

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.5943 of 2023
Date of Decision: 24.11.2025

Devki Nandan

.....Petitioner

Versus

State of Himachal Pradesh & Anr.

.....Respondents

Coram

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting?

For the Petitioners: Ms. Suman Thakur, Advocate.

For the respondents: Mr. Vishal Panwar, Additional Advocate General with Mr. Ravi Chauhan, Deputy Advocates General, for the respondents-State.

Mr. Vishal Singh Thakur, Advocate, for respondent No.3.

Sandeep Sharma, J. *(Oral)*

Precisely, the grouse of the petitioner, who has been working as Visiting Instructor in the respondent/ Institute on daily wage basis since 2011, is that respondent/ Institute is deliberately not permitting the petitioner to complete 240 days in each calendar year, despite there being availability of work so that petitioner does not claim regularization in future.

2. Conjoint reading of the pleadings adduced on record by the respective parties reveal that petitioner, who possesses requisite qualification for the post of Instructor, is being deployed on daily wage basis to impart training to trainees, who participates in skiing courses.

Though it has been claimed on behalf of the petitioner that his services are being used by the respondent/Institute throughout the year, but reply filed by the respondent/institute reveals that services of the petitioner are taken only on need basis. As and when, courses are conducted, petitioner is given work of Visiting Instructor on daily wage basis. Admittedly, petitioner herein has been not been able to produce any appointment letter suggestive of the fact that he was given appointment against the post of Visiting Instructor on daily wage basis for whole year, but certainly there are certain receipts suggestive of the fact that petitioner had been working on seasonal basis.

3. As per reply filed by the respondent/Institute, there are five sanctioned posts of Instructor, out of which three already stand filled up and for two posts, no recruitment process has been initiated, rather on requirement basis, Visiting Instructors are being engaged on daily wage basis. Ms. Suman Thakur, learned counsel for the petitioner, vehemently argued that factum with regard to petitioner's employment against the post of Instructor, may be on seasonal basis, clearly reveals that there is requirement of manpower, but yet respondent/Institute with a view to defeat the rightful claim of the petitioner for regularization have denied regular appointment of the petitioner against the post of Skiing Instructor. She further submitted that record, if called for, would clearly reveals that petitioner herein,

besides imparting training to ski trainees, has also been rendering his services in various other training programmes organized by the respondent/Institute throughout the year. Ms. Thakur, further submitted that there is ample material available on record to suggest that work of training is available throughout the year in the respondent/Institute, but yet respondent/Institute with a view to avoid continuity of service of the petitioner has been appointing other persons as Visiting Instructors throughout the year. She submitted that by now it is well settled that one set of contractual employees cannot be replaced by another set of contractual employees, as such, the petitioner herein cannot be replaced by another contractual employee

4. To the contrary, Mr. Vishal Singh Thakur, learned counsel for the respondent/Institute, though admitted factum with regard to petitioner's employment as Visiting Instructor on daily wage basis, but he submitted that appointment of the petitioner is for a very limited period. He submitted that since Skiing Courses are organized during winter season, respondent/Institute hires services of the many Visiting Instructors to train the trainees because regular staff is not sufficient. He also submitted that once Skiing training is over, no employment is given to other persons as has been claimed by the petitioner. He submitted that though two posts of Skiing Instructor are available, but

same cannot be filled up till the time approval is not given by the Government of Himachal Pradesh.

5. Though it is apparent from the reply filed by the respondent/Institute that there is lot of work in the respondent/Institute, but yet no cogent and convincing material has been adduced on record to suggest that there is no requirement of filling up all vacant posts of Instructor. As per reply filed by the respondent/Institute, various training programmes in the disciplines of mountaineering, skiing and rescue operations during disaster are conducted by the trainees and for that purpose, throughout the year trainings are conducted at Kullu or other parts of the country. However, regular staff comprising of two instructors is not sufficient for these activities, as such, respondent/Institute hires the services of the Visiting Instructors for a limited period.

6. Since it is apparent from the pleadings adduced on record by the petitioner that he has been continuously working as Visiting Instructor in the respondent/Institute for more than twelve years, coupled with the fact that he possesses requisite qualification for the post in question and there is ample work in the respondent/Institute, this Court is persuaded to agree with Ms. Suman Thakur, learned counsel for the petitioner, that in the event of availability of work, petitioner herein cannot be denied work of Instructor and more

particularly, he cannot be replaced by another set of contractual employee, rather in that situation, he has a preferential right to be given work, may be on daily wage basis. It is quite apparent from the reply filed by the respondent/Institute that it hires services of the petitioner as a Visiting Instructor for a limited period, but thereafter, for ongoing other courses also engages other persons. If it is so, petitioner is right in contending that despite there being availability of work against the post in question, new person cannot be engaged on daily wage basis. Though this Court, having taken note of pleadings as well as documents adduced on record, is not persuaded to agree with Ms. Suman Thakur, learned counsel for the petitioner, that petitioner herein is entitled for regularization, but certainly he is entitled to work, may be on intermittent basis subject to availability of work in the respondent/Institute and in no eventuality, he can be replaced by another set of contractual employee.

7. Though at this stage, Mr. Vishal Singh Thakur, learned counsel for the respondent/Institute, attempted to argue that present petition is not maintainable because the relief, as sought for, can only be claimed by the petitioner by filing petition under Industrial Disputes Act, but this Court is not persuaded to agree with Mr. Thakur, for the reason that in the instant case, precise prayer of the petitioner is that despite his having rendered continuous service of

twelve years, his name is not being considered for regularization. Since this Court is not inclined to go into the question of regularization for the reasons detailed hereinabove, coupled with the fact that prayer made on behalf of the petitioner has been confined only to the issuance of direction to the respondent/Institute not to replace the petitioner with another set of contractual employees, this Court deems it fit to dispose of the present with a direction to the respondent/Institute to ensure that in the event of availability of work of training to skiing trainees, the preferential right to provide such training as a Visiting Instructor shall be of the petitioner until he is replaced by a regular instructor and in no eventuality, he shall be replaced by another set of Visiting Instructors. Ordered accordingly. While parting, this Court, having perused reply filed by the respondent/Institute, perusal whereof reveals that there is a lot of work, hopes and trusts that steps for filling up of two vacant posts of Instructor shall also be taken by the respondent/Institute expeditiously, so that no requirement is otherwise left for engaging Visiting Instructor on intermittent basis. Pending applications, if any, stand disposed of.

November 24, 2025
(sunil)

(Sandeep Sharma),
Judge