



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.3189 of 2025
Date of Decision: 19.08.2025

Sh. Balbir SinghPetitioner
Versus
State of H.P. and OthersRespondents

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

For the Petitioner: Mr. Nishant Khidta, Advocates.
For the Respondents: Mr. Anup Rattan, Advocate General, with Mr. Rajan Kahol, Mr. Vishal Panwar and Mr. B.C. Verma, Additional Advocates General, with Mr. Ravi Chauhan, Deputy Advocate General, for State.

Sandeep Sharma, Judge (oral):

Petitioner herein, who has been working as Class-IV employee at Government Post Graduate College, Nahan, District Sirmaur, is aggrieved of order dated 18.01.2025 (Annexure P-22), issued under the signatures of Director of Higher Education, Himachal Pradesh, whereby prayer made on behalf of the petitioner for regularisation in terms of policy for regularisation, framed by the Government of Himachal Pradesh, came to be rejected.

2. For having bird's eye view, facts relevant for adjudication of the case at hand are that petitioner was engaged as daily wager (Class-IV) in Government Post Graduate College, Nahan w.e.f. 23.06.2006 and since then, he has been performing the duties of Peon, Daftri, Chowkidar & Sweeper in the Arts Block of the afore College continuously without

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

any break. After completion of requisite number of years, petitioner approached respondents for regularisation in terms of policy of regularisation formulated by the Government of Himachal Pradesh, however, fact remains that such prayer of him was not acceded to, as a result thereof, petitioner was compelled to approach the erstwhile H.P. State Administrative Tribunal by way of Original Application No.5830 of 2017, which ultimately came to be transferred to this Court and was registered as CWPOA No.3135 of 2020. Division Bench of this Court vide judgment dated 16.10.2020 allowed the aforesaid case, thereby issuing direction to respondents to consider the case of the petitioner for regularisation, if same falls within the ambit of apposite policy.

3. Since despite there being aforesaid direction issued by the Division Bench of this Court, no steps were ever taken by the respondents to regularize the services of the petitioner, in terms of mandate contained in the judgment dated 16.10.2020, petitioner herein was compelled to approach this Court by way of Execution Petition No.29 of 2021, which came to be disposed of vide order dated 29.06.2021, with the direction to respondents to comply with the judgment, within a period of two weeks.

4. Pursuant to aforesaid mandate contained in the order dated 29.06.2021 passed by Division Bench of this Court in Execution Petition No.29 of 2021, respondents passed order dated 03.07.2021 (Annexure P-15), thereby rejecting the case of the petitioner on the ground that

there is no policy/instructions for regularisation of services of those non-teaching staff, who have been engaged by the heads of institution at their own level against non-sanctioned/created posts, without any approval/permission. In the afore background, petitioner again approached this Court by way of CWP No.5003 of 2021, titled Sh. Balbir Singh Vs. State of H.P. and Others, which also came to be disposed of vide judgment dated 04.04.2024 (Annexure P-18), thereby again issuing directions to respondents to consider the case of the petitioner afresh for the purpose of regularisation in light of observations made in the judgment, within a period of eight weeks. Interestingly, again respondents, on same and similar grounds, as were contained in the order dated 03.07.2021 (Annexure P-15), proceeded to pass same order, thereby rejecting the case of the petitioner.

5. At this stage, it is apt to take note of the fact that judgment dated 04.04.2024 passed by the learned Single Judge in CWP No.5003 of 2021 was taken into appeal by way of LPA No.456 of 2024, which came to be dismissed vide judgment dated 11.12.2024 (Annexure P-20). In afore judgment, Division Bench of this Court clarified that Division Bench while passing judgment dated 16.10.2020, passed in CWPOA No.3135 of 2020 had directed respondents to consider the case of the petitioner within the ambit of policy of regularisation, which means that in case petitioner was fulfilling the criteria set-out for regularisation i.e. the requisite number of years and requisite number of days in a calendar

year along with educational qualification, then the respondents would be bound to regularize the services of the petitioner and there was no occasion to sit over the judgment passed by the learned Division Bench and reject the case of the petitioner on the same plea, but as has been noticed hereinabove, respondents ignoring the observations made by learned Single Judge as well as Division Bench of this Court in CWP and LPA, as detailed hereinabove, again proceeded to pass order dated 18.01.2025 (Annexure P-22) on same and similar grounds. In afore background, petitioner has approached this Court in the instant proceedings, praying therein for following main relief:

“(i) That the impugned order dated 18.01.2025 (Annexure P-22) may kindly be quashed and set aside and further respondents may kindly be directed to regularize the petitioner immediately after completion of 7 years as per the policy of dated 28.06.2014 (Annexure P-11) with all consequential benefits.”

6. I have heard the parties and gone through the record of the case.

7. It is not in dispute that petitioner was engaged on daily wage (Class-IV) in the Government Post Graduate College, Nahan on 23.06.2006 and till today, he has been discharging the duties of Daftri, Peon, Chowkidar and Sweeper in the Arts Block of afore College, without any break. Though it repeatedly came to be argued at the behest of respondents that initial appointment of the petitioner was not in accordance with law, rather same was made by the Principal of the College concerned, without prior approval/permission of the higher

authorities, but interestingly, there is no explanation rendered on record that in case initial appointment of the petitioner was not in accordance with law, why, till date, he is still continuing.

8. At the time of filing of the initial petition bearing CWPOA No.3135 of 2020, titled Balbir Singh Vs. State of H.P. and Others, it came to be argued at the behest of respondents/State that petitioner was never issued any muster roll and his salary was being paid from the amalgamated funds. Petitioner herein filed rejoinder to aforesaid plea set-up by the respondents, specifically stating therein that when amalgamated funds are deposited in the Treasury, it acquires the trait of Government funds. It is not in dispute that salary of the petitioner is being paid by the Principal, but by drawing it from the District Treasury. Having taken note of aforesaid plea set-up by the petitioner, which never came to be refuted, Division Bench of this Court vide judgment dated 16.10.2020, proceeded to pass following directions:

“5. In aftermath, the espousal of the petitioner, is, meritorious, and, if within the ambit of the apposite policy, the petitioner has completed the requisite period of service, under the respondents, thereupon, the respondents are directed, to, forthwith make an order of regularisation in service, of, the petitioner, against the apposite substantive post, along with all incidental thereto benefits. The writ petition is allowed, and, all the pending applications also stand disposed of.”

9. Mr. Rajan Kahol, learned Additional Advocate General, attempted to argue that there was no positive direction, if any, to respondents to regularize the services of the petitioner, rather direction was to make an order of regularisation of service, in case petitioner is

found eligible, in terms of policy in vogue at the relevant time. He argued that since there is no policy, which talks about regularisation of such employee, who were appointed straightaway by the Administrator/Principal of the College concerned, without prior approval/permission of the higher authorities, factum, if any, with regard to petitioner's having put in almost 20 years of service may not be of any consequence. Besides above, Mr. Kahol while referring to reply filed by the respondents also argued that since Recruitment and Promotion Rules were not taken into consideration by the Principal of the College concerned while offering appointment to the petitioner against the post of Peon, no benefit of regularisation, in violation of Recruitment and Promotion Rules, otherwise can be extended to the petitioner, which if permitted, would amount to back-door entry.

10. Vide order dated 03.07.2021 (Annexure P-15), respondents rejected the case of the petitioner for regularisation in terms of mandate contained in the judgment dated 16.10.2020 passed by the Division Bench of this Court in CWPOA No.3135 of 2020. Again Coordinate Bench of this Court vide judgment dated 04.04.2024, passed in CWP No.5003 of 2021, made the following observations:

"5. Having heard learned counsel for the parties as also learned Deputy Advocate General, this Court is of the considered view that impugned order dated 03.07.2021 (Annexure P15), in terms whereof, the case of the petitioner has been rejected for the purpose of regularisation is not sustainable in the eyes of law. The reason that has been given in this Office Order as to why the services of the petitioner cannot be regularized is that the petitioner was engaged by

the Principal of the concerned College at his own level against a noncreated/nonsanctioned post and therefore, as per the regularisation Policy of the State, such an incumbent cannot be regularized. Now incidently, when the petitioner had earlier preferred an Original Application with the prayer of regularisation of his services, which Original Application was transferred to this Court and decided as an Original Application, a perusal of the judgment passed therein by this Court, copy whereof is appended with this petition as Annexure P12 demonstrates that this was exactly the stand which was taken by the Department before this Court. But, this Court negated the said stand as is evident from the judgment passed by Hon'ble Division Bench and thereafter, directed the respondents to consider the case of the petitioner for regularisation if it was within the ambit of the Policy of regularisation.

6. Therefore, in this background the rejection of the case by the Authority concerned on the same ground which stood rejected by this Court while deciding the earlier litigation of the petitioner is not sustainable in law. The adjudication by Hon'ble Division Bench that the case of the petitioner be considered within the ambit of the Policy of regularisation has to be construed that in case the petitioner was fulfilling the criteria set in for regularisation, i.e. the requisite number of years and requisite number of days in a calendar year alongwith education qualification etc. if any, then the respondents were bound to have had regularized the services of the petitioner, but they had no occasion to sit over the judgment of the Hon'ble Division Bench and again reject the case of the petitioner on the same plea which stood rejected by Hon'ble Division Bench."

11. Coordinate Bench of this Court clarified that finding returned by the Division Bench of this Court in Para 5 of the judgment (extracted hereinabove), clearly suggests that it had arrived at a definite conclusion that case of the petitioner be considered within the ambit of policy of regularisation, construing that he was fulfilling the criteria set in for regularisation i.e. requisite number of years and requisite number of

days in calendar year along with educational qualification, if any. In case petitioner had put in requisite number of years and requisite number of days in a calendar year along with educational qualification, there was no occasion, if any, for respondents to reject the case of the petitioner on the ground that his initial appointment made by the respondents is not in accordance with law.

12. Though aforesaid aspect of the matter again came to be clarified by the Division Bench of this Court in its judgment dated 11.12.2024, passed in LPA No.456 of 2024, while upholding the judgment dated 04.04.2024, passed by the Coordinate Bench of this Court in CWP No.5003 of 2021, but interestingly, again vide order dated 18.01.2025 (Annexure P-22), respondents rejected the case of the petitioner on same and similar grounds, as were otherwise contained in the initial order dated 03.07.2021 (Annexure P-15).

13. In case reply filed by the respondents in CWPOA No.3135 of 2020 is perused in its entirety, it clearly reveals that case of the petitioner was refuted on the ground that Principal of the College concerned was not competent to engage the petitioner, in violation of Recruitment and Promotion Rules, governing the post of Peon, but as has been observed hereinabove, that till date no action has been taken by the department to remove the petitioner, who has been uninterruptedly working against the post of Peon in the College concerned for almost 20 years, rather, till date, he is being paid salary,

may be from the amalgamated funds. In CWPOA No.3135 of 2020, respondents attempted to argue that petitioner is being paid from the amalgamated funds, but such plea of them came to be refuted by the petitioner by way of rejoinder, stating therein that amalgamated funds, if any, were firstly being deposited in the Treasury and thereafter salary was being paid to the petitioner by the Principal of the College concerned by withdrawing the amount from the Treasury.

14. Division Bench of this Court having taken note of aforesaid plea set-up by the petitioner, which never came to be refuted at the behest of respondents, arrived at a conclusion that the moment, amalgamated funds are deposited with the Treasury and thereafter salary is paid by drawing the amount from the Treasury, it acquires the trait of Government money/public funds. If the reply filed by the respondents in CWPOA No.3135 of 2020 is perused, only tenable ground raised for denying the regularisation to the petitioner was with regard to payment of his salary from the amalgamated funds, but in view of aforesaid finding returned by the Division Bench of this Court, such ground had lost its relevancy, but yet, respondents have cheeks to again and again reject the case of the petitioner on same and similar grounds, despite there being repeated directions issued by the learned Single Judge as well as Division Bench of this Court.

15. Leaving everything aside, this Court is of the definite view that once petitioner, in the capacity of Peon, had been working in the

College concerned for almost 20 years and till date, no steps, if any, were taken by the respondents to remove him for the reason that his initial appointment was *dehors* the rules, coupled with the fact that petitioner has been working continuously with 240 days in each calendar year, his prayer for regularisation from due date, in terms of policy of regularisation, needs to be allowed. After passing of judgment dated 16.10.2020 in CWPOA No.3135 of 2020, respondents ought to have considered the case of the petitioner in terms of policy of regularisation in vogue, ignoring the question of petitioner's initial appointment *dehors* the rules, rather at relevant time, only they were required to see, "whether he has put in requisite number of service with 240 days in each calendar year and he possesses requisite qualification for the post in question or not?"; if yes, then in any eventuality, he ought to have been granted benefit of regularisation.

16. Case at hand is a classic case where despite repeated clarifications and directions issued by this learned Single Judge and Division Bench of this Court, respondents are hell-bent in not granting the benefit of regularisation to the petitioner for totally unjustifiable reasons. It appears that officials manning the higher positions in the respondent's office have made it a prestige issue for themselves and that is why they are not leaving any stone unturned in defeating the rightful claim of the petitioner.

17. Consequently, in view of the above, this Court finds merit in the present petition and accordingly the same is allowed. Impugned order dated 18.01.2025 (Annexure P-22) is quashed and set aside, with the direction to respondents to regularize the services of the petitioner w.e.f. 2013 i.e. within a period of seven years, from the date of initial appointment of the petitioner, in terms of policy of regularisation dated 28.06.2014 (Annexure P-11), expeditiously, preferably, within a period of four weeks.

18. Since petitioner herein was repeatedly compelled by respondents to approach this Court for his rightful claim, coupled with the fact that despite repeated clarifications and directions issued by learned Single Judge as well as Division Bench of this Court, respondents failed to comply with the earlier directions issued in cases, details whereof has been given hereinabove, it is a fit case where cost amounting to ₹50,000/- should be imposed upon the respondents. Ordered accordingly. Cost quantified by this Court shall be paid to the petitioner expeditiously, preferably, within a period of four weeks.

The present petition is disposed in the above terms, so also the pending miscellaneous application(s), if any.

**(Sandeep Sharma),
Judge**

August 19, 2025
(Rajeev Raturi)