



2025:HHC:22205

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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

LPA No.215 of 2023.

Decided on: 09.07.2025

Rakesh Atwal

.....Appellant.

Versus

State of H.P. and Ors.

.....Respondents.

Coram:

The Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice.

The Hon'ble Mr. Justice Ranjan Sharma, Judge.

Whether approved for reporting?

For the appellant : Appellant in person with Mr. Vivek Singh Attri, Advocate

For the respondents: Mr. Arsh Rattan, Deputy Advocate General, for respondent No.1-State.
Mr. Mukul Sood, Advocate, for respondents No.2 and 3.

G.S. Sandhawalia, Chief Justice.

The present Letters Patent Appeal is directed against the order of the learned Single Judge whereby the learned Single Judge has dismissed **CWP No.5841 of 2022** titled as ***Rakesh Atwal vs. State of H.P. and others*** on 22.09.2023 by holding that the petitioner as such was appointed as a Sweeper and had voluntarily accepted to discharge the duties of a Driver on acceptance of the daily wages. The rules as such of the Corporation did not provide appointment way of promotion of the Safai Karamchari to the post of Driver and it is



not a promotional post and was to be filled up by way of direct recruitment.

2. In such circumstances, the prayer which had been made for regularization against the post of the Driver was rejected along with the prayer for upgradation of the services to the said post since in the writ petition challenge had been raised to the regularization order for the post of Sweeper on 05.12.2008 on completion of 8 years service as a Daily wager/contractual, as per the policy.

3. The learned Single Judge also noticed that on an earlier occasion an application had been filed before the H.P. State Administrative Tribunal which had been transferred to this Court and registered as CWPOA No.5250 of 2020 which had been dismissed as withdrawn with liberty to file a fresh petition. The Original Petition had not been placed on record to show what relief had been sought and resultantly the principle of Order 2, Rule 2 of the Code of Civil Procedure was also applied to dismiss the writ petition while distinguishing the case in **CWP No.778 of 2006** titled as **Gauri Dutt and others vs. State of H.P. and others** on the ground that the job of the



incumbent gets changed from lower scale to the higher scale with tacit consent of the employer to pay for it.

4. It is an admitted position that the petitioner as such was well aware of the post on which he was appointed and thereafter he was regularized in the year 2008. Therefore, the relief itself which was claimed for upgradation and for regularization as a Driver could not have been done against the Rules and since the recruitment has to be done keeping in view the principles of Articles 14 and 16 of the Constitution of India and the right has to be given to every person to compete against the said posts. The petitioner as such could not be given a back door entry to the said post as prayed for in the writ petition.

5. On an earlier occasion, it was directed that for the period he worked as a Driver, the monetary amounts be calculated and paid to him, as the petitioner had restricted his appeal only to the extent of difference of wages for a period during which his services had been utilized as Driver. The details having been placed on record by the Corporation for the period for which his services were utilised and it is not disputed that an amount of Rs.48,158/- as such has been disbursed to



him after he had visited the office of the Municipal Corporation, Shimla and was satisfied with the details provided. The receipt and acknowledgment is also placed on record in original by the Municipal Corporation, Shimla, which reads as under:

"As per directions by the Hon'ble High Court in LPA No.215 of 2023 titled as Rakesh Atwal versus M.C., Shimla on dated 08.01.2025. The respondents were directed to provide access to the petitioner to inspect the records as directed so as to enable him to file Affidavit.

So today on dated 10.01.2025 at 10:00 AM Mr. Rakesh Atwal came to the office and was allowed to access the records and was satisfied with the calculations of the arrear disbursed and no. of days he has worked after fully checking and counting the days in the each Logbook and was also satisfied with the payment/diff. amount disbursed i.e. amount Rs.48,158/- (rupees forty eight thousand one hundred & fifty eight only)."

6. In such circumstances, we have also gone through the chart whereby Municipal Corporation, Shimla has calculated the differential amount, keeping in mind the days he worked as a Driver. It is apparent that during the period from 2018 till 2022 his services were utilised to a considerable extent, and then the amount has been duly calculated as such.

7. In such circumstances, we are of the considered opinion that on merits since the relief is not liable to be granted and the respondents have addressed his grievances to a large extent, there is no further scope for grant of any benefits to the appellant.



8. Resultantly, while upholding the order of the learned Single Judge, we dismiss the present appeal. Pending application(s), if any, also stand disposed of.

(G.S. Sandhawalia)
Chief Justice

(Ranjan Sharma)
Judge

July 09, 2025
(ankit)