



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.3315 of 2019

Decided on: 06.04.2026

Gulab Singh

...Petitioner

Versus

State of H.P and another

...Respondents

Coram

Hon'ble Mr.Justice Jiya Lal Bhardwaj, Judge.

Whether approved for reporting?¹

**For the petitioner: Mr.S.P. Chatterji and
 Mr.Rakesh Kumar Dogra,
 Advocates.**

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

Jiya Lal Bhardwaj, Judge (Oral)

The petitioner has filed the instant petition,
praying therein for the following substantive reliefs:-

- “(i) *That the Respondent may kindly be directed to treat Petitioner to have been regularized /promoted to the post of Tehsildar (Class I Gazetted) on regular basis w.e.f. 08.01.2014 when he was promoted on ad hoc basis (Annexure P-2) against 2014 vacancies in pursuance of promotion order dated 21st June, 2019 (Annexure P-7) with all consequential benefits including retiral.*
- ii) *That last para of impugned Notification dated 21st June, 2019 (Annexure P-7) may kindly be declared null and void and the same may kindly be quashed and set aside qua the Petitioner.”*

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



2. Shorn of unnecessary details, the brief facts of the case are that the petitioner was appointed as Clerk with the respondents on 01.12.1980 and promoted as Naib Tehsildar w.e.f. 30th December, 2008. Thereafter, vide Notification dated 16.07.2013, the respondents were pleased to order the transfer/posting of few of the Naib Tehsildars, working in the Revenue Department, Himachal Pradesh, against the post of Tehsildars, to work in their existing scale and the petitioner who was working as Naib Tehsildar, Sub Tehsil, Sainj (Kullu), was posted as Tehsildar, Shahpur, District Kangra, H.P. Thereafter, vide Notification dated 08.01.2014, the petitioner was promoted as Tehsildar (Class-I Gazetted) in the pay-scale of Rs.10,300-34,800+Grade Pay of Rs.5,000/- purely on adhoc basis for a period of three months or till "A" & "B" Class Tehsildars become available for appointment as Tehsildars.

3. The petitioner has placed on record the minutes of the DPC convened on 30.04.2014, whereby the vacancies upto the year 2014 were considered for promotion to the posts of Tehsildar. However, the petitioner though eligible for promotion and in the zone of consideration, was not



considered and only one Naib Tehsildar namely, Ms.Champa Bhardwaj, who was retiring on 30.06.2014, was considered and recommended for promotion to the post of Tehsildar. A perusal of the minutes of the meeting of DPC, clearly reveals that there were 16 vacancies with the respondents-Department for the year 2014, out of which, 14 were for the General category and one each for the Scheduled Caste and Scheduled Tribes categories, respectively. The petitioner has also placed on record the final seniority list of Naib Tehsildars working in Mandi Division as stood on 31.05.2012, in which, the name of petitioner figures at Serial No.12. When the candidature of the petitioner was not considered for promotion to the post of Tehsildar, he preferred the Original Application, bearing O.A.(M) No.148 of 2017 before the erstwhile Himachal Pradesh Administrative Tribunal and the learned Tribunal vide order dated 13.06.2017, had directed respondent No.1, to take a final decision on the representation of the petitioner. When no action was taken by the respondents, the petitioner filed a Contempt Petition, bearing **Cont. Pet. (M) No.13 of 2018 in O.A.(M) No.148 of 2017, titled, Gulab Singh Thakur vs. Onkar Chand Sharma**, which was disposed of by the learned Tribunal on



11.03.2019, with a direction to the respondents to ensure that the process be expedited and brought to the logical conclusion without any further delay, but latest by 31st August, 2019.

4. In sequel to the said directions, the respondents, had issued Notification dated 21.06.2019 (Annexure P-7), thereby promoting the petitioner to the post of Tehsildar along-with other eligible persons and held that they have no right for actual promotion and also that the promotions will have only prospective effect even in cases where the vacancies relate to an earlier year. The Officers (except retired Tehsildars) may exercise option for fixation of pay under Fundamental Rule-22 (1) (a) (i) within one month, if already not exercised.

5. The petitioner was though promoted to the post of Tehsildar, but as recorded above, he was not held entitled to the consequential benefits, though he was eligible and further worked on the post of Tehsildar, as per office orders dated 16.07.2013 and 08.01.2014. The petitioner stood retired from service, when the DPC was convened on 30.04.2014 for promotion to the post of Tehsildar and the Notification was issued on 15.05.2014 (Annexure P-3), in which, the name of



petitioner did not figure, though the posts of Tehsildars were available and only one person was recommended for promotion to the post of Tehsildar. During the pendency of the present petition, respondent No.1 issued another Notification dated 14.02.2020 and name of the petitioner has been recommended for promotion to the post of Tehsildar for the vacancy of the year 2013, in which, the name of petitioner figures at Serial No.99.

6. The respondents filed reply to the petition and averred that the petitioner was promoted as Tehsildar from the post of Naib Tehsildar (promotee) on 08.01.2014 purely on adhoc basis for a period of three months. The process for regularization of Naib Tehsildars, promoted to the post of Tehsildars, was initiated and it took sometime and as per review DPC convened on 06.01.2020, the petitioner has been recommended for regularization from the year 2013. However, as per instructions issued by the Government on 25.06.2013, regularization/promotion would be to the Tehsildars who are in service, except the Naib Tehsildars, who stood retired and such retired Officers would, however, have no right for actual promotion and also that promotions will have only prospective effect even in cases where the vacancies relate to



an earlier year. The respondents have also placed on record instructions dated 25.06.2013 to contend that the retired Officers have no right for actual promotion.

7. The petitioner has filed rejoinder to the reply and controverted facts in the reply and also placed on record Notification dated 14.02.2020.

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

9. It is not in dispute that the petitioner was posted against the post of Naib Tehsildar vide Notification dated 16.07.2013 and thereafter was promoted to the post of Tehsildar on adhoc basis vide Notification dated 08.01.2014. It is also not in dispute that the vacancies were available when the DPC was convened on 30.04.2014 and when the candidature of the petitioner was not considered for promotion to the post of Tehsildar on regular basis though he was eligible and in the zone of consideration.

10. It is also not in dispute that after the directions being issued by the Tribunal, the respondents had considered the claim of the petitioner for promotion on regular basis to the post of Tehsildar and issued Notification dated 21.06.2019, but not granted him the benefits from the date of



his promotion. The only grievance of the petitioner is that since he had worked on the post of Tehsildar, he was entitled to all the benefits from the date of his placement on the post of Tehsildar i.e. w.e.f. 08.01.2014, with all consequential benefits.

11. The plea raised by the respondents that since the petitioner had retired from service on the date when Notification dated 21.06.2019 was issued, he is not entitled to benefits from earlier date, cannot be countenanced for the simple reason that in the case of the petitioner, he had worked on the post of Tehsildar, unlike the other officers, who got retired and have not worked on the said post. The instructions placed on record along-with reply dated 25.06.2013 also do not come in the way of the petitioner for the reason that in the case of petitioner, he had worked on the post of Tehsildar. Once the petitioner had worked on the said post, even otherwise, as per FR-49, he was entitled to the remuneration of the said post and thus once he had worked on the said post, the respondents cannot say that he was not entitled to the benefits of his regularization w.e.f. 08.01.2014, when another officer of the same category was considered and promoted to the post of Tehsildar on regular basis.



12. No doubt, the respondents later on have issued Notification dated 14.02.2020, whereby the petitioner has been considered to be regularized for the vacancy of the year 2013, but the petitioner has neither amended the petition nor has prayed for regularizing him for the vacancy of 2013 and, therefore, the said benefits cannot be extended to him.

13. It is settled law that when a person is agitating his claim before the Court and was not considered for the post, he is entitled to the benefits from the date when he was entitled, as per law. Normally, this Court could not have interfered with the impugned order, when the person had not worked on the post, on which, he has been promoted, on notional basis, but in the present case, once the petitioner had discharged the duties on the post of Tehsildar, he is entitled to the actual benefits w.e.f. 08.01.2014, when he was promoted on adhoc basis as Tehsildar (Class-I Gazetted).

14. A similar issue had arisen before the Hon'ble Apex Court in ***Sunaina Sharma and others vs. State of Jammu and Kashmir and others (2018) 11 SCC 413***, wherein the Court had come to the conclusion that when the vacancies exist from an earlier date and the person is granted retrospective promotion, he should have also worked against



the said post. The relevant paras of the judgment read as under:-

“17. In Suraj Prakash Gupta's case (supra) this Court held that direct recruits could not claim seniority from a date anterior to their appointment. The reason is simple. The direct recruits were not even born in the cadre and were not holding any post in the service. There can be no manner of doubt that direct recruits cannot get seniority from a date prior to their appointment. While interpreting Rule 23, we must also take note of Rule 9 of Excise Rules which deals with probation. When a person is appointed to the post of ETO whether by promotion or by way of direct recruitment, he shall be on probation for a period of two years. The explanation to Rule 9 provides that appointment on probation shall be made against substantive vacancies only. The explanation also provides that any period of officiating service shall be reckoned as period spent on probation when a person is formally appointed to the service. This clearly envisages that the person should have been actually working on the post of ETO to be considered to be on probation. The whole concept of probation is to judge the suitability of the candidate appointed to the post. There can be no objective assessment if the person is not actually working on the post. The promotees never worked as ETOs prior to their formal promotion. Therefore, though vacancies may have been there in their quota, they having not worked against the post of ETO could not have been appointed and granted seniority from an anterior date.

18. In our view the rules in question clearly provide that not only vacancies should have been existing from an earlier date but the person to be granted retrospective promotion should have also been working against the post. To give an example in the context of the present Rules, a vacancy in the promotional cadre existed on 01.01.10. However, a person from the feeder category is promoted on temporary/officiating/adhoc/or on any other basis to work against the post on 01.01.11. He is thereafter regularly appointed on 01.01.12. Though the vacancy may have existed from 01.01.10 the employee can get promotion only from 01.01.11 when he actually started working against the said post.

19. It is well settled that retrospective promotion to a particular group can violate Article 14 and 16 of the Constitution of India. Even if the Rules enable the State to



make retrospective promotion, such promotion cannot be granted at the cost of some other group. Therefore, the only reasonable interpretation can be that the promotees can get promotion from an anterior date only if they have worked against the said post even if it be on temporary or officiating, or ad-hoc basis etc.

20. On analysis of Rule 24 of the Civil Services Rules, it is apparent that as per this Rule the seniority of a person subject to the said Rules is to be determined by the date of first appointment to such service, class, category or grade, as the case may be. Therefore, it is apparent that only the service rendered in a particular service, class, category or grade can be taken into consideration and not the service rendered in some other service, class, category or grade while determining the seniority. Note-1 to the Rules also makes it clear that the date of first appointment shall mean the date of permanent appointment or the first appointment on probation on a clear vacancy. We have already held above that appointment on probation obviously envisages that the person is working against the said post in the particular service, class, category or grade.

21. Therefore, on a combined reading of Rule 9 of the Excise Rules and Rule 23 and 24 of the Civil Services Rules, we are clearly of the view that promotion can be granted on retrospective basis to promotee officers from a date on which the clear-cut vacancy in the promotional cadre has occurred subject however to the conditions that the promotee should have worked against that post prior to his regular appointment.”

15. In the present case, as already noticed above, the petitioner has worked on the post of Tehsildar from the month of July, 2013, when he was posted against the post of Tehsildar and thereafter when the Notification dated 08.01.2014 was issued to promote him on adhoc basis. Thus, the ratio of the judgment of the Hon’ble Apex Court in



Sunaina Sharma's case (supra) is applicable on all four in the facts of the present case.

16. A similar issue has also been dealt with by a Coordinate Bench of this Court in **CWPOA No.5312 of 2020**, titled, **Devini Sharma and others vs. State of H.P and another**, decided on 17.05.2024 and after considering the judgments of the Hon'ble Apex Court in **State of Kerala and others vs. E.K. Bhaskaran Pillai (2007) 6 SCC 524** and in **Ramesh Kumar vs. Union of India and others, (2015) 14 SCC 335**, it has held that in normal circumstances, when the retrospective promotions are effected, all the benefits flowing therefrom, including monetary benefits, must be extended to an employee, who has been denied promotion earlier, however, release of monetary benefits related to retrospective promotion, will depend upon case to case. The relevant paras of the judgment read as under:-

"5. Consideration

5(i) In **Ramesh Kumar vs. Union of India and Others**, the Hon'ble Apex Court reiterating the principles laid down in **State of Kerala & Others Vs. E.K. Bhaskaran Pillai** observed that in normal circumstances, when retrospective promotions are effected, all benefits flowing therefrom, including monetary benefits, must be extended to an employee who has been denied promotion earlier, however, release of monetary benefits relatable to retrospective



promotion, will depend upon case to case. There are various facets which may have to be considered while adjudicating the release of actual monetary benefits on account of retrospective promotions. The principle of no work no pay would not be attracted, where respondents were in fault in not considering the case of the incumbents for promotion and not allowing them to work on its own carrying higher pay scale. Relevant paragraphs of the judgment as under:-

“14. In normal circumstances when retrospective promotions are effected, all benefits flowing therefrom, including monetary benefits, must be extended to an employee who has been denied promotion earlier. So far as monetary benefits with regard to retrospective promotion is concerned that depends upon case to case. In [State of Kerala &Ors. vs. E.K. Bhaskaran Pillai](#), (2007) 6 SCC 524, this Court held that the principle of “no work no pay” cannot be accepted as a rule of thumb and the matter will have to be considered on a case to case basis and in para (4), it was held as under:-

“4... We have considered the decisions cited on behalf of both the sides. So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before court or tribunal and he succeeds in that and



direction is given for reconsideration of his case from the date persons junior to him were appointed in that case the court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard-and-fast rule. The principle “no work no pay” cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also.”

15. *We are conscious that even in the absence of statutory provision, normal rule is “no work no pay”. In appropriate cases, a court of law may take into account all the facts in their entirety and pass an appropriate order in consonance with law. The principle of “no work no pay” would not be attracted where the respondents were in fault in not considering the case of the appellant for promotion and not allowing the appellant to work on a post of Naib Subedar carrying higher pay scale. In the facts of the present case when the appellant was granted promotion w.e.f. 01.01.2000 with the ante-dated seniority from 01.08.1997 and maintaining his seniority alongwith his batchmates, it would be unjust to deny him higher pay and allowances in the promotional position of Naib Subedar.”*

5(ii). *In the instant case, respondent-Education Department cannot be said to be at fault for not promoting the petitioners from due date on actual basis. It is an admitted factual position that the petitioners were eligible for promotion to the post of Superintendent Grade-II w.e.f 05.10.2015. Realizing this, respondents themselves convened a meeting of*



DPC on 05.10.2015, whereunder the names of the petitioners alongwith others were recommended for promotion to the post of Superintendent Grade-II on regular basis. However, the actual promotion orders could not be issued as the seniority list of the Senior Assistants on the basis of which the promotions were recommended had come under cloud in two litigations preferred before the Administrative Tribunal. The petitioners were parties therein. Pursuant to an interim order passed in one of these petitions, the respondents did not issue promotion order of the petitioners. It is not the case of the petitioners that they themselves took any positive steps in the aforesaid two litigations, wherein they were also impleaded as respondents, for their promotion to the post of Superintendent Grade-II.

In the aforesaid circumstances, when the petitioners have not worked on promotional post of Superintendent Grade-II w.e.f. 05.10.2015 to the date when their promotion order was actually issued on 28.02.2018/28.06.2018 consequent upon dismissal of the two petitions referred to above, actual monetary claimed by them from the dates of their retrospective promotions cannot be released to them. Held accordingly.”

17. In the present case too, the petitioner has worked on the post of Tehsildar and, therefore, the impugned action of the respondents to curtail the benefits and to grant the same only prospectively is arbitrary, unjust and discriminatory. Thus, the same cannot sustain in the eyes of law and the impugned order to that extent is modified,



thereby directing the respondents to grant the petitioner all the benefits from the date of his promotion w.e.f. 08.01.2014.

18. Consequently, the present petition is allowed and the impugned Notification dated 21.06.2019 (Annexure P-7) is quashed qua the petitioner, to the extent of denying him benefits only from the prospective effect, thereby directing the respondents to grant him the benefit of the post of Tehsildar w.e.f. 08.01.2014 with all consequential benefits. In case the arrears are not released in favour of the petitioner within three months from today, it shall carry interest @6% per annum till its payment to the petitioner.

19. The writ petition is disposed of in the aforesaid terms, so also the pending applications, if any.

6th April, 2026
(naveen)

(**Jiya Lal Bhardwaj**)
Judge