

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Execution Petition No.180 of 2023 in
CWP (T) No.14355 of 2008
Decided on: 10.04.2025**

Shri Chaman Lal

... Petitioner

Versus

State of Himachal Pradesh & others

... Respondents

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge.

Whether approved for reporting?¹

For the petitioner : Mr. Tek Chand Sharma, Advocate.

For the respondents : Mr. Pushpinder Jaswal, Additional
Advocate General.

Ajay Mohan Goel, Judge (Oral)

By way of this execution petition, the petitioner has prayed for execution of the judgment passed in CWP(T) No.14355 of 2008, titled as Sh. Chaman Lal Versus Government of Himachal Pradesh & others, decided on 19.12.2012, which petition was disposed of in the following terms:-

“6. Accordingly, in view of the observations and discussions made hereinabove, the writ petition is allowed, the respondents are directed to consider the case of the petitioner for regularization as Surveyor immediately after completion of ten years continuous service, within a period of ten weeks from today. However, the petitioner shall be paid the arrears of

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



salary only for a period of three years. The pending application(s), if any, also stands disposed of. No costs”

2. Alongwith the execution petition, the judgment of Hon’ble Division Bench of this Court passed in LPA No.171 of 2013, titled as Government of Himachal Pradesh & others Versus Sh. Chaman Lal, is appended. The judgment was passed by Hon’ble Division Bench in LPA No.171 of 2013, on 22.09.2022 and the order passed by Hon’ble Single Judge was upheld.

3. The petitioner filed the execution petition feeling aggrieved by the fact that the judgment passed Hon’ble Single Judge was not being implemented despite having been upheld by Hon’ble Division Bench.

4. When the case was listed previously, learned Additional Advocate General, on the strength of instructions, received from Director, Rural Development, to the Government of Himachal Pradesh, dated 02.12.2024, apprised the Court that after the judgment was passed by Hon’ble Single Judge, the petitioner had filed a contempt petition, alleging non-compliance thereof and Hon’ble Single Judge, in terms of order dated 21.06.2013, passed in COPC No.64 of 2013, held that the judgment was not capable of being implemented for reasons assigned in the order. The order passed by Hon’ble Single Judge is being quoted hereinbelow:-



“present petition has been filed for implementation of the judgment rendered by this Court in CWP (T) No. 14355/2008, decided on 19.12.2012, whereby the respondents were directed to consider the case of the petitioner for regularization as Surveyor immediately after completion of ten years continuous service, within a period of ten weeks.

2. Reply has been filed on behalf of the respondents. According to the respondents, the petitioner has concealed material facts from this Court at the time of hearing of CWP(T) No. 14355/2008, decided on 19.12.2012. The petitioner has earlier filed O.A.(M)No. 48/2008 on 21.2.2008, which was converted to CWP (T) No.1879/2008 after abolition of H.P. State Administrative Tribunal. The aforesaid petition was decided on 25.2.2011. According to the judgment dated 25.2.2011, the petitioner failed to substantiate that he was regularly working as Surveyor. The petitioner has also filed O.A.(M) No.168/2008 on 19.3.2008, which was converted to CWP(T) No.1937/2008. In CWP (T) No.1879/2008, the petitioner has sought for work charge status and in CWP (T) No.14355/2008, he has sought for regularization.



Neither the petitioner nor the learned Deputy Advocate General has brought to the notice of the Court at the time of disposal of CWP (T) No.14355/2008 that on the same and similar facts O.A.(M) No. 48/2008 converted to CWP (T) No.1879/2008 already stood decided on 25.2.2011. The duty is cast upon the parties to bring material facts before the Court. According to the reply filed to the contempt petition, there is no sanctioned post of Surveyor nor any Recruitment and Promotion Rules have been framed under Article 309 of the Constitution of India to fill-up the post of Surveyor. In absence of framing of Recruitment and Promotion Rules and sanctioned post of Surveyor, the judgment cannot be implemented. Accordingly, the contempt petition is closed. Notice is discharged.”

5. Learned Additional Advocate General submits that this fact was not brought to the notice of Hon'ble Division Bench when the matter was heard in the Letters Patent Appeal (supra).

6. In this backdrop, when the matter was listed on 04.12.2024, the following order was passed:-

“Learned Advocate General informs the Court that the State has preferred an Special Leave Petition against the



judgment passed by the Hon'ble Division Bench, more so, in light of the fact that in the contempt petition that was filed by the petitioner, after the pronouncement of the judgment, non-compliance whereof, has led to the filing of this execution petition, Hon'ble Single Judge in terms of order dated 21.06.2013 had observed that the judgment was not capable of being implemented, in light of the detailed observations made in this regard.

He further submits that in fact this fact has been conveniently concealed by the petitioner as there is no averment qua the decision in the contempt petition, in the execution petition.

I have gone through the order passed by the Hon'ble Coordinate Bench in COPC No.64 of 2013, in which the petitioner was seeking initiation of contempt proceeding for willful disobedience of the judgment passed in CWP.T No. 14355 of 2008, i.e. the judgment for the execution whereof, the present execution proceedings have been filed.

This Court is of the view that apparently there is indeed concealment of facts. Incidentally, as has been pointed out at the bar, learned counsel, who is representing the



execution petitioner herein, was representing the petitioner in the contempt proceeding also.

Faced with this situation, learned counsel for the petitioner submits that the case be taken up after some time. List after six weeks, as prayed for."

7. Today, learned counsel for the petitioner has submitted that in the light of the fact that the judgment passed by Hon'ble Single Judge has been upheld by Hon'ble Division Bench, the order passed by Hon'ble Single Judge in the contempt proceedings cannot come in the way of implementation of the judgment and there is no concealment of fact by the petitioner and the judgment has to be implemented.

8. Having carefully gone through the execution petition, this Court has no hesitation in holding that there indeed is concealment of fact by the petitioner from the Court. There is no mention in the execution petition that after the passing of the judgment by Hon'ble Single Judge, a contempt petition was preferred and the same was closed by Hon'ble Single Judge by *inter alia* observing that the judgment cannot be implemented.

9. Incidentally, the petitioner was being represented by the same learned counsel in the contempt proceedings, who has filed this execution petition and who was representing him in CWP(T)



No.14355 of 2008 as well as the Letters Patent Appeal.

10. In the considered view of this Court, the minimum that was expected from the petitioner was that in the course of the adjudication of the Letters Patent Appeal by Hon'ble Division Bench, he should have had brought the order passed by Hon'ble Single Judge in COPC No.64 of 2013, passed on 21.06.2013, into the notice of Hon'ble Division Bench and then left it upon the wisdom of Hon'ble Division Bench as to how to deal with the order. Not having done so, amounts to sharp practice and this Court deprecates the same.

11. Similarly, as observed hereinabove, even in these proceedings, this fact has been cleverly concealed by the petitioner, because nothing prevented the petitioner from disclosing this fact in the execution petition and thereafter, leaving it upon the wisdom of this Court to act thereupon.

12. Therefore, in the light of the observations made hereinabove, these execution proceedings are closed as unexecutable. Pending miscellaneous application(s), if any also stand disposed of accordingly.

(Ajay Mohan Goel)
Judge

April 10, 2025
(Rishi)