



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA  
CWP No.229 of 2021  
Date of Decision: 2.9.2025

Anand Swarup .....Petitioner  
Versus  
State of Himachal Pradesh and Ors.  
... Respondents

Coram:  
**Hon’ble Mr. Justice Sandeep Sharma, Judge.**  
Whether approved for reporting? <sup>1</sup> Yes.

**For the Petitioner:** Mr. Tijender Singh, Advocate.  
**For the Respondents:** Mr. Anup Rattan, Advocate General with Mr. Rajan Kahol, Mr. Vishal Panwar and Mr. B.C. Verma, Additional Advocates General and Mr. Ravi Chauhan, Deputy Advocate General, for respondents No.1 to 3/State.  
Mr. Kashmir Singh Thakur, Senior Advocate with Mr. Abhinandan Thkaur, Advocate, for respondent No.3.  
Mr. Narender Kumar, Superintendant Grade-II, o/o Deput Director of Elementary Education, Shimla, District Shimla, Himachal Pradesh, present with records.

**Sandeep Sharma, Judge**(oral):

Precisely, the question, which needs to be determined in the case at hand, is “*whether experience certificate (Annexure P-1 Colly.) Issued by the Principal, Government Senior Secondary School Gumma, whereby it came to be certified that petitioner herein worked as Art & Craft Teacher w.e.f. 20.7.2009 to 21.6.2012, could be ignored by the Selection Committee while considering candidature of the petitioner for the post of Drawing Master on batch-wise basis that too on the ground that appointment was made by PTA/SMC of Government Senior Secondary School Gumma without prior permission of the department.*”

<sup>1</sup>Whether the reporters of the local papers may be allowed to see the judgment?

2. Key facts, which may be relevant for adjudication of the case at hand, are that in the month of July 2017, respondent-State initiated process for batch wise selection for filling up vacant posts of C&V Language Teacher and Drawing Master. Petitioner herein alongwith private respondent No.3 being eligible also came to be considered in the said process. However, private respondent No.3 came to be selected on account of his having secured more marks than the petitioner i.e. 3.75 marks, whereas petitioner secured 3.66 marks in total.

3. Since it came to be transpired to the petitioner that teaching certificate submitted by him was not taken into consideration by the department, as a result thereof, he was not granted additional 1.5 marks, he got less marks than respondent No.3. Since petitioner had submitted teaching certificate issued by the Principal of Government Senior Secondary School, Gumma, specifically certifying therein that petitioner had worked w.e.f. 20.7.2009 to 21.6.2012, but yet respondents failed to take note of the same, he approached erstwhile HP Administrative Tribunal by way of **OA No. 6189 of 2017** titled as **Anand Swarup v. State of Himachal Pradesh and Ors.**, however on account of its abolishment, matter came to be transferred to this Court and same was registered as CWPOA No. 24 of 2019, which came to be allowed on 2.11.2020 with further direction to the respondents to reevaluate the merit on the strength of documents adduced on record by the respective parties.

4. Pursuant to afore direction issued by this Court in writ petition detailed herein above, respondents passed order dated 23.12.2020 (Annexure P-4), stating therein that Committee has submitted its report on

23.12.2020 and as per reevaluation conducted by the Committee, private respondent is more meritorious than the petitioner. Since authorities concerned while passing aforesaid order dated 23.12.2020, nowhere took note of teaching certificate submitted by the petitioner, coupled with the fact that needful was not done in terms of observation made by this Court in afore CWPOA, petitioner has approached this Court in the instant proceedings, praying therein for following main relief:

“i. That the impugned office order dated 23.12.2020 (ANNEXURE P-4) being illegal and arbitrary may kindly be quashed and set-aside and the respondent state may kindly be directed to offer appointment to the petitioner with all consequential service benefits from the date of the appointment of the private respondent.”

5. In nutshell, the grouse of the petitioner, as has been highlighted in the petition and further canvassed by Mr. Tijender Singh, learned counsel for the petitioner is that this Court while passing judgment dated 2.11.2020 passed in CWPOA No. 24 of 2019, had categorically directed the authorities to revisit the respective merit of the petitioner as well as private respondent on the strength of documents, which were available with the authorities concerned at the time when their respective candidatures were concerned, but yet respondents, failed to take note of certificate issued by Principal, Government Senior Secondary School Gumma, thereby certifying that petitioner had taught students in the school concerned w.e.f. 20.7.2009 to 21.6.2012. Mr. Tijender, while making this court peruse merit list drawn by the department concerned, to fill up the post of Drawing Master, submitted that maximum 5 marks could be allotted for teaching experience in Government or Semi Government Organizations

in relating to the post applied for (0.5 marks only for each completed year).

He submitted that since as per certificate adduced on record by the petitioner, he had rendered three years service in government school, he ought to have been awarded 1.5 marks. He submitted that had Selection Committee granted 1.5 marks to the petitioner, he would have secured 5.16 marks, whereas selected candidates i.e. respondent No.3, secured only 3.75 marks.

6. To the contrary, Mr. Rajan Kahol, learned Additional Advocate General, while fairly admitting factum with regard to production of certificate issued by Principal, Government Senior Secondary School Gumma, submitted that since appointment of the petitioner in the school in question, was without permission of the department, no marks could have been granted to the petitioner. He further submitted that after year 2008, no person could be appointed on PTA basis and as such, it is not understood that how and on what circumstances, petitioner was appointed on PTA basis for the period, as detailed herein above. Mr. Kahol further submitted that selection to the post of Drawing Master was made on the basis of batch-wise basis, if it is so, same was made strictly on the basis of Seniority. He submitted that since private respondent was senior to the petitioner, no illegality can be said to have been committed by the respondents while offering appointment against the post in question to the private respondents.

7. Mr. Kashmir Singh Thakur, learned Senior Counsel appearing for the private respondents No.3, also adopted the arguments advanced by Mr. Rajan Kahol, learned Additional Advocate General.

8. I have heard the learned counsel for the parties and also gone through the records of the case including the one brought by Mr. Narender Kumar, Superintendant Grade-II, from the office of Deputy Director of Elementary Education, Shimla, District Shimla, Himachal Pradesh.

9. Having taken note of submission made by learned Additional Advocate General with regard to selection of candidates on batch-wise basis strictly on merit, it would be apt to take note of judgment dated 2.11.2022 passed by this Court in earlier CWPOA No. 24 of 2019 (Annexure P-3), wherein this court has dealt with aforesaid aspect of the matter in following manner.

“4.Reply to the petition has been filed by respondents No.1 and 2, as also by the private respondent. The stand of respondents No.1 and 2 is that in terms of information received from the Deputy Director of Elementary Education, Shimla, in the case of batch-wise appointment, date of issuance of original certificate of Diploma Course is the criteria for reckoning the batch of the candidate. According to them, the petitioner had passed two years' Diploma Course of Art and Craft from State Council for Vocational Training, in the year, 2007, and the date of issuance of original certificate was 29.08.2007. Selected candidate, i.e., private respondent had also passed the two years' Diploma Course of Art and Craft from State Council for Vocational Training, in the Session, 2005-2007, however, the date of issuance of original certificate in her favour was 28th August, 2007. On these bases, said respondents submit that appointment/ selection of private respondent as Drawing Master on batch-wise basis was rightly made by the Appointing Authority as the date of issuance of original certificate of the private respondent preceded the date on which the said certificate was issued in favour of the petitioner. Rejoinder to the said reply stands filed by the petitioner, wherein, it stands mentioned that justification being given by respondents No.1 and 2, is erroneous, because as both the

candidates had obtained the Diploma in the same year, then in terms of the established practice, it was the age of the candidate concerned, which had to be taken into consideration and petitioner being elder in age, ought to have been selected.”

**10.** In the afore para, this Court after having perused pleadings adduced on record, has categorically held that since both the candidates had obtained the diplomas in the same year, then in terms of the established practice, it was the age of the candidate concerned, which had to be taken into consideration and petitioner being elder in age, ought to have been selected. Aforesaid finding rendered by this Court, in the aforesaid petition, has attained finality because neither private respondent nor respondent-State has laid challenge to the same. In view of the above, plea taken by the learned Additional Advocate General with regard to seniority of private respondent deserves outright rejection.

**11.** It is not in dispute that as per procedure evolved by Selection Committee, maximum 2.5 marks could have been granted on account of educational qualification and 2 marks on account of BPL. Besides above, 1 mark each, was to be awarded on account of non-employment certificate as well as NSS/NCC certificate, Scout Guide and medal won in national level sports. As per scheme evolved by selection committee, (0.5) marks could have been granted for one year experience of teaching. In case, a candidate had five years experience, he /she could have been granted 2.5 marks.

**12.** In the instant case, petitioner came to be awarded 1.66 marks on account of his qualification, 1 mark each on account of non-employment certificate, NSS Certificate, as a result thereof, he secured 3.66 marks in

total, whereas private respondent No.3 came to be awarded (1.75) marks on account of qualification and 2 marks for her belonging to BPL, securing 3.75 marks, in total.

**13.** Precisely, the grouse of the petitioner is that he ought to have been granted 1.5 marks for his having submitted three year teaching certificate issued by the Principal Government Senior Secondary School Gumma. Careful perusal of merit list placed on record by respondent No.3 (Annexure R3/2) suggests that as per experience certificate issued by the afore principal, petitioner herein had worked w.e.f. 20.7.2009 to 21.6.2012 i.e. three years on PTA basis without GIA, but since his appointment was made by PTA Government Senior Secondary School Gumma, without prior permission of the department, certificate furnished by him, was not taken into consideration, as a result thereof, he failed to avail benefit of 1.5 marks, which could be granted to him for his having taught for three years in school in question. Had selection committee taken into consideration the teaching certificate placed on record by the petitioner, he would have secured 5.16 (3.66+1.5) and in that eventuality, he would have been selected in place of respondent No.3.

**14.** Though Mr. Rajan Kahol, learned Additional Advocate General and Mr. Kashmir Singh Thakur, learned Senior Counsel, representing respondent No.3, vehemently argued that certificate issued by Principal of Government Senior Secondary School, Gumma, certifying therein that petitioner had taught in school in question for three years, could not have been taken into consideration for the reason that appointment of the petitioner in school in question was without permission

of the department, but this court is not persuaded to accept the aforesaid submission made by the learned counsel for the respondents being totally erroneous.

**15.** Question was only with regard to furnishing of teaching experience certificate. Once it is apparent from the certificate adduced on record by the petitioner that he had taught in school in question for three years and such fact was fully certified by the Principal of the school concerned, reason assigned by the Selection Committee for not taking into consideration the certificate being wholly unjustifiable, deserves rejection. Important factor was possession of teaching certificate, if any, of Government/ Semi Government Organization. Once Principal of Government Senior Secondary School issued certificate, certifying therein that petitioner herein worked in School for more than three years, question of his appointment in school without permission, if any, of government, may not be of any relevance.

**16.** This Court had an occasion to deal with similar question in case titled **CWP No. 7228 of 2021** titled **Bimla Devi v. State of Himachal Pradesh and Ors.**, wherein this court held as under:

“14. Once, factum with regard to issuance of certificate by Principal of Govt. Senior Secondary School is not in dispute, it is not open for respondent commission to ignore the aforesaid experience certificate on the ground that the selection of the petitioner against the post in question in the year 2012 was not in accordance with law. Otherwise also marks, if any, were to be awarded qua the experience, which admittedly petitioner gained, may be while working voluntarily in a Govt. Senior Secondary School.

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15. The moot question is “experience”, and not the manner it has been acquired. Once, it is not in dispute that petitioner had acquired experience by rendering services in Govt. Senior Secondary School, respondent-commission ought to have awarded her 2.5 marks in terms of notification dated 17.04.2017.

16. In similar facts and circumstances, Coordinate Bench of this Court in **CWP No.2237 of 2019**, titled as **Ravi Kumar V. State of HP and Others**, decided on 25.08.2023 held that, merely the fact that the petitioner was appointed on the post of TGT (Arts) on Local SMC basis, will not alter the fact that he had experience of more than five years of teaching against a duly sanctioned post of TGT (Arts) in a Government School. Nature of his, appointment be it regular or contractual, ad-hoc or stop-gap, SMC basis or Local SMC basis, will not make any difference to his experience. Relevant para of the aforesaid judgment reads as under:-

“5(v) Respondent No.2 did not grant marks for petitioner’s experience certificate on the ground that it had taken a decision not to award marks for experience obtained while working on Local SMC basis. It was not for respondent No.2 to substitute terms & conditions of the advertisement with its own decisions that too taken post issuance of the advertisement. No such authority vested with respondent No.2. Also it was not for respondent No.2 to discard an experience certificate on the ground that the same was not issued on the prescribed format and did not reflect the salary drawn by him. Firstly, there was no such format mentioned in the advertisement. The conditions given in the advertisement for counting the experience for the purpose of award of marks were fulfilled in the petitioner’s experience certificate. Secondly, the certificate being not on the format, is otherwise a curative defect as held in CWP No. 3035 of 2019 (Sunita Devi Vs. The Himachal Pradesh State Selection Commission & others and connected matters), decided on 25.11.2019. Regarding non mentioning of petitioner’s salary in his certificate, suffice to observe that neither there was any such term in the advertisement, nor the

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format prescribing filling up of salary was part of the advertisement and in any case reality of petitioner's experience will not vanish in thin air just because he did not take any salary or was not paid any salary. What is important is that he had the requisite experience and it was certified so by the competent authority."

17. In view of the detailed discussion made hereinabove, as well as judgment passed by Coordinate Bench, as taken note hereinabove, action of respondent-Commission in not awarding marks to petitioner qua experience is not sustainable and deserves to be rectified in accordance with law."

**17.** Necessary factor, if any for awarding marks on the basis of teaching certificate issued by the competent authority is experience. Once on account of the petitioner's having worked in the school in question, he obtained teaching experience coupled with the fact that marks, if any, in terms of scheme formulated by the selection committee were to be awarded on the basis of teaching experience, if any, possessed by the candidate concerned, question with regard to appointment of the petitioner in school without permission of the government, may not be of much relevance. Moreover, in the case at hand, certificate has been issued by the Principal of Government Senior Secondary School, Gumma, who in unequivocal terms, have stated that petitioner taught in school in question w.e.f. 20.7.2009 to 21.6.2012.

**18.** In view of the discussion made herein above, this court is of definite view that injustice has been caused to the petitioner on account of non-consideration of teaching certificate adduced on record by him. Had Selection Committee taken into consideration teaching experience

certificate rendered by the petitioner, he would have been selected in place of private respondent No.3.

**19.** Now question, which needs to be decided is “whether in the event of petitioner’s being selected on account of awarding of marks as detailed herein above, private respondent No.3, would be ousted or not?”

**20.** Undoubtedly, respondent No.2 pursuant to her selection has already joined services and by now her services have been further regularized in terms of policy of regularization framed by the Government of Himachal Pradesh. Since it is quite apparent from the pleadings adduced on record by the respective parties including the petitioner that private respondent never came to be appointed against the post in question on account of misrepresentation, if any, on her part, rather mistake, if any, is of the Selection Committee. Since private respondent stands regularized and she has been working for the last eight years, it may not be justifiable to oust her at this stage, rather in peculiar facts and circumstances, her services need to be protected.

**21.** At this juncture, it is apt to take note of judgment titled **Vikas Pratap Singh and others Versus State of Chhattisgarh and others, (2013) 14 SCC 494**, wherein taking note of the fact that the appellants (therein) had successfully undergone training and were serving the State for more than three years, were allowed to continue in service even though their selection was interfered with. Para 28 of the judgment, being relevant, is extracted hereinafter:-

“28. In our considered view, the appellants have successfully undergone training and are efficiently serving the respondent State

for more than three years and undoubtedly their termination would not only impinge upon the economic security of the appellants and their dependants but also adversely affect their careers. This would be highly unjust and grossly unfair to the appellants who are innocent appointees of an erroneous evaluation of the answer scripts. However, their continuation in service should neither give any unfair advantage to the appellants nor cause undue prejudice to the candidates selected qua the revised merit list.”

**22.** Similar situation arose in **Anmol Kumar Tiwari and others Versus State of Jharkhand and others, (2021) 5 SCC 424**. The Apex Court confirmed the decision of the High Court that had directed reinstatement of the writ petitioners after taking into account the fact that they were though beneficiaries of the select list that was prepared in an irregular manner, but were not responsible for the irregularities committed by the authorities in preparation of the said select list. Relevant para from the judgment reads as under:-

“11. Two issues arise for our consideration. The first relates to the correctness of the direction given by the High Court to reinstate the Writ Petitioners. The High Court directed reinstatement of the Writ Petitioners after taking into account the fact that they were beneficiaries of the select list that was prepared in an irregular manner. However, the High Court found that the Writ Petitioners were not responsible for the irregularities committed by the authorities in preparation of the select list. Moreover, the Writ Petitioners were appointed after completion of training and worked for some time. The High Court was of the opinion that the Writ Petitioners ought to be considered for reinstatement without affecting the rights of other candidates who were already selected. A similar situation arose in Vikas Pratap Singh case, where this Court considered that the Appellants-therein were appointed due to an error committed by the Respondents in the matter of valuation of answer scripts. As there was no allegation of fraud or

misrepresentation committed by the Appellants therein, the termination of their services was set aside as it would adversely affect their careers. That the Appellants therein had successfully undergone training and were serving the State for more than 3 years was another reason that was given by this Court for setting aside the orders passed by the High Court. As the Writ Petitioners are similarly situated to the appellants in Vikas Pratap Singh case, we are in agreement with the High Court that the Writ Petitioners are entitled to the relief granted. Moreover, though on pain of Contempt, the Writ Petitioners have been reinstated and are working at present.”

**23.** In the case at hand, private respondent No.3 cannot be said to be at fault, rather it is the department, which has offered appointment to her and as such, it would be too harsh if she is ordered to be removed from service by the respondent department itself. At the same time, petitioner also cannot be denied the relief prayed by him in the instant petition, since he was fully eligible to be appointed against the post in question.

**24.** Consequently, in view of detailed discussion as well as law taken into consideration, this Court finds merit in the instant petition and accordingly, same is allowed. Respondents are directed to offer appointment to the petitioner against the post of Drawing Master, but while doing so, appointment already given to private respondent No. 3 shall not be disturbed, rather, same shall remain protected. Since, petitioner has not worked against the post in question till date, he shall not be entitled for monetary benefits, but for the period he was unable to join on account of discrepancies, as discussed herein above, shall be considered on notional basis for seniority and continuity.

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**25.** In the aforesaid terms, present petition is disposed of  
alongwith pending applications, if any.

**(Sandeep Sharma),  
Judge**

September 2, 2025  
manjit

High Court of H.P.