

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****CWP No.3028 of 2020****Decided on: 30th July, 2026**

Vijay Kumar

...Petitioner

Versus

State of H.P. and others

...Respondents

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

For the petitioner: Mr. Vikas Rajput, Advocate.

For the respondents: Mr. Rupinder Singh Thakur, Additional
Advocate General.

Jiya Lal Bhardwaj, Judge (Oral)

By way of present petition, the petitioner has
prayed for the following substantive reliefs:-

"a. That respondents may kindly be directed to count the service rendered by the petitioner on contract basis w.e.f. July. 1997 to July, 2003 as qualifying service for purpose of pensionary benefits under the Central Civil Services (Pension) Rules, 1972 and respondent may kindly be directed to grant pension to petitioner as per CCS (Pension), Rules 1972.

b. That respondents may kindly be further directed to consider the case of petitioner for annual increments from initial date of appointment on contract basis."

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



2. The facts as emerge from the pleadings are that the petitioner was initially appointed as Junior Basic Teacher (in short "JBT") vide office order dated 08.07.1997 (Annexure P-1) and was posted in Govt. Primary School, Demana, District Sirmour, H.P., where he worked till 2003. Thereafter, he was appointed as Drawing Master on regular basis vide office order dated 31.07.2003. It has been averred that after appointment of the petitioner as Drawing Master, only his cadre was changed. He remained with the Education Department, where he was earlier serving. It has further been averred that as per Notification dated 15.05.2003 (Annexure P-3), the State Government of Himachal Pradesh had amended the Central Civil Services (Pension) Rules, 1972 (in short "CCS (Pension) Rules") and all the appointments made in the State Government on or after the date of publication of the Notification in Rajpatra, were covered under the New Pension Scheme. It has also been averred that the petitioner was allotted General Provident Fund (in short "GPF") No.



HP/09/97320, which clearly establishes that earlier he was also covered under the Old Pension Scheme. However, after his appointment, as Drawing Master, on regular basis, as per office order dated 31.07.2003 (Annexure P-2), a unilateral decision was taken, whereby his GPF account was changed to Contributory Pension Scheme (in short "CPS") and resultantly, the petitioner became ineligible under the Old Pension Scheme/Rules. It has further been averred that the petitioner has ultimately retired from service on 31.01.2018 (Annexure P-5).

3. It has further been averred that the petitioner had represented the respondents on many occasions that his GPF account has wrongly been converted into CPS and further his services on contract basis since 1997 to 2003, have not been counted as qualifying service for the purpose of pension as per Old Pension Scheme, though the petitioner was recruited after following the due process of recruitment. It has also been averred that once the appointment of the petitioner as Drawing Master has been followed by his appointment as JBT



and thus he is entitled to get the period of contract service counted for the purpose of pension. The petitioner has also placed reliance upon the judgment passed by this Court in CWP No.2411 of 2019, titled, ***Jagdish Chand vs. State of Himachal Pradesh and others***, decided on 10.01.2020 along with connected matters, as well as the judgment passed in CWPOA No.195 of 2019, titled, ***Sheela Devi vs. State of Himachal Pradesh and others***, decided on 26.12.2019, and thus prayed that the respondents be directed to count the services rendered by the petitioner on contract basis w.e.f. July, 1997 to July, 2003 as qualifying service for pension, for the purpose of pensionary benefits under the CCS (Pension) Rules and further the respondents be directed to grant pension to him as per the said Rules.

4. The respondents filed reply to the petition and averred that the petitioner had retired from service in January, 2018 and the alleged conversion of GPF of petitioner to CPS happened prior to his retirement. The petitioner never raised any grievance at that time and now after a delay of two



years from the date of his retirement in the year 2020, he has filed the present petition. The petitioner has been granted pension for the regular services, which has been rendered by him on the post of Drawing Master w.e.f. 13.03.2003 @ Rs.28,350/- per month, vide Pension Sanction Order dated 08.07.2024.

5. On merits, it has been averred that since the petitioner has never raised any grievance at the time of conversion of GPF to CPS, the petition suffers from delay and laches. It has been further averred that as per the judgment passed in *CWP No.3277 of 2019*, titled, ***Bansi Ram Thakur Vs. State of H.P. & Ors.***, this Court has been pleased to hold that since the petitioner had chosen to be fence sitter for a long time and he did not challenge the alleged wrongful action of the respondents within a reasonable time and thus can be said to have acquiesced into same and also placed reliance upon the judgment passed by the Hon'ble Supreme Court in ***State of Uttar Pradesh and others vs. Arvind Kumar Srivastava and others***, (2015) 1 SCC 347, and further relied



upon the judgment passed by the Hon'ble Supreme Court passed in Civil Appeal No._____/2023 (arising out of SLP (Civil) No.10399 of 2020, titled, ***State of Himachal Pradesh and another vs. Sheela Devi***, as well as the judgment of the Hon'ble Supreme Court passed in Special Leave Petition (Civil) Diary No(s).8008/2025, titled, ***State of Himachal Pradesh & Ors. vs. Ram Chand & Ors.***,

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

7. The issue raised in the present petition is no more *res integra* in view of the judgment passed by this Court in CWPOA No.5507 of 2020, titled, ***Oma Wati and another vs. State of Himachal Pradesh and others***, wherein this Court, after considering the earlier judgments passed by this Court in ***Jagdish Chand*** and ***Sheela Devi's*** cases (supra), held that where an employee has served on contract basis on different posts and has been regularized on some other post, his ad-hoc/tenure period shall be counted only for the purpose of pension.



8. The aforementioned judgment passed by the Division Bench of this Court was challenged before the Hon'ble Supreme Court in SLP (C) Diary No(s).46343 of 2024, titled, ***The State of Himachal Pradesh & Ors. vs. Oma Wati & Anr.***, and vide order dated 09.05.2025, the judgment passed by the Division Bench of this Court has been upheld and the SLP preferred by the State was dismissed.

9. In the present case, the petitioner was earlier appointed to the post of JBT and thereafter as Drawing Master. Once this Court has already adjudicated the same issue and the judgment passed has attained finality, when the SLP preferred by the respondents has been dismissed by the Hon'ble Supreme Court, the relief claimed by the petitioner deserves to be granted to him.

10. Learned Additional Advocate General has vehemently argued that since the petitioner was fence sitter, his petition is hit by the principle of delay and laches. The same very issue was raised in ***Jagdish Chand's*** case (supra) and the Division Bench of this Court after considering the



judgment passed in **Arvind Kumar Srivastava's** case (supra), had come to the conclusion that non-extension of benefit in favour of a particular set of employees by the Court to similarly situated persons, violates Article 14 of the Constitution of India as like should be treated alike. This of course is subject to exception in case of delay, laches and acquiescence, on the part of those, who remain dormant and do not challenge wrongful action in their respective cases merely for the reason that their counterparts were associated to their efforts earlier by approaching the Court. However, when the benefit given by the Court was a judgment in *rem* intended to give benefit to all similarly situated persons, irrespective of whether they approached the Court or not, this exception, therefore, will not operate.

11. In the said judgment, the Hon'ble Court had come to the conclusion that the prayers made by the petitioners for counting their past contractual service as qualifying service towards pensionary benefits under CCS (Pension) Rules, 1972 cannot be denied to them on the grounds of limitation, delay,



laches or acquiescence. However, financial benefits are to be restricted to them to three years prior to the filing of the writ petition.

12. The judgment passed in ***Jagdish Chand's*** case (supra) was also challenged by the respondents before the Hon'ble Supreme Court and the same was also dismissed and therefore, the contention raised by the learned Additional Advocate General that the petition is hit by the principles of delay and laches, cannot be countenanced, in view of the pronouncements of the Division Bench of this Court in ***Jagdish Chand's*** case (supra), which judgment was in rem and further has attained finality.

13. Learned Additional Advocate General has further contended that since the matter is pending adjudication in ***Ram Chand's*** case (supra) before the Hon'ble Supreme Court, the petitioner is not entitled to the benefit of counting the contract service rendered by him for the purpose of granting him pensionary benefits. However, if the order dated 04.04.2025 passed by the Hon'ble Supreme Court in ***Ram***



Chand's case (supra) is perused, the Hon'ble Court had only given the direction that in the meantime, the impugned order to count the increments shall remain stayed.

14. In the present case, the petitioner has not claimed the grant of increments and only prayed to count the services rendered by him on contract basis as qualifying service for the purpose of pensionary benefits under the CCS (Pension) Rules, and thus, the contention raised by the learned Additional Advocate General is rejected.

15. The petitioner has approached this Court on 08.07.2020 and he retired from service on 31.01.2018. While allowing his petition, his pensionary benefits should have been curtailed for three years, but since the petitioner has retired on 31.01.2018, he is entitled to the arrears from the date of his retirement, keeping in view the judgment passed by the Hon'ble Supreme Court in **Union of India and others vs. Tarsem Singh**, (2008) 8 SCC 648, wherein arrears to three years were restricted holding that the issue relating to payment or refixation of pay and pension can be granted



inspite of delay.

16. Consequently the present petition is allowed and the respondents are directed to count the services rendered by the petitioner, on contract basis, on the post of JBT towards qualifying service for the purpose of pension under CCS (Pension) Rules, 1972 and pay him all the consequential financial benefits within a period of three months from today.

17. The petition is accordingly disposed of. No order as to costs. Pending application(s), if any, shall also stand disposed of.

30th July, 2026

(ankit)

(Jiya Lal Bhardwaj)
Judge