713 of 2020

Shail Bibi Petitioner

Versus

State of H.P. and anotherRespondents

6. Ex. Petition (T) No. 72 of 2024

Nishant Sharma and others Petitioners

Versus

State of H.P. and anotherRespondents

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

The Hon'ble Mr. Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹

Present:

Mr. I.N. Mehta, Sr. Additional A.G with Ms. Sharmila Patial and Mr. Sushant Keprate, Addl. A.Gs. Mr. J.S. Guleria and Mr. Raj Negi, Dy. A.Gs. for the appellants in LPA No. 356 of 2024 a/w LPA Nos. 311 & 472 of 2024 and for respondents in CWPOA No. 5155/2020 & 6713/2020

Mr. K.D. Shreedhar, Sr. Advocate, with Ms. Shreya Chauhan, Advocate for the respondents in LPA No.311 of 2024

Mr. Dushyant Dadwal, Advocate, for the respondent in LPA No. 356 of 2024

Mr. Vikas Rajput, Advocate, for the petitioners in CWPOA Nos. 5155/2020, 6713/2020 & Ex.Pet.(T) No. 72/2024.

¹

Whether the reporters of the local papers may be allowed to see the Judgment? Yes



Justice Tarlok Singh Chauhan

Since common questions of law and fact are involved in all these matters, therefore, they were taken up for hearing together and are being disposed of by common judgment.

LPA Nos. 311, 356 and 472/2024

2. We really wonder why the State has filed these appeals and further how the same are maintainable.

3. The parties shall be referred to as they were before the learned writ Court.

4. It is not in dispute that the petitioners superannuated from the posts of Assistant Librarian in the Department of Education (Himachal Pradesh). The petitioners were granted UGC scales. Since the petitioners had become eligible for selection grade, the pay scale of ₹37400 - ₹67000 +AGP ₹9000/- was payable to them. The petitioners were granted the above mentioned pay scale vide order dated 27.06.2017, however, later on, vide order dated 19.06.2018, orders were issued reducing the pay scale of ₹37400- ₹67000 + AGP ₹8000/- w.e.f. 01.01.2006. However, these orders were not implemented until 22.10.2021 when the directions came to be issued to the concerned D.D.O.(s) to implement the order dated 19.06.2018.



5. The petitioners approached the learned Writ Court assailing the orders dated 19.06.2018 and 22.10.2021 on the ground that the petitioners vide judgment passed by learned Division Bench of this Court in LPA No.146 of 2009 and connected matters on 23.12.2015 had been held to be entitled to UGC Scales at par with all other similarly situated persons.

6. In support of the case, the petitioners had placed reliance upon notification issued by the Higher Education Department on 15.10.2009. As per Clause 5(c)(vi) of said notification, the Deputy Librarian/ Assistant Librarian (Selection Grade)/ College Librarian (Selection Grade) after having completed three years in the pre-revised scale of ₹12000- ₹18300/- on 01.01.2006 would be fixed at an appropriate stage in the pay band of ₹37400- ₹67000 with an AGP of ₹9000/-.

7. It was on the strength of the aforesaid notification that the petitioners assailed the reduction of AGP from ₹9000/- to ₹8000/- per month.

8. The respondent-State contested the claim of the petitioners on the ground that category/cadre of Assistant Librarian was non-teaching one and as per Recruitment and Promotion Rules, the pay scale of cadre/ category of Assistant Librarian is ₹5910-₹20200 ₹2400 Grade Pay. The pay scale of ₹15600-₹39100 +₹6000 Grade Pay is admissible to them and pay scale of ₹37400-



₹67000+₹9000 Grade Pay is admissible/applicable only to those Librarians (College Cadre) who were initially appointed/promoted as Librarian (College Cadre) in the pay scale of ₹15600-₹39100 +₹6000 Grade Pay.

9. It was not in dispute before the learned writ Court that the petitioners were parties in LPA No.146 of 2009, titled as State of H.P. and another versus V.D. Saraswati and others decided on 23.12.2015, wherein it had been held that all the Assistant Librarians constitute one homogeneous class. The judgment proceeded on the terms that the State had denied the benefits of UGC scale to the entire class of Assistant Librarians and, therefore, they were entitled to the UGC scales.

10. Once that be so, obviously the writ petitioners were entitled to all the benefits as flowed from the judgment in LPA No.146 of 2009.

11. Accordingly, once the petitioners being Assistant Librarian were allowed the benefits of UGC scales, the respondents could not have denied the same especially in view of clause 5(c)(vi) of notification dated 15.10.2009 (supra) and that too, when it was not the case of the respondents that the petitioners had not completed three years of service in the pre-revised pay scale of ₹12000-₹18300 on 01.01.2006.



12. Even the office order dated 19.06.2018 clearly reveals that on 01.04.1996, the petitioners had been granted Selection Grade pay scale of ₹12000-₹18300, thus, they had completed 10 years in State Cadre till 01.01.2006 and as per the notification dated 15.10.2009, they are entitled to pay band of ₹37400-₹67000 + AGP ₹9000/- which had rightly been fixed by the respondents but thereafter, illegally withdrawn.

13. In view of the aforesaid discussion, we do not find any merits in all these appeals and find the same to be a gross abuse of process of law wherein the State has only chosen to re-litigate by indulging in bogus and frivolous litigation and has simply squandered the public money and harassed the writ petitioners.

14. It is a well-known fact that the Courts across the country are saddled with a large number of cases. Public Sector undertakings indulgences further burden them. Time and again, the Courts have expressed their displeasure at the Government/Public Sector undertakings indulging in compulsive litigation, but solution to this alarming trend appears to be a distant dream.

15. The judiciary is now imposing costs upon Government/Public Sector undertaking(s) not only when they pursue cases which can be avoided but also when it forces the public to do so.



16. The frivolous litigation clogs the wheels of justice making it difficult for courts to provide easy and speedy justice to the genuine litigants. The Public Sector undertakings should not indulge in mindless litigation, which results in unnecessary wastage of time of the Court and also puts burden on public exchequer.

17. It is therefore, high time that the official(s)/officer(s) of the State act responsibly rather than indulging in useless, fruitless and mindless litigation.

18. Ordinarily, this court would have imposed costs upon the State while dismissing these appeals, but it is only on account of persuasive submissions made by the learned Advocate General that the court is refraining from doing so.

19. We hope and trust that non-imposition of costs in the instant cases would have its desired effects on the official(s)/officer(s) of the State Government and it is clarified that the Court may not be so magnanimous in case similar default is noticed in future.

CWPOA Nos. 5155/2020 & 6713/2020

20. As regards these petitions, the petitioners herein have assailed memo/communication dated 17.10.2017 issued by the respondent-State, whereby the State Government has taken a decision pursuant to the judgment of this court in *V.D. Saraswati's* case (supra) to restrict the arrears in respect of the petitioners



therein for three years prior to filing of this case and to the non-petitioners w.e.f. 11.10.2017 i.e. the date of approval of the State Government.

21. Action of the respondent-State has been assailed on the ground that the petitioners herein are similarly situate like V.D.Saraswati, therefore, they cannot be discriminated.

22. However, we find no merit in this submission given the fact that benefit of V.D. Saraswati's case has already been extended to the petitioners and it is only the arrears that have been restricted in terms of the communication dated 17.10.2017.

23. No exception can be taken to this notification given the fact that the L.P.A filed by the State Government was decided on 23.12.2015 and yet the petitioners did not choose to rise from the slumber till 09.07.2018 and 24.04.2019 to agitate their claim.

24. Clearly, the petitioners are fence sitters and thus, not entitled to any relief. For it is settled law that fence sitters cannot be allowed to raise dispute or challenge the validity of the order after its conclusion. No party can claim the relief as a matter of right as one of the grounds refusing the relief is that the person approaching the court is guilty of delay and laches. The courts exercise public law jurisdiction and do not encourage agitation of stale claims.

25. It is a settled law that a litigant who is guilty of long delay and laches is deemed to have acquiesced or waived of his



claim or right. The benefit of the judgment rendered in the case of similarly situated persons cannot be claimed by those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay. The Hon'ble Supreme Court in **Shiba Shankar Mohapatra and Ors vs. State of Orissa and Ors. Reported in (2010) 12 SCC 471** held as follows:

"29. It is settled law that fence-sitters cannot be allowed to raise the dispute or challenge the validity of the order after its conclusion. No party can claim the relief as a matter of right as one of the grounds for refusing relief is that the person approaching the Court is guilty of delay and the latches. The Court exercising public law jurisdiction does not encourage agitation of stale claims where the right of third parties crystallises in the interregnum...."

26. In **State of Uttar Pradesh and Ors. Vs. Arvind Kumar Srivastava & Ors., (2015) 1 SCC 347** the following legal principles were set out:-

"22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under.

22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more



emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.”

27. Thus, a careful reading of the aforesaid principles reveals that delay and laches as well as acquiescence can be a ground to deny benefit to fence sitters. Those who do not approach the Court in a timely and prompt manner can be denied "equal treatment".

28. In the present case also, the petitioners approached the Tribunal only in the year 2018 and 2019, respectively despite the judgment having been rendered by the learned Writ Court way back



in the year 2009 and dismissal of the appeal preferred by the State on 23.12.2015.

29. Consequently, we find no merit in both these petitions and the same are accordingly dismissed so also the pending application(s) if any.

Execution Petition (T) No.72 of 2024

30. By medium of this petition, the petitioners have sought execution of the order dated 22.12.2023 passed by the court in CWPOA No.7314 of 2020, which reads as under:-

1. Parties are in ad idem that the issue raised in present petition is squarely covered by the judgment rendered by learned Single Judge of this Court in CWP No. 7526 of 2021, titled as Laiq Ram Sharma and another Vs. State of H.P. & another and connected matters and, as such, no prejudice is going to be caused to any party, in case respondents are directed to consider the case of petitioners in light of aforesaid judgment, expeditiously, preferably within a period of six weeks. Ordered accordingly.

2. Needless to say, authority concerned shall pass a speaking order after affording opportunity of hearing to the petitioners. Petitioners are also at liberty to avail appropriate remedy if anything still survives to be redressed.

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

31. It needs to be noticed that save and except for placing on record the instructions dated 04.07.2024 and August, 2024, the State has not complied with the directions by considering the case



of the petitioners by passing speaking order after affording an opportunity of being heard to them.

32. Accordingly, the execution petition is disposed of with a direction to respondents to comply with the order sought to be executed within a period of six weeks and report compliance on 13.03.2025.

(Tarlok Singh Chauhan)
Judge

(Rakesh Kainthla)
Judge

9th January, 2025.
(pankaj/y.s)