





*and other consequential benefits and pay arrears alongwith interest thereon @ 18% pa;”*

2. Shorn of unnecessary details, the key facts of the case are that the petitioner was initially appointed as Instructor (Craft) in the school/home for Blind Children, Dhalli on ad-hoc basis on 4<sup>th</sup> February, 1984 by the H.P. State Council for Child Welfare, as is evident from office order dated 02.03.1984 (Annexure P-2). After serving on contract basis till 31.03.1986, his services were regularized on the said post w.e.f. 01.04.1986 and he served there till 08.09.1994.

3. The petitioner had applied through proper channel for the post of Lecturer (school cadre) in Political Science and as per office order dated 30.08.1994, he was selected for the said post on stop-gap basis in the pay-scale of Rs.1800-3200/- (1800 fixed) plus other usual allowances. After his selection, the petitioner had tendered technical resignation on 08.09.1994 (Annexure P-4) to his employer with a view to join the next assignment, which was duly accepted and thereafter, he joined on the post of Lecturer (Political Science), (school cadre). No objection certificate dated 20.09.1994 issued by the H.P. State Council for Child Welfare (Annexure P-5) and experience certificate dated 09.11.1994 (Annexure P-6), have been placed on record. A perusal of experience certificate



dated 09.11.1994 reveals that the petitioner has rendered his services with the H.P. State Council for Child Welfare w.e.f. 04.02.1984 to 08.09.1994. The services of the petitioner as Lecturer were regularized on 12.01.1995 and he continued to serve in the school till 30.07.1999. Thereafter on the recommendations of the H.P. Public Service Commission, his services were taken on regular basis as Lecturer (college cadre), Class-I in the subject of Political Science and accordingly, he joined on 30.09.1999.

4. The petitioner made representation to respondent No.1, requesting therein to give him the benefit of his previous services rendered with the H.P. State Council for Child Welfare on the analogy of one Shri Laxmi Singh Bhatia, Clerk, working in the GAD Branch of the H.P. Secretariat, Shimla as well as on the basis of Shri Harish Kumar, Clerk, who was appointed in the same department where the petitioner was earlier serving. The office order dated 03.08.2007 (Annexure P-9) issued by the Director, Treasuries, Accounts and Lotteries, H.P. reveals that the services of Shri Harish Kumar, Clerk w.e.f 27.07.1985 to 28.05.1996 i.e. 10 years, 10 months and 3 days before his appointment was accorded after having deposited the terminal benefits received



by him from the H.P. State Council for Child Welfare. It was however, made clear that the past services rendered by the said employee will only be counted for the purpose of pensionary benefits and he will not be entitled for any other benefit, monetary or otherwise.

5. The petitioner again made representation. However, the said prayer made by the petitioner came to be rejected vide order dated 15.02.2010 (Annexure P-12). A perusal of order dated 15.02.2010 reveals that as per entries recorded in the service book of the petitioner, he had rendered 24 hours resignation on 08.09.1994 and he had not obtained prior approval of the competent authority as required under the Rules while applying for service in the Education Department. According to Rule 26(1) of CCS (Pension) Rules, 1972, the resignation from a service or post unless it is allowed to be withdrawn in the public interest by the Appointing Authority, entails forfeiture of past service. The services rendered by the petitioner in the H.P. State Council for Child Welfare will not count as qualifying service for pensionary benefits. The contract period will also not count for the purpose of any service benefits and he is



entitled for counting of service from the date, he joined the Government on regular basis.

6. The petitioner feeling aggrieved by the said order passed by the respondents has preferred the petition on the grounds that the action on the part of the respondents in not counting the said period of past services rendered by him with the H.P. State Council for Child Welfare is illegal, arbitrary, malafide, discriminatory and against well establish principles of natural justice. The respondents have taken a hyper technical view of the matter and without appreciating the factum that the petitioner is wholly blind person and cannot be equated with the able-bodied persons.

7. The respondents filed reply to the petition and raised preliminary submissions that the petitioner was initially working as Braille Instructor in the H.P State Council for Child Welfare Department w.e.f. 04.02.1984 to 31.03.1986 on adhoc basis and from 01.04.1986 to 08.09.1994 on regular basis. The petitioner applied for the post of Lecturer(school cadre) on stop gap/contract basis and accordingly selected on 30.8.1994 in the Education Department.He worked as school cadre Lecturer (Political Science) w.e.f. 12.09.1994 to 11.01.1995 on contract basis



and 12.01.1995 to 30.7.1999 on regular basis. The petitioner was selected as College Lecturer in 1999 and joined as Lecturer College cadre (Political Science) in Government College, Paonta Sahib on 30.9.1999. Since the petitioner was appointed on stop gap/contract basis w.e.f. 12.09.1994 to 11.01.1995, after rendering regular service in H.P State Council for Child Welfare Department, thus there is a break in regular service and the case of the petitioner was thoroughly examined at the Government level and the advice of the Finance Department was also sought for as to whether the period w.e.f.04.02.1984 to 31.03.1986 & w.e.f. 12.09.1994 to 11.01.1995 can be counted for the pensionary benefits and whether the services of the petitioner can be treated as continuous w.e.f. 04.02.1984. The petitioner had not obtained prior approval of the competent authority while applying in the Education Department. According to Rule 26(1) of CCS (Pension) Rules, 1972, the resignation from a service or post unless it is allowed to be withdrawn in the public interest by the Appointing Authority entails forfeiture of past service. The initial adhoc service does not count for pensionary benefits and CCS (Pension) Rules, 1972 also do not apply to a person appointed on contract basis. The



contract period will also not count for the purpose of any service benefit.

8. The respondents-State also filed the supplementary affidavit in compliance with the directions issued by this Court on 20.11.2025, wherein it was directed that whether the Himachal Pradesh Council for Child Welfare was a pensionable establishment during 1984 till September, 1994 or not. The instructions dated 05.07.1996 quoted in the order dated 03.08.2007 be also placed on record.

9. The respondents-State in compliance with the aforesaid order filed supplementary affidavit and stated that the Himachal Pradesh Council for Child Welfare was not a pensionable establishment under the CCS (Pension) Rules, 1972 during the period from 1984 to September, 1994.

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

11. The respondents have not disputed the period of service rendered by the petitioner in the previous department. It is also not disputed by the respondents that as per office order dated 03.08.2007, one Shri Harish Kumar, Clerk who was also serving in the same Department where the petitioner was earlier serving, his entire service has been counted for



the purpose of pensionary benefits. It is also not disputed that the petitioner suffers disability. It is also not in dispute that before joining the Education Department, the petitioner had submitted his resignation and the H.P State Council for Child Welfare had issued the 'No Objection Certificate' dated 20.09.1994, that the department has no objection if the petitioner is offered appointment with the Himachal Pradesh Government. Once the respondents have extended the benefit of counting the service in the case of similarly situated person, who had also served with the same department where the petitioner had earlier served, there is no justification to deny the said benefit to the petitioner. No doubt, the respondents-State while filing reply to the petition have stated that the petitioner had not obtained the prior approval of the competent authority as required under the Rules, but the documents placed on record i.e. resignation letter dated 08.09.1994 (Annexure P-4) and thereafter 'No Objection Certificate' dated 20.09.1994 (Annexure P-5) issued by the H.P State Council for Child Welfare Department clearly reveals that the said Council had no objection in case the petitioner is appointed with the Himachal Pradesh Government. In the case of the petitioner, who is physically



challenged and having the bench mark disability, cannot be denied the benefit on the plea that he had not obtained prior approval of the competent authority, especially when the petitioner before joining the respondent department had rendered the resignation and his earlier employer had no objection if the petitioner is offered appointment with the Himachal Pradesh Government.

12. At the time of joining with the respondent department, the petitioner had to take permission from his ex-employer, which was granted to him and thus, the services rendered by the petitioner in the previous department cannot be ignored for the purpose of granting him the pensionary benefits.

13. At this juncture, it is relevant to refer to Rule 26(2) of CCS (Pension) Rules, 1972, which provides that if resignation is submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies, the past service will not entail forfeiture. Rule 26(2) reads as under:-

***“26. Forfeiture of service on resignation***

- (1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service.*



- (2) *A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.*
- (3) *Interruption in service in a case falling under sub-rule (2), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to him.*
- (4) *The appointing authority may permit a person to withdraw his resignation in the public interest on the following conditions, namely:-*
- (i) *that the resignation was tendered by the Government servant for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation;*
  - (ii) *that during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person concerned was in no way improper;*
  - (iii) *that the period of absence from duty between the date on which the resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than ninety days;*
  - (iv) *that the post, which was vacated by the Government servant on the acceptance of his resignation or any other comparable post, is available.*
- (5) *Request for withdrawal of a resignation shall not be accepted by the appointing authority where a Government servant resigns his service or post with a view to taking up an appointment in or under a private commercial company or in or under a corporation or company wholly or substantially owned or controlled*



*by the Government or in or under a body controlled or financed by the Government.*

- (6) When an order is passed by the appointing authority allowing a person to withdraw his resignation and to resume duty, the order shall be deemed to include the condonation of interruption in service but the period of interruption shall not count as qualifying service.*
- [(7) A resignation submitted for the purpose of Rule 37 shall not entail forfeiture of past service under the Government.]”*

14. In the present case, the petitioner had obtained the permission before joining the respondent department. So far as the contention raised by the respondents that the petitioner was not appointed on regular basis and since he was appointed on stop gap/contract period, the said period cannot be counted, is also not acceptable. Rule 26 provides that if a resignation is tendered and an employee takes any employment whether temporary or permanent, it will not entail forfeiture of past service and, therefore, once the petitioner was regularized with the earlier employer, taking his adhoc service, the said period cannot be ignored.

15. The another fact of the matter is that the State Government in case of another employee, who had also served with the same employer having no pensionable establishment, his entire period of service has been counted, then, to give same treatment, the said benefit cannot be denied to the petitioner. If it is allowed to be done, it will



violate Articles 14 and 16 of the Constitution of India. Further, this Court is also extending the relief to the petitioner, keeping in view the fact that he belongs to the category of physically challenged persons. Since it is not disputed by the respondents that the petitioner was having the benchmark disability, then, in that case, the relief denied to him is unsustainable in law.

16. As already held above, the plea taken by the respondents that the petitioner was not serving in the pensionable establishment before joining the respondent department, is rejected once the State Government in the case of another employee, namely, Harish Kumar had extended the benefits, who was also serving with the same employer with whom the petitioner had earlier served. Thus, the said plea cannot be accepted. The respondents cannot apply different parameters with respect to same set of employees of the State being a model employer and, therefore, on this count also, the impugned order cannot sustain and is quashed and set aside.

17. Consequently, the present petition is allowed and the impugned order dated 15.02.2010 is quashed, with a direction to the respondents to count the entire services



rendered by the petitioner w.e.f. 04.02.1984 to 02.09.1994 for the purpose of extending him the pensionary benefits only. Since the petitioner has retired from service, the respondents are directed to revise his pension, counting the entire period of service w.e.f. 04.02.1984 till his retirement. Arrears on account of counting of service be paid to the petitioner within a period of three months from today. In case, the arrears are not paid, the respondents shall pay interest @6% per annum from today till actual payment.

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

5<sup>th</sup> May, 2026  
(naveen)

( **Jiya Lal Bhardwaj** )  
**Judge**