



Vijay Kumar vs. State of H.P

Ex. Petition No. 21 of 2025

04.07.2025 Present:

Mr. Sanjeev Bhushan, Sr. Advocate, with Mr. Rajesh Kumar, Advocate, for the petitioner.

Mr. Anup Rattan, Advocate General with Mr. Varun Chandel, Additional Advocate General, for the respondents/State.

1. Fresh compliance report on affidavit of Director General of Police (DGP) dated 3.7.2025, produced by the learned Advocate General, alongwith supporting documents, is taken on record.
2. Compliance report reveals that in continuation of office order dated 27th March, 2025, another office order dated 2nd July, 2025 has been issued by the Director General of Police and in sequel thereto, joining of the petitioner has been accepted by the Superintendent of Police, Chamba, District Chamba on 3rd July, 2025 in furtherance to the office order issued by the DGP in compliance of judgment dated 31.8.2023 and order passed by this Court in present Execution Petition time to time.
3. In the present matter, CWPOA No. 4593 of 2020, preferred by petitioner, was allowed and disposed of vide judgment dated 31.8.2023, passed by this High Court, directing the respondents to offer appointment to the petitioner on compassionate ground as expeditiously as possible latest by 31st October, 2023.
4. Respondents did not offer appointment to the petitioner, whereupon petitioner was compelled to file the present Execution Petition (T) No. 21 of 2025 on 24th December, 2024.
5. During pendency of the Execution Petition, an Office Order dated 27.3.2025 was issued by the DGP purporting the same to be offer of appointment, but without asking/permitting the petitioner to



join the services and it was communicated to the petitioner that the joining shall be accepted only after complying with Condition No.1, whereby petitioner was directed to qualify the type test as per benchmark contained in the said condition.

6. When Execution Petition was listed on 27th March, 2025, aforesaid purported offer of appointment dated 27th March, 2025 was produced in the Court and considering it to be a complete offer of appointment, the Execution Petition was closed vide even dated order which includes following observations:-

“3. In view of the such situation, petitioner shall be deemed to have been appointed on 31.10.2023 and he shall be entitled for all service benefits from the said date except the actual pay from 31.10.2023 till his joining in sequel to the offer of appointment made to him.

4. Respondents shall carry out necessary entries to the aforesaid effect in the service record of the petitioner”

7. From the aforesaid directions, it is apparent that on 27th March, 2025 impression was given that in compliance of the judgment passed by this Court, compassionate appointment had been offered to the petitioner but it was not so, as emerged from the events subsequent to the order dated 27th March, 2025, including filing of the application for revival of Execution Petition, as petitioner was not permitted to join.

8. Application for restoration of Execution Petition was filed on 15.5.2025 and thereafter vide order dated 30.6.2025. Execution Petition was revived and restored to its original status and respondents were granted time to ensure complete compliance by carrying out necessary requisite rectification in the offer of appointment and the Execution Petition was ordered to be listed on 2nd July, 2025.



9. In sequel to order passed on 2nd July, 2025, based on the submissions made by learned Advocate General under instructions of the Officers present in person, matter was adjourned for filing fresh compliance with direction to accept the joining of the petitioner on 3rd July, 2025.

10. In the aforesaid circumstances, petitioner has been permitted to join on 3rd July, 2025.

11. Main petition was decided on 31st August, 2023 by granting time to the respondents to comply with the judgment by offering appointment to the petitioner on or before 31.10.2023. Not only during these two months, but even thereafter, till passing of order dated 27th March, 2025, that too on filing of Execution Petition by the petitioner, respondents did not come forward for extension of time or pointing out any difficulty being faced by the concerned Officers/Officials in implementing the order/judgment passed by the Court within the stipulated period or thereafter.

12. Even offer of appointment dated 27.3.2025 proved to be an eye wash rather an attempt to overreach the judgment passed by this Court.

13. The petitioner for not offering appointment on or before 31st October, 2023 had suffered loss of service benefits including the monetary benefits, whereas every time he was available for joining, but subject to permission granted by the competent authority. He has been prevented for omission and commission on the part of the respondents from joining the job, therefore, principle of “no work no pay” shall not be applicable in the present case (see ***as Union of India and others vs. K.V. Jankiraman and others (1991) 4 SCC 109***).



14. In the aforesaid given facts and circumstances, we are of the considered opinion that petitioner shall be entitled for all service benefits from the due date including the monetary benefits, however, insofar as monetary benefits are concerned, the State should not suffer as these monetary benefits have to be paid to the petitioner without doing any job but for the laxity and lapse on the part of the concerned Officers/Officials, who were required to take appropriate steps within time granted to implement the judgment passed by the Court by offering appointment to the petitioner on or before 31.10.2023.

15. Learned Advocate General submits that after offer of appointment dated 27.3.2025, petitioner had appeared in the typing test but failed to qualify the same and, therefore, he could not be permitted to join. According to him, the said condition has been incorporated in the offer of appointment strictly in terms of the Policy of the State circulated by the Special Secretary (Finance) to the Government of Himachal Pradesh, Shimla-2 dated 10.9.2013.

16. Firstly the appointment order was to be issued as per the existing R&P Rules. A circular issued by the Finance Department or any other authority cannot supersede the provisions of the R&P Rules and, therefore, any condition imposed to overreach the judgment passed by this Court based on any such circular, which has not been incorporated in the R&P Rules, cannot be used to save the skin of the erring Officers/Officials. Even otherwise, it is also made clear that anything which is not there in the R&P rules cannot be imposed as a condition under the garb of the condition of the Compassionate Appointment Policy because no condition, more rigorous than the condition imposed on regular appointee at the time



of offering appointment, can be imposed at the time of offering compassionate appointment.

17. Even otherwise, in the offer of appointment, there is Condition No. 17, which speaks about offering appointment to the petitioner, on failing to pass the type test, as a Class-IV daily wage employee and time to pass the type test, which has been given in Condition No.1, is 12 months but the condition is silent whether these 12 months will commence after joining or before joining. Condition No.2, provides that period of the contract shall be for one year from the date of joining. On reading Condition No.1 with Conditions No.2 and 17, it indicates that three chances are permissible to the petitioner to qualify the type test within 12 months from the date of joining during the first year of the contract service.

18. Therefore, the above submissions made by learned Advocate General based on circular issued by Finance Department have no weight, thus rejected, being not sustainable.

19. Learned Advocate General has also pointed out that in the affidavit dated 27th March, 2025, it was also stated that the case of the petitioner after decision of the petition had been rejected by the authority for not fulfilling some criteria. We are thankful to him to point out this contemptuous fact narrated in the affidavit because due to oversight it could not be noticed by the Court.

20. In response to the query, learned Advocate General has submitted that affidavit dated 27th March, 2025 especially para 5 thereof was vetted under his instructions by the concerned officer in the office of Advocate General. It is relevant to observe, as a caution, that offence of contempt of Court is committed not only by those who author an offensive document but also by those who file it in the



Court. Therefore, all those who are instrumental in preparing, vetting, approving and filing affidavit justifying the contemptuous act also commit offence of contempt of Court. In this regard, following observations of the Supreme Court in case ***In RE Sanjeev Datta Vs. Unknown and others, reported in 1995 (3) SCC 619***, would be relevant:-

"14.....The offence of contempt of the Court is committed not only by those who author an offensive document but also by those who file it in the Court....."

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19. Of late, we have been coming across several instances which can only be described as unfortunate both for the legal profession and the administration of justice. It becomes, therefore, our duty to bring it to the notice of the members of the profession that it is in their hands to improve the quality of the service they render both to the litigant-public and to the courts, and to brighten their image in the society. Some members of the profession have been adopting perceptibly casual approach to the practice of the profession as is evident from their absence when the matters are called out, the filing of incomplete and inaccurate pleadings - many times even illegible and without personal check and verification, the non-payment of court fees and process fees, the failure to remove office objections, the failure to take steps to serve the parties, et al. They do not realise the seriousness of these acts and omissions. They not only amount to the contempt of the court but do positive dis-service to the litigants and create embarrassing situation in the court leading to avoidable unpleasantness and delay in the disposal of matters. This augurs ill for the health of our judicial system.

20. The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honourable members. Although the entry to the profession can be had by acquiring merely the qualification of technical competence, the honour as a professional has to be maintained by the its members by their exemplary conduct both in and outside the court. The legal profession is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilised society. Both as a leading member of the intelligential of the society and as a responsible citizen, the lawyer has to conduct himself as a model for others both in his professional and in his private and public life. The society has a right to expect of him such ideal behavior. It must not be forgotten that the legal profession has always been held in high esteem and its members have played an enviable role in public life. The regard for the legal and judicial systems in this country is in no small measure due to the tiredness role played by the stalwarts in the profession to strengthen them. They took their



profession seriously and practised it with dignity, deference and devotion. If the profession is to survive, the judicial system has to be vitalised. No service will be too small in making the system efficient, effective and credible. The casualness and indifference with which some members practise the profession are certainly not calculated to achieve that purpose or to enhance the prestige either of the profession or of the institution they are serving. If people lose confidence in the profession on account of the deviant ways of some of its members, it is not only the profession which will suffer but also the administration of justice as a whole. The present trend unless checked is likely to lead to a stage when the system will be found wrecked from within before it is wrecked from outside. It is for the members of the profession to introspect and take the corrective steps in time and also spare the courts the unpleasant duty. We say no more."

21. However, at this stage, as requested by learned Advocate General, today, we are confining this order for granting time to the respondents to disclose the name of Officers/Officials, who were responsible to implement the judgment dated 31st August, 2023 on or before 31st October, 2023 and thereafter till acceptance of joining on 3rd July, 2025 as we intend to fasten the liability of the unpaid salary from 31st October, 2023 till date of joining on 3rd July, 2025, if payable to the petitioner. Necessary information be supplied by or before the next date.

22. List for further orders on **14th July, 2025**.

(Vivek Singh Thakur)
Judge

(Bipin C. Negi)
Judge

July 04, 2025
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