



**LPA No. 66/2022 a/w LPA Nos.
63, 67, 91/2022, Ext. Pet. Nos.
53 & 54/2022**

**Reserved on: 22.4.2024.
Decided on: 25.4.2024**

1. LPA No. 66/2022

State of H.P. & ors.	Appellants
Versus	
Nishant Sharma & ors.	Respondents

2. LPA No. 63/2022

State of H.P. & ors.	Appellants
Versus	
Nirmal Kumar & ors.	Respondents

3. LPA No. 67/2022

State of H.P. & ors.	Appellants
Versus	
Vikas Gupta & ors.	Respondents

4. LPA No. 91/2022

State of H.P. & ors.	Appellants
Versus	
Nishant Sharma & ors.	Respondents

5. Ex. Pet. No. 53/2022

Nishant Sharma & ors.	Petitioners
Versus	
State of H.P. & ors.	Respondents

6. Ex. Pet. No. 54/2022

Nirmal Kumar & ors.	Petitioners
Versus	



State of H.P. & ors.

....Respondents

Coram:

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

The Hon'ble Mr. Justice Sushil Kukreja, Judge.

*Whether approved for reporting?*¹ No

Mr. Y. W. Chauhan & Mr. I. N. Mehta, Senior Additional Advocate General with Mr. Ramakant Sharma, Ms. Sharmila Patial, Addl. A.Gs. and Mr. Raj Negi, Dy.A.G. for the appellants in all the LPAs and for the respondents in both the execution petitions.

Mr. Vijay Chaudhary, Advocate, for the respondents in LPA Nos. 66, 63, 91/2022 and for respondents No. 15, 17, 19, 20 & 22 in LPA No. 67/2022 and for the petitioners in Ex. Pet. Nos. 53 & 54/2022.

Mr. Adarsh K. Vashista, Advocate, for respondent Nos. 1 and 10 in LPA No. 67/2022.

Mr. Lokender Paul Thakur, Senior Panel Counsel, for respondent-UoI.

Justice Tarlok Singh Chauhan

Since all these appeals and execution petitions emanate from a common judgment rendered by the learned writ court, therefore, they were taken up together for consideration and are being disposed of by this judgment.

2 The State is the writ respondent and is aggrieved by the judgment passed by the learned writ court, whereby it

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



directed the regularization of services of the writ petitioners from the date they completed eight years of service with all consequential benefits within a period of three months, however financial benefits were restricted to three years preceding filing of the writ petitions.

3 The parties shall be referred as they were before the learned writ court i.e. petitioners and respondents respectively.

4 Petitioners in CWP Nos. 1756/2021 and 3743/2021 were the technical staff (Junior Engineers, Assistant Engineers and Draftsman), whereas, petitioners in CWP Nos. 1339 and 1755 of 2021 were non-technical staff (Lecturers, Accountants, Data Entry Operators, Clerks and Peons) having been employed with Himachal Pradesh School Education Society (HPSES). Aggrieved by non regularization of service, they approached the learned writ court for grant of following substantive reliefs:

“I. A Writ in the nature of Certiorari may kindly be issued for quashing the condition incorporated in order, dated 16.12.2020, Annexure P-8 to the effect that “The services of the employees of the Society would stand automatically dispensed with and they will not be considered for taking over in Government Departments.”

(II) That the order dated 16.12.2020 (Annexure P-12) may kindly be modified and the respondents may kindly be directed to regularize the services of the petitioners after



completion of the requisite years of services as per their date of joining on contract basis, as per the Government Policy prevailing at the relevant time along with all consequential benefits of seniority, increments, allowances and arrears of pay.”

5 It is not in dispute that initially recruitment of the writ petitioners was on contract basis in HPSES under District Primary Education Programme (DPEP) or Sarva Shiksha Abhiyan (SSA) and they continued to be contractual employees till their regularization in 2020. Before their regularization, majority of the writ petitioners had continued to serve on contract basis for more than two decades.

6 It is further not in dispute that in the meeting of the Executive Committee of the HPSES held on 23.2.2012 under the chairmanship of the Principal Secretary (Education), it was resolved to grant regular pay scale to the contractual employees. Vide office order dated April, 2011, the employees who had completed eight years of service as on 31.3.2010 and 31.3.2011 respectively, were granted revised contractual remuneration at par with the Government employees in the other departments.

7 The State Project Director vide letter dated 24.10.2011 had also apprised the Chairman of the Governing



body of HPSES that the services of the contractual employees could be considered for regularization since the HPSES was a sister wing of the Education Department.

8 However, despite these decisions, the writ respondents did not choose to regularize services of the writ petitioners and aggrieved thereby the writ petitioners approached this Court by filing CWP Nos. 6275/2012, titled as Sanjay Gharu and ors. vs. State of H.P. and CWP No. 1497/2012, titled as Tilak Chand Sharma vs. State of H.P. & ors., which came to be decided by this Court on 16.10.2024 in the following terms:-

“10. Accordingly, in view of the observations and analysis made herein above, both the writ petitions are allowed and the respondents are directed to regularize the services of the petitioners from the date when they have completed eight years of service with all consequential benefits within a period of three months from today. Pending application(s), if any, also stand disposed of. No orders as to costs.”

9 It is yet not in dispute that the respondent-State initially assailed the aforesaid judgment in LPA No. 66/2015, however in the meanwhile, the State Government took a conscious decision to merge technical staff of HPSES in



Himachal Pradesh Public Works (HPPW) and Irrigation & Public Health (I&PH) Departments. The relevant communication dated 26.9.2017 in that regard from Mission Director (SSA)-cum Director Elementary Education, Himachal Pradesh to the Engineer-in-Chief (PWD), reads as under:

“No. HPSES(SSA/RMSA) HO-VI.II-7395

*OFFICE OF THE STATE PROJECT DIRECTOR SSA/PMSA
H.P. SCHOOL EDUCATION SOCIETY, DPEP BHAWAN LAL
PANI, SHIMLA-171001.*

Dated: 26/09/17

To

*The Engineer-in-Chief (PWD)
Nirman Bhawan, Nigam Vihar,
Shimla – 171 002.*

Subject: Regarding merger of technical staff (Civil Engineers and Draftsmen) of HPSES Employees in HPPWD and IPH Department in view of the Hon’ble High Court order.

Sir,

With reference to letter dated 22.09.2017, on the subject noted above, matter regarding merger of technical staff of Himachal Pradesh School Education Society (HPSES) in HPPWD and I&PH has been approved by the Council of Ministers in its meeting held on 18.09.2017. Accordingly, as per the ratio approved by the Council of Ministers, 60% of total employees are to be merged in PWD Department.

You are, therefore, requested to do the needful as per the list enclosed. It is further apprised that these



employees are being paid pay scales equivalent to regular employees of Government Department as per Annexure-A, B and C.

It is also brought to your kind notice that the Council of Ministers has further approved that one Assistant Engineer and 18 Junior Engineers after merging in PWD Department as per list enclosed as Annexure 'D' be deputed in HPSES (SSA) on secondment basis to supervise ongoing works of the department of Education. Therefore, necessary action may please be taken at your end at the earliest please.

Yours faithfully,

Sd/-

*Mission Director (SSA)-cum-
Director Elementary Education,
Himachal Pradesh.*

Encls: As above.

Letter dated 22.9.17."

10 LPA No. 66/2015 came up for consideration on
10.10.2017 and was disposed of in the following manner:-

"Learned Deputy Advocate General has placed on record instructions, dated 29th September, 2017, which read as under:-

"To

*The Ld. Advocate General,
H.P. High Court, Shimla-1.*

*Sub: Regarding withdrawal of L.P.A. No. 66 of 2015
filed by the State of H.P.*

Sir,

*I am the honour to enclose herewith the copy of
letters received from the Principal Secretary (Education)*



vide which approval of CMM and the Council of Ministers held on 18.09.2017 has been conveyed to this office.

In this context it is submitted that vide above mentioned letters following has been conveyed:

“LPA No. 66/2015 filed by the Government against the order passed by the Hon’ble High Court in CWP No. 6275 of 2012 and CWP No. 1497/2012 and other litigation/CWPs filed by the Society and individual be withdrawn.”

It is, therefore, requested to kindly withdraw the L.P.A. No. 66/2015 filed by the State of H.P., as desired by the Government.

Yours faithfully,

Sd/-

*State Project Director(SSA &
RMSA) H.P., Shimla-1”*

2. At this stage, learned counsel for the writ petitioners, under instructions, states that in view of intervening developments, writ petitioners seek permission to withdraw the original writ petitions being CWP Nos. 1497 of 2012 and 6275 of 2012.

3. Learned Deputy Advocate General also seeks permission to withdraw the present Letters Patent Appeal. Permission, as prayed for, is granted.

4. Consequently, judgment, dated 16th October, 2014, passed in CWP No. 6275 of 2012, titled Sanjay Gharu and others Vs. State of H.P. and others (supra) is rendered infructuous. It stands clarified that all issues are left open, reserving liberty to the petitioners to agitate the same, if so



desired at a later stage. Pending applications, if any, also stand disposed of.”

11 After disposal of LPA No. 66 of 2015, the matter with respect to regularization of the writ petitioners was placed before the Cabinet on 25.10.2017 and the Cabinet approved the proposal to merge the technical staff of HPSES with HPPW and I&PH Departments. Thereafter, the Special Secretary (PW) to the Govt. of H.P. vide letter dated 13.11.2017, requested the Mission Director (SSA) to provide the requisite information regarding the technical staff of HPSES for further transmission to the H.P. Public Service Commission, in sequel to the proposed merger of the technical staff of HPSES in HPPW and I&PH Departments.

12 However, despite having taken a decision to merge the technical staff of HPSES with HPPW and I&PH Departments, no consequent action was taken, which constrained the writ petitioners to approach the Court again by filing CWPOA No. 5637 of 2020, titled as Manoj Kumar and others vs. State of H.P. and others and CWPOA No. 5567 of 2020, titled as Bimla Devi and others vs. State of H.P. and others.

13 However, before the decision could be taken up for consideration on merits, the State regularised the services of



technical staff as well as non-technical staff of HPSES vide order dated 16.12.2020. The writ respondent-State while regularizing the services of the writ petitioners on their existing posts with existing pay scales in HPSES under “Samagra Shiksha” imposed a condition that their employment would be co-terminus with the existence of HPSES and on dissolution of such Society their services would automatically dispense with and they shall not be considered for taking over by any other Government Departments.

14 In view of the intervening developments, CWPOA No. 5637 of 2020 and CWPOA No. 5567 of 2020 came to be disposed of by this Court on 22.12.2020 in the following terms:-

“Since the services of the petitioners have already been regularized as is evident from order dated 16th December, 2020 we deem it proper to dispose of all these petitions, making it clear that in case any of the petitioner is still aggrieved by non-grant of any of the relief including the one claimed in these petitions and has subsisting cause of action, he/she is always at liberty of approach this court for redressal of the same. Pending miscellaneous application(s), if any also stand disposed.”

15 This once again constrained the writ petitioners to assail action of the State Government by approaching the writ court primarily on two counts – firstly services of the



petitioners ought to have been regularized on completion of 8 years at par with the other similarly situated government employees and secondly that the stipulation to the effect that their employment would be co-terminus with HPSES is arbitrary.

16 The writ respondent-State opposed claim of the writ petitioners by filing reply, wherein it was averred that the writ petitioners were engaged under SSA on contract basis and as per para 37.1 of the Manual of Financial Management procurement, no permanent liability could be accrued on the HPSES or the State Government by filling up of the posts. It was further averred that some of the petitioners were engaged under DPEP project which was wound up in 2003 resulting their contract being come to an end. Thereafter, they were engaged afresh under SSA.

17 It was also averred that the writ petitioners could not be equated with the Government employees as they had not been selected after due process and through competitive exam, interview etc. in accordance with the relevant Recruitment and Promotion Rules, and in fact had been recruited without adoption of procedure in accordance with law. The financial



difficulty was also raised as one of the grounds for not regularizing services of the writ petitioners.

18 The learned writ court after hearing the arguments and going through the material placed before it, allowed the writ petitions constraining the writ respondent-State to file the instant appeals.

19 It has been vehemently argued by learned Additional Advocate General that the judgment rendered by the learned writ court is liable to be set aside as it has not considered the issue raised in the petition in right perspective and all the grounds that were taken before the learned writ court were reiterated in the instant appeals.

20 We have heard the learned counsel for the parties and have also gone through the material placed on record.

21 It is not in dispute that the petitioners had worked under SSA continuously and uninterruptedly prior to their regularization. It is also not in dispute that the HPSES was formed in 1995 initially to implement DPEP and later programmes/projects such as SSA, Rashtriya Madhyamik Shiksha Abhiyan (RMSA) and currently “Samgra Shiksha”. The above noted holistic programmes/ projects have been launched



from time to time to focus on provision of basic quality school education to all in mission mode.

22 As regards SSA, it is central government sponsored scheme having been entrusted to the Government of Himachal Pradesh, Department of Education and the same is to be executed through HPSES. The Executive Committee of HPSES consists of Principal Secretary (Education), H.P., who happens to be the Chairman, Principal Secretary (Finance), H.P., Secretary Rural Development, Secretary HPPWD, Under Secretary, Department of Education, MHRD Govt. of India, Secretary (Social Justice & Empowerment), Advisor Planning, Director, Higher Education, Director, Elementary Education and Principal, State Council of Education, Research & Training, Solan. The Chairman of Governing body of the HPSES. is the Chief Minister. The Society has promulgated its byelaws, rules and regulations. The HPSES has been created to execute the policy of the government of achieving the goal of complete literacy through SSA and for this purpose funds are provided by the Central Government.

23 Thus, it is clear that the HPSES, wherein the writ petitioners had been working, is wholly owned and controlled by the State Government and is thus a “State” within meaning of



articles 12 and 226 of the Constitution of India and is required to act as a model employer.

24 It is also not in dispute that SAS had been implemented in the State since the year 1996 when the Himachal Pradesh School Education Society Service Regulation, 1996 was promulgated and thereafter the services of the writ petitioner were engaged in different years ranging from 1996 to the year 2000.

25 This clearly establishes that the project in no manner can be said to be temporary and moreover some of the writ petitioners have worked on contractual basis for nearly two decades. Therefore, the writ petitioners were required to be afforded minimal guarantee of security of tenure and the respondents cannot deny the writ petitioners the benefits arising out of continuous service like pay scale and other service benefits.

26 As rightly held by the learned writ court, the action of the writ respondent-State in not regularizing the service of the writ petitioners, who have rendered long and continuous service for two decades is not only arbitrary, but would amount to exploitation and unfair labour practice and thus is clearly violative of Articles 14 and 16 of the Constitution of India.



27 Long continuous service rendered by the writ petitioners clearly proves that there is master and servant relationship between the respondent-State and writ petitioners and if that be so, then there is no justification for the writ respondents to take a defence that after permitting utilization of the services of large number of people like the writ petitioners for decades to say that there are no sanctioned posts to absorb the writ petitioners. After all, sanctioned posts do not fall from heaven. The State has to create them by a conscious choice on the basis of some rational assessment of the need as was held by the Hon'ble Supreme Court in ***Nihal Singh and Ors. Vs. State of Punjab and Ors., (2013) 14 SCC 65.***

28 Apart from the above, the State has tried to play fraud and indulged in mischief with the writ petitioners. This would be clearly evident from the fact that the writ petitioners had already earned judgment in their favour by way of CWP No. 6275/2012 and CWP No. 1497/2012 (supra), whereby directions have already been issued qua their regularization from the date when they completed 8 years with consequential benefits restricting to three years. LPA No. 66/2015 assailing the aforesaid judgment was also withdrawn by the State as is evident from the order dated 10.10.2017, quoted in extenso



above, yet the benefits in terms of order passed in their favour were not granted to them.

29 The writ respondents were required to implement the judgment that was rendered in CWP No. 6275/2012 and CWP No. 1497/2012. Once the State had withdrawn its appeal, it should have been gracious enough to implement the directions as contained in the aforesaid petitions, but instead of doing so, the State resorted to hand-twisting tactics by issuing regularization order dated 16.12.2020 and by further imposing a condition therein that writ petitioners' employment would be co-terminus with the existence of HPSES and on dissolution of such Society their services would automatically dispense with and they shall not be considered for taking over by any other Government Departments.

30 Undeniably, the HPSES being a wing of the State is a model employer with a social conscience and not an artificial person without soul to be damned or body to be burnt. The social conscience propels economic justice. Therefore, the respondents must necessarily conduct themselves with this social conscience with high probity and candour while responding to the expectations of its employees by adopting



means and methods which are fair and in accordance with Articles 14 and 16 of the Constitution of India.

31 Continuing an employee on contract for long years not following pay parity or granting pension would not be to the satisfaction of the theme and spirit of Articles 14 and 16 of the Constitution of India.

32 Any arrangement or agreement loaded in favour of the respondents denying the right to claim regularization is indubitably against public policy, as held by the Hon'ble Supreme Court in ***Dhirendera Chamoli and another vs. State of U.P. (1986) 1 SCC 637.***

33 In ***Central Inland Water Transport Corporation Ltd. and another vs. Brojo Nath Ganguly and another AIR 1986 SC 1571,*** the Hon'ble Supreme Court declared the terms in the appointment order as unconscionable terms of contract and also held that the State must act as a model employer and cannot take undue advantage of the need of the employee, who does not have any choice in the matter of employment due to the economic compulsions.

34 In ***State of Haryana and others vs. Piara Singh and others (1992) 4 SCC 118,*** the Hon'ble Supreme Court held that the main concern of the Court in such matters is to



ensure the rule of law and to see that the Executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16.

35 In ***Bhupendra Nath Hazarika and another vs. State of Assam and others (2013) 2 SCC 516*** while laying emphasis on the role of the State as a model employer, though in a different context, the Hon'ble Supreme Court observed as under:

“65. We have stated the role of the State as a model employer with the fond hope that in future a deliberate disregard is not taken recourse to and deviancy of such magnitude is not adopted to frustrate the claims of the employees. It should always be borne in mind that legitimate aspirations of the employees are not guillotined and a situation is not created where hopes end in despair. Hope for everyone is gloriously precious and a model employer should not convert it to be deceitful and treacherous by playing a game of chess with their seniority. A sense of calm sensibility and concerned sincerity should be reflected in every step. An atmosphere of trust has to prevail and when the employees are absolutely sure that their trust shall not be betrayed and they shall be treated with dignified fairness then only the concept of good governance can be concretized. We say no more.”



36 It does not behove the State Government or augur well with this Court that the State as a model employer would play with rights of the writ petitioners in any manner as has been done in the instant case.

37 To say the least, the State has acted irrationally, unreasonably and even arbitrarily as rightly held by the learned writ court. The benefit of regularization to the petitioners on completion of 8 years continuous service on contract basis has been delayed by the writ respondents.

38 Financial implication pleaded by the State cannot be a ground to deny the writ petitioners their legitimate claim. The State has failed to justify reasons for denying benefit of regularization to the writ petitioners on completion of 8 years continuous service, but has regularized their services pursuant to the decision taken by the cabinet on 23.11.2020 that too when many of the writ petitioners had already put in contractual service for about 2 decades.

39 Learned writ court in the given facts and circumstances has rightly come to the conclusion that writ respondents by its conduct had inculcated a legitimate expectation in the writ petitioners that their services would be



regularized at par with the other government employees and then unreasonably and illegally denied the same.

40 Before parting, it needs to be noticed that the order passed by the learned writ court has in fact been followed and made basis of the judgment rendered by learned Single Judge of this Court in CWPOA No. 1541/2019, titled as Man Singh vs. State of H.P., decided on 13.10.2022 and LPA No. 241/2023 preferred by the State has been dismissed vide order dated 19.12.2023.

41 Likewise, another learned Single Judge of this Court has also made this judgment as the basis for granting work charge status to the writ petitioners in CWPOA No. 3562/2019, titled as Sant Ram vs. State of H.P., vide judgment dated 6.9.2022, which was also assailed by the State filing LPA No. 153/2022, however the same came to be dismissed vide judgment dated 7.10.2023.

36 In view of aforesaid discussions and for the reasons stated above, we find no reason to interfere with the judgment passed by the learned writ court.

37 All the appeals stand dismissed in the aforesaid terms, so also the pending application(s), if any. As regards the execution petitions, the respondents are directed to implement



the judgment in question within a period of four weeks and
report compliance on 23.5.2024.

(Tarlok Singh Chauhan)
Judge

(Sushil Kukreja)
Judge

25.4.2024
(pankaj)