

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****CWP No. 13617 of 2024****Reserved on: November 20, 2025****Date of Decision: November 28, 2025**

Shammi Kumar		Petitioner
	Versus	
State of Himachal Pradesh and another		Respondents

*Coram:****Hon'ble Mr. Justice Sandeep Sharma, Judge.******Whether approved for reporting? ¹***

For the Petitioner: Mr. Onkar Jairath, Advocate.**For the Respondents:** Mr. Anup Rattan, Advocate General with Mr. Rajan Kahol and Mr. Vishal Panwar, Additional Advocates General & Mr. Ravi Chauhan, Deputy Advocate General

Sandeep Sharma, Judge:

The petitioner has filed the present petition, seeking following main reliefs:

- "i)** That the writ in the nature of Certiorari or any other appropriate writ, order or directions may kindly be issued, quashing the ***Impugned Order dated 16.10.2017*** being illegal, arbitrary, discriminatory, and unconstitutional and against the settled law of service jurisprudence.
- ii)** That the writ in the nature of Mandamus or any other appropriate writ, order or directions may kindly be issued, directing the Respondents to grant financial enhancement/up gradation under the ACPS on the completion of 8 years of service w.e.f. 08.10.1994 with all consequential benefits and w.e.f. 30.03.2000 on completion of 4 years' service, 30.03.2005 on completion of 9 years' service and 30.03.2009 on completion of 14 years' service.
- iii)** That in alternate the writ in the nature of Mandamus or any other appropriate writ, order or directions may kindly be issued, directing the

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



Respondents to remove the pay anomaly of the petitioner and her pay be stepped up at par with her junior namely Shri Vijay Kumar Walia in view of the law laid down by the Apex Court in Madhav Murthy case (Supra) with all consequential benefits including his pension be revised accordingly and he be paid the arrears along with arrears @ 9% Per Annum.”

2. Grievance of the petitioner as put forth in the petition and further canvassed by Mr. Onkar Jairath, learned counsel for the petitioner is that he became eligible for grant of proficiency increment after completion of eight years as Junior Auditor i.e. on 8.10.1994, but same was not granted to him and his request has been rejected by the respondent Department vide order date 16.10.2017, on the ground that he was granted step-up benefit of Rs.10/- with effect from 1.10.1993 vide office order dated 11.6.1996. Petitioner claims that he has not been granted any financial benefit of step up allowed vide letter dated 11.6.1996. Petitioner claims that he is entitled to first prop-step up on completion of eight years as Junior Auditor on 8.10.1994, for grant of increment on completion of four years on the post of Section Officer as on 30.3.2000, on completion of nine years on 30.3.2005 and on completion of fourteen years as on 30.3.2009. Petitioner claims that the instructions dated 7.7.2014 and 9.9.2014, are not applicable to his case being later in point of time. Petitioner also claims that since his junior is drawing higher pay, his pay be stepped up at par with such junior i.e. Shri Parveen Kumar and Vijay Kumar Walia. However, since his representation has been dismissed, petitioner has approached this Court, by way of present writ petition, praying therein for following main reliefs by way of present petition:



3. The petitioner was appointed as Junior Auditor in Local Audit Department on 6.10.1986. Thereafter, in 1990, petitioner qualified State Accounts Services (SAS) examination and was promoted as Section Officer on 30.3.1996 and transferred to ex cadre post in Bhakra Beas Management Board (BBMB), where he opted for pay scales of BBMB, which involved financial gain. Vide order dated 11.6.1996, the petitioner was granted step in pay at par with his junior Shri Vidya Sagar with effect from 1.4.1993, before completion of eight years of service, due to which he was not considered by the Departmental Promotion Committee for grant of proficiency step up after completion of eight years of service, in terms of para-8 of letter dated 14.6.1989, which provides as under:

“An employee will be eligible to proficiency increment(s) only if he has not gained any enhancement in his basic pay, except by way of annual increments and fixation of pay as a result of revision of pay scales from time to time, during preceding eight years for first prop-increment, and 18 years for second prop-increment as on the date from which prop-increment is given.”

4. Petitioner remained posted from 19.6.1996 to 22.7.2015 in BBMB and thereafter on secondment basis with effect from 23.7.2015 to 10.6.2016 and then again in BBMB on transfer basis with effect from 11.6.2016 to 30.11.2021, at his own request. During this period the petitioner received salary higher than his post. Petitioner was repatriated to his parent Department on 5.8.2004, then on 21.5.2011 and again on 1.3.2018, but petitioner did not join his parent department and requested for his posting in BBMB,



on 4.11.2011, one dated nil, 6.6.2014 and 28.2.2015 (Annexure R/4 colly of reply filed by the respondents).

5. Thereafter, petitioner was granted proforma promotion as Assistant Director/ Assistant Controller in the Department vide Notification dated 3.11.2015 (Annexure R/6). It seems that during this time, he was posted in Central University, Dharamshala, where he again opted for pay scale of said University. Pay of the petitioner was fixed on notional basis from 1.10.1997 to 3.11.2015 vide order dated 16.7.2016 (Annexure R/8). The petitioner remained posted in Central University Dharamshala on secondment basis with effect from 23.7.2015 to 10.6.2016 and thereafter was promoted as Deputy Director/ Deputy Controller in the respondent Department and was posted in headquarters of the respondent Department vide Notification dated 1.3.2018 but the petitioner did not join and requested for his posting in BBMB. The petitioner was posted on 9.4.2018 in BBMB where he joined on 25.4.2018. Petitioner was thereafter promoted as Joint Director/Joint Controller vide Notification dated 22.6.2020. Vide letter dated 9.11.2021 (Annexure R/15), petitioner Secretary, BBMB requested for repatriation of petitioner to respondent Department, where he was posted in Resident Audit Scheme, Himachal Pradesh University vide Notification dated 11.11.2021, but the petitioner applied for voluntary premature retirement with effect from 30.11.2021, vide his letter dated 27.11.2021, which was not acceded to being not in line with Himachal Pradesh Civil Services (Premature Retirement) Rules, and he joined back on 13.12.2021, as per Notification dated 11.11.2021. The summom bonum is that petitioner remained on



secondment basis in BBMB and Central University for 25 years from 19.6.1996 to 12.12.2021, against ex cadre post, involving financial gains.

6. At this stage, it would be relevant to take note of instructions issued by Finance Department vide letter No. Fin(C)B(7)-6/88-II, dated 6.4.1990, wherein it is provided as under:

“The period of service rendered against an ex-cadre post will be taken into account for reckoning the period of 8 or 18 years for the grant of Proficiency increments.

In the ex-cadre post if the appointment is in the same pay scale only then the benefit of proficiency step up will be admissible. However, if the appointment has been made against a higher post involving financial gains in the basic pay. The benefit of proficiency increment will not be admissible.”

7. Further Finance Department letter No. Fin(PR)B(7)-59/2010, dated 7.7.2014 provides in para-5 as under:

“Once an employee has already got three enhancements/ financial u-gradation i.e. grant of progression under the new or old ACPS, or promotion or any other financial enhancement except annual increment or the general pay revision based on recommendations of the Pay Commission, in fourteen years or more of his/her entire service, thereafter, he will not be entitled for placement in next higher grade pay in the ACPS scheme introduced vide the FD's instructions dated 09.08.2012.”

8. If the reply of the respondents is seen, they have rejected the claim of the petitioner for grant of first step up on completion of eight years as Junior Auditor, on the ground that he had received benefit of stepping up of pay with effect from 1.4.1993, and thus in view of Finance Department in-



structions issued on 14.6.1989, he is debarred from claiming proficiency step up on completion of eight years.

9. I have heard learned counsel for the parties and perused the material available on record.

10. So far claim of the petitioner for benefits of ACPS on completion of 4-9-14 years of service is concerned, respondents have stated that the petitioner remained posted outside the Department, on secondment basis, where he was in receipt of higher pay scales throughout, therefore, in view of condition provided in Finance Department instructions dated 6.4.1990, as reproduced herein above, the petitioner is not entitled to any step up on account of ACPS, since he was in receipt of higher pay.

11. So far claim of the petitioner that he has not received any financial benefit on account of stepping up of his pay at par with his junior, it is the contention of respondent Department that the petitioner never raised the issue. It is also contended by the respondents that while being posted in BBMB, petitioner received benefits of Assured Career Progressions Scheme. Besides this, it is stated in reply to para-14 that pay of the petitioner was stepped up with effect from 1.4.1993 at Rs.2000+60 vide office order dated 11.6.1996 and thereafter, pursuant to option exercised by petitioner in the year 1998, his pay was fixed in revised pay structure and both the orders were conveyed to the petitioner, but he failed to represent for payment of arrears.

12. So far grievance of the petitioner that he is entitled to financial upgradation under 4-9-14 ACPS is concerned, it is the contention of the res-



pondents that under new ACPS, no person can be allowed more than three financial up-gradations and petitioner has got three promotions. While referring to Finance Department instructions dated 7.7.2014, Mr. Kahol, learned Additional Advocate General stated that once an employee has already got three enhancements/ financial u-gradation i.e. grant of progression under the new or old ACPS, or promotion or any other financial enhancement except annual increment or the general pay revision based on recommendations of the Pay Commission, in fourteen years or more of his/her entire service, thereafter, he will not be entitled for placement in next higher grade pay in the ACPS scheme introduced vide the FD's instructions dated 09.08.2012. Since the petitioner has got benefit of stepping up of pay in 1993, thereafter promotions to the posts of Section Officer, Assistant Controller, Deputy Controller and Joint Controller and during this time, he was in receipt of higher salary while posted on secondment basis in other organization, therefore, neither said period can be counted for grant of benefit of ACPS nor new ACPS provides for grant of any benefit of ACPS after getting three financial upgradations.

13. So far Claim of the petitioner regarding stepping up of his pay at par with his junior is concerned, this court is of the opinion that from the records, it is apparent that the petitioner was granted step up but no actual financial benefits were released in his favour. Besides this, the respondents have not dealt with the issue of stepping up of pay of the petitioner at par with his juniors.

14. In view of the detailed discussion made herein above, the petition is allowed to the extent that the respondents are directed to grant the benefit



of stepping up of pay of the petitioner at par with his juniors and thereafter, grant all consequential benefits like arrears, revised retiral benefits. This exercise be completed within four months and actual monetary benefits be released in favour of the petitioner, within two weeks thereafter.

The petition stands disposed of in the afore terms. All pending applications also stand disposed of.

**(Sandeep Sharma),
Judge**

November 28, 2025
(Vikrant)