



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.10354 of 2023 with CWP Nos.
10398, 10587, 10771,10772, 10775, 10801, 11004,
11005,11006,11007 of 2023 and CWP No. 05 of 2024.

Date of Decision:01.09.2025

1. CWP No. 10354 of 2023 Subhash Kumar & others	Petitioners
Versus	
State of Himachal Pradesh & Anr.	... Respondents
2. CWP No. 10398 of 2023 Diler Singh Saini & others	Petitioners
Versus	
State of Himachal Pradesh & Anr.	... Respondents
3. CWP No. 10587 of 2023 Kailash Kumar Sharma & others	Petitioners
Versus	
State of Himachal Pradesh & Anr.	... Respondents
4. CWP No. 10771 of 2023 Neeraj Kumar Sharma & others	Petitioners
Versus	
State of Himachal Pradesh & Anr.	... Respondents
5. CWP No. 10772 of 2023 Chetan Khanna & others	Petitioners
Versus	
State of Himachal Pradesh & Anr.	... Respondents
6. CWP No. 10775 of 2023 Kalpana Thakur & others	Petitioners
Versus	
State of Himachal Pradesh & Anr.	... Respondents
7. CWP No. 10801 of 2023 Anju Bala & others	Petitioners
Versus	
State of Himachal Pradesh & Anr.	... Respondents

8. CWP No. 11004 of 2023
Yeshveer Singh & others

Versus

.....Petitioners

State of Himachal Pradesh & Anr.

... Respondents
9. CWP No. 11005 of 2023
Hari Singh & others

Versus

.....Petitioners

State of Himachal Pradesh & Anr.

... Respondents
10. CWP No. 11006 of 2023
Vishal Dhiman & others

Versus

.....Petitioners

State of Himachal Pradesh & Anr.

... Respondents
11. CWP No. 11007 of 2023
Anita Kumari & another

Versus

.....Petitioners

State of Himachal Pradesh & Anr.

... Respondents
12. CWP No. 05 of 2024
Mandeep Kumar & others

Versus

.....Petitioners

State of Himachal Pradesh & Anr.

... Respondents

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

For the Petitioner:

Mr. Onkar Jairath, Mr. Piyush Mehta, Advocates.

For the Respondents:

Mr. Anup Rattan, Advocate General with Mr. Rajan Kahol, Mr. Vishal Panwar and Mr. B.C.Verma, Additional Advocate Generals and Mr. Ravi Chauhan, Deputy Advocate General, for the respondents-State.

Sandeep Sharma, Judge(oral):

Since common questions of law and facts are involved in all the above captioned cases, and the petitioners herein are

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

aggrieved by their non-regularization despite having completed requisite period as provided for regularization by the Government of Himachal Pradesh, this Court clubbed all the cases together for hearing, and now same are being disposed of vide this common judgment.

2. For having bird's eye view, facts which are common in all the cases, are that vide notification dated 14.09.2007(Annexure P- 1), the Governor, Himachal Pradesh conveyed approval to fill up 77 posts of Computer Operators in Development Blocks (one in each Block), 12 in District Rural Development Agencies (one in each DRDA) and 3 at the Rural Development Department Headquarters with the prior concurrence of the Finance Department. The aforesaid notification further laid down the procedure for inviting applications as well as criteria for selection of incumbents as Computer Operators. Pursuant to afore notification, Department of Rural Development issued advertisement dated 28.09.2007 (Annexure P-2), thereby inviting applications for the post of Computer Operators. Petitioners herein, being fully eligible, applied for the post in question and subsequently on the basis of their overall merits, were offered appointment letters (one of the appointment letter is appended as Annexure P-3) on contract basis with fixed remuneration of Rs. 6000/-per month, and contract was interse Government and the petitioner through the respondent-Department, which was renewed from time to time.

3. Though, initially, there were no Recruitment and Promotions Rules (**for short 'R&P Rules'**) for the post of Computer Operator, but subsequently, the Governor of Himachal Pradesh, in the year 2012 vide notification dated 14.02.2012, notified common R&P Rules for the post of Computer Operators, named as Himachal Pradesh Department of Personnel Computer Operator Class-III, Non-Gazetted Common Director Recruitment & Promotion Rules, 2012 (Annexure P-5), wherein vide Clause 7, minimum educational and other qualifications came to be prescribed for direct recruitment. Clause 4 of the afore Rules provided for the pay scale of Computer Operators i.e. Regular incumbents were to be paid Rs. 10300-34800+3200 Grade pay, whereas contractual employees were held entitled remuneration to the tune of Rs. 13,500/- per month. After promulgation of afore R&P Rules, respondent-Department converted the services of the petitioners to Government contract and as such, contracts were entered into between the Government and the petitioners through respondent No.2 (Annexure P-6).

4. In the year, 2012, State Government circulated a regularization policy vide communication dated 17.08.2012, conveying the decision of the State Government to regularize the services of contractual appointees on completion of six years' service. Petitioners herein, who were engaged between the years 2006 and 2008, though had completed six years' service in the year 2014, but they were not

given benefit of aforesaid policy of regularization. In the year 2017, respondents, with the approval of His Excellency the Governor, Himachal Pradesh, granted the regular pay scale of Rs. 10300-34800+3200 Grade alongwith other allowances to the contractual employees. As a result thereof, petitioners herein, who were initially appointed on contract basis, also came to be granted regular pay scale, as indicated hereinabove.

5. It is pertinent to take note of the fact that regular pay scale which came to be granted to the petitioners in the year, 2017 is otherwise payable to regularly appointed Computer Operators in various Departments of Himachal Pradesh. Though, in terms of notification dated 09.10.2017 (Annexure P-7), regular pay scale came to be granted to the petitioners alongwith other allowances i.e. HRA, CCA, DA and CA, but they were not granted earned leaves, medical allowances and were further not held entitled to NPS and GPF deductions.

6. Though, the petitioners, after having completed more than six years on contract basis, repeatedly requested the Department to regularize their services in terms of policy of regularization framed by the Government of Himachal Pradesh in the year 2012, wherein it was provided that incumbents, who have completed six years of service on contract basis shall be regularized, but in vain. One person, namely Sh. Rakesh Kumar, who was also

appointed as Junior Engineer in the Office of Block Development Officer under the centrally sponsored Scheme/ Watershed Programme Scheme, approached this Court by way of CWP No. 6451 of 2011, titled **Rakesh Kumar vs. State of Himachal Pradesh and others**, which came to be decided on 26.02.2014(Annexure P-8). Learned Single Judge of this Court allowed the petition and directed the respondents to regularize the services of aforesaid Rakesh Kumar on his having completed eight years on contract basis. Though, the respondents, being aggrieved with aforesaid judgment passed by learned Single Judge, filed LPA No. 178 of 2014 before the Division Bench of this Court, but the same was dismissed. Respondents-State, being aggrieved and dissatisfied with the judgment passed by Division Bench of this Court, though ventured to file SLP before the Hon'ble Apex Court, but the same was also dismissed. Thereafter, respondent-State rejected the case of the petitioner therein, as such, he again filed Original Application, which was subsequently transferred to this Court and was re-registered as CWPOA No.166 of 2019, which was allowed on 22.11.2022. Being aggrieved with the aforesaid judgment passed by this Court, respondent-State preferred LPA No.61 of 2025 before the Division Bench of this Court, but same was dismissed and thereafter, respondent-State filed SLP before the Hon'ble Apex Court, which was also dismissed. Thereafter,

respondent-State implemented the judgment dated 21.11.2022 passed in CWPOA No.116 of 2019 vide order dated 17.07.2025.

7. Similarly, some of the employees, who were earlier appointed on contract basis under the 3rd State Finance Commission in the Planning Department and were engaged in HPRDEGS in the year 2009, filed Original Application No.131 of 2015, titled **Harish Sharma vs. State of Himachal Pradesh**, praying therein for their regularization in terms of the policy of regularization framed by Government of Himachal Pradesh. Aforesaid Original Application was allowed with directions to consider the case of the petitioners therein. Though, at first instance, the respondents laid challenge to order passed by erstwhile Tribunal before this Court, but ultimately, after having considered the representation filed by aforesaid petitioner, namely Harish Kumar alongwith others, considered their case for regularization and vide office order dated 17.11.2018, regularized their services.

8. Petitioners herein, who are similarly situate to persons namely Rajesh Kumar and others and Harish Kumar and others, though have been repeatedly requesting the respondents to regularize their services after their having completed six years on contract basis, but since no decision is being taken, they are compelled to approach this Court in the instant proceedings, praying therein for following main reliefs:

***“(i) That the writ of certiorari or any other appropriate writ order or direction may kindly be issued for quashing and setting aside the impugned action of the respondents, whereby the petitioners have been denied regularization, being patently illegal, arbitrary, discriminatory and unconstitutional besides the same being in violation to the settled law of the land;
(ii) That the writ in the nature of mandamus or any other appropriate writ order or directions may kindly be issued directing the respondents to regularize the services of the petitioners as Computer Operators or in alternate the petitioners can be adjusted against the vacant posts in the Rural Development Department as per their eligibility criteria and commensurate with the qualification possessed by them w.ef. 25.06.2012 as has been done with other similarly situated incumbents or in alternate the services of the petitioners be regularized on and w.e.f. the date they have been granted regular pay scale in terms of the Recruitment and Promotion Rules alongwith all consequential benefits;
(iii) That the writ in the nature of mandamus or any other appropriate writ order or directions may kindly be issued directing the respondents to release the arrears alongwith the interest @12% p.a.”***

9. Pursuant to the notices issued in the instant proceedings, the respondents have filed reply in all the cases, wherein the facts as noticed hereinabove have not been disputed, but attempt has been made to refute the claim of the petitioners on the ground that the petitioners were engaged under MGNREGA and their remuneration/salary is paid from the administrative expenses available under the scheme, which is a centrally funded scheme. It has been further submitted that pursuant to their appointments, the petitioners entered into agreements with the respondents, which clearly provide that their engagement is temporary and co-terminus with the duration of the scheme and as such, it is not within the purview of the State Government to regularize the services of the petitioners and create permanent financial liability for the State Exchequer. It has been

further stated in the reply that as per MGNREGA Guidelines issued in the year 2022-23, there is no provision to regularize the services of the petitioners. ◇

10. Besides above, it has been further stated in the reply that the petitioners herein were not recruited by the Himachal Pradesh Public Service Commission or by the Himachal Pradesh Rajya Chayan Aayog against sanctioned posts, but under the policy dated 14.09.2007 by a Committee constituted for the specific purpose hence, they cannot claim regularization. While fairly admitting the fact with regard to approval given by His Excellency the Governor of Himachal Pradesh to fill up 77 posts of Computer Operators in Development Blocks (one in each Block), 12 in District Rural Development Agencies (one in each DRDA) and 3 at the Rural Development Department Headquarters, it is averred at the behest of the respondents that the policy for engaging Computer Operators in the Rural Development Department on contract basis for implementation of MGNREG Scheme was placed before the Cabinet on 28.08.2007, which subsequently gave its approval to fill up the posts, as detailed hereinabove. Though, there is specific denial to the fact that at present Computer Operators are in receipt of regular pay scale, it has been averred in the reply of the respondent-State that initially remuneration of Computer Operators engaged on contract under MGNREGA in DRDAs/Blocks was Rs. 6000/- per month, but

the same was subsequently enhanced to Rs. 8000/- per month and thereafter to Rs. 13,500/-per month.

11. Most importantly, respondents have admitted that all officials appointed on contract basis had made a representation on 03.09.2012 for regularization of their services on the ground that they had completed 8 years of service including service rendered in 3rd State Finance Commission. Since part of their services was rendered under the 3rd State Finance Commission in the Planning Department, the matter was taken with the Planning Department, however, the Planning Department vide its letter dated 29.03.2013 expressed its inability to regularize these officials in the Planning Department. Thereafter, the matter was taken up with the Finance Department for its advice as to what action is to be taken regarding regularization of these officials, as they had been deployed in MGNREGA Society on the advice of Finance Department. Accordingly, the Finance Department advised to take up the matter with Department of Personnel. Subsequently, the Department of Personnel (DOP) opined that these persons are not the contractual employees of the Rural Development Department, but are working under a Programme sponsored by Government of India and as such, policy regarding regularization of services of contractual employees is applicable in the Government Department where contractual employees are engaged after codal formalities.

12. Most importantly, having taken note of aforesaid stand put forth by the respondent-State, erstwhile H.P. Administrative Tribunal vide its decision dated 16.05.2016 passed in Original Application No.131 of 2015, directed the respondents to re-consider the case of Sh. Harish Sharma alongwith others. Pursuant to direction issued by erstwhile Tribunal, the Government re-considered its decision and taking a lenient and exceptionally considerate view, regularized the services of Harish Kumar alongwith others, vide office order dated 24.02.2018 with effect from 16.05.2016, against the vacant posts of Clerks/ Class-IV in the Department of Rural Development.

13. Mr. Onkar Jairath, learned counsel representing the petitioners, vehemently argued that once the services of similarly situate persons were regularized, that too on the advice rendered by the Department of Personnel to the effect that contractual employees in Rural Development Department are working under a programme sponsored by the Government of India and as such, policy regarding regularization of services of contractual employees is applicable in the Government Departments, there is no occasion, if any, for the respondents to deny similar treatment to the petitioners, who have put in more than 18 years of service. Mr. Jairath, further submitted that from day one, petitioners have been discharging the duties of Computer Operators at par with regularly appointed Computer

Operators, coupled with the fact that they are also in receipt of regular pay scale. If it is so, they cannot be denied regularization in terms of policy of regularization framed by the Government of Himachal Pradesh from time to time.

14. To substantiate his aforesaid arguments, he placed reliance upon the judgment passed by Division Bench of this Court in bunch of appeals, i.e., LPA No.66 of 2022, titled ***State of Himachal Pradesh and others vs. Nishant Sharma and others*** alongwith connected matters, wherein a similar plea with regard to disbursement of salary/remuneration from centrally sponsored funds was rejected by the Division Bench of this Court. He also placed reliance upon the recent judgment passed by Hon'ble Apex Court in Civil Appeal No.8558 of 2018, titled ***Dharam Singh and others vs. State of U.P and another***, wherein the Hon'ble Apex Court reiterated that the judgment passed by this Court in ***Secretary, State of Karnataka and others vs. Umadevi & others,(2006)4 SCC 1***, cannot be deployed as shield to justify exploitation long term “ad hocism”, the use of outsourcing as a proxy, or the denial of basic parity where identical duties are extracted over extended periods.

15. Precisely, in afore judgment, Hon'ble Apex Court deprecated the arbitrary practice of the State in not creating sanctioned posts despite its own acknowledgement of need and decades of continuous reliance on the very workforce.

16. To the contrary, Mr. Anup Rattan, learned Advocate General, while inviting attention of this Court to the reply filed by the respondents, vehemently argued that once it is not in dispute that the petitioners herein are being paid from MGNREGA funds, coupled with the fact that MGNREGA funds are provided by the Central Government, they cannot claim regularization, as in that event the salary would have to be paid out of State exchequer. He further submitted that if the petitioners herein are ordered to be regularized, it would be at the cost of thousands of persons who must be in queue to obtain appointment through proper channels i.e. the Himachal Pradesh Public Service Commission or by the Himachal Pradesh Rajya Chayan Aayog. He further submitted that, though in few cases Computer Operators working in Rural Department have been regularized, but was not in terms of the policy decision taken by the Government, rather pursuant to the directions issued by this Court and as such, same cannot be a ground for the petitioners to claim parity with such persons. He further submitted that since respondent-State has not framed any policy for regularization of contractual employees working under MGNREGA funds, which are otherwise provided by Central Government, petitioners are not entitled to seek regularization.

17. I have heard learned counsel for the parties and gone through the record carefully.

18. It is not in dispute that His Excellency the Governor of Himachal Pradesh, vide notification dated 14.09.2007 (Annexure P-1), decided to engage 77 Computer Operators in Development Blocks (one in each Block), 12 in DRDAs (one in each DRDA), and 3 at the Rural Development Department. Though, afore notification suggests that engagement of Computer Operators was to be done on contract basis with fixed remuneration as per qualifications/ mode of deployment, but such notification was issued with the prior concurrence of the Finance Department. As per afore notification, remuneration of Computer Operators in NREGA, DRDAs/ Blocks were to be met out of contingency available under NREGA and Non-NREGA, DRDAs/Blocks out of the centrally sponsored Scheme funds as authorized by Government of India. Having carefully perused object of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005, this Court is of the definite view that petitioners herein, who were given appointment against the post of Computer Operators otherwise could not have been appointed under MGNREGA. Before elaborating upon aforesaid question, it would be apt take to note of statement of object of afore Act:-

An Act to provide for the enhancement of livelihood security of the households in rural areas of the country by providing at least one hundred days of guaranteed wage employment in every financial year to every household whose adult members volunteer to do unskilled manual

work and for matters connected therewith or incidental thereto.”

19. Careful perusal of aforesaid object, as set out in the Act itself, suggests that very purpose of promulgating aforesaid Act was the enhancement of livelihood security of households in rural areas of the country by providing at least one hundred days of guaranteed wage employment in every financial year to every household whose adult members volunteer to perform unskilled manual work, and for matters connected therewith or incidental thereto. At this stage, it would be apt to take note of definition of ‘unskilled manual work’ as provided in Section 2(r) of the Act, herein below:-

“2(r) “unskilled manual work” means any physical work which any adult person is capable of doing without any skill or special training.”

20. “Unskilled manual work” means any physical work which any adult person is capable of doing without any skill or special training. In the case at hand, though respondents, while refuting the claim of the petitioners, attempted to argue that they were appointed under MGNREGA Scheme, but as has been noticed hereinabove, petitioners being fully skilled, i.e., Computer operators could not have been assigned unskilled manual work, meaning thereby though respondents taking note of their need of manpower in various Block Developments, decided to employ Computer Operators, but to meet expenditure, decided to utilize MGNREGA funds.

21. Though, at first instance, petitioners, who were appointed on contract basis, were paid fixed remuneration of Rs. 6000/- per month, which subsequently came to be enhanced to Rs. 8000/- per month and thereafter to Rs. 13,500/-per month, but it is not in dispute that after promulgation of Himachal Pradesh Department of Personnel Computer Operator Class-III, Non Gazetted Common Director Recruitment & Promotion Rules, 2012, petitioners, being contractual employees came to be given regular pay scale of Rs. 10300-34800+3200 Grade pay alongwith other allowances on contract basis, save and except earned leaves, medical allowances NPS and GPF deductions.

22. Since petitioners herein have been discharging the duties of Computer Operators in various Developments/ Blocks as well as Rural Development Department for more than 18 years, coupled with the fact that some of similarly situate persons, as detailed in the earlier part of the judgment, have been granted benefit of policy of regularization framed by the Government of Himachal Pradesh, there appears to be no justification to deny similar benefits to the petitioners, who, for all intents and purposes, are similar situated to persons namely Rakesh Kumar and others and Harish Kumar and others.

23. At this stage, it would be apt to take note following paras of the reply filed by the respondents herein below:-

“ Thereafter, the matter was taken up with Finance Department for its advice as to what action is to be taken regarding regularization of these officials as they have been deployed in MGNREGA Society on the advice of Finance Department. Accordingly, Finance Department advised to take up the matter with DOP.

Subsequently, Department of Personnel (Dop) opined that these persons are not the contractual employees of the Rural Development Department and are working under the Programme sponsored by Government of India and as such, policy regarding regularization of service of contractual employees is applicable in the Government Departments where contractual employees are engaged after codal formalities.

The Hon'ble Administrative Tribunal vide its decision dated 16.05.2016 passed in O.A. No.131/2015 directed to reconsider the case of Harish Sharma alongwith others.

Subsequently, after due consideration and reexamination and taking a lenient and exceptionally considerate view, that Harish Sharma alongwith others were regularized vide office order dated 24.02.2018 with effect from 16.05.2016 against the vacant post of Clerks/Class-IV in the Department of Rural Development.”

24. It is apparent from the pleadings adduced on record by the respondents that matter was taken with the Finance Department with regard to regularization of officials, who were deployed in MGNREGA Society. The Department of Personnel category opined that such persons are not the contractual employees of the Rural Development Department, rather they are working under the Programme sponsored by Government of India and as such, policy regarding regularization of service of contractual employees is applicable in the Government Departments. Taking note of aforesaid

advise rendered by the Department of Personnel, respondents themselves, pursuant to the direction issued by erstwhile Tribunal as well as this Court in number of cases, proceeded to regularize the services of several persons, who are similar situated to the petitioners.

25. In similar facts and circumstances, Division Bench of this Court in LPA No.66 of 2022, titled **State of Himachal Pradesh and others vs. Nishant Sharma and others** alongwith connected matters, held as under:-

“22 As regards SSA, it is central government sponsored scheme having been entrusted to the Government of Himachal Pradesh, Department of Education and the same is to be executed through HPSES. The Executive Committee of HPSES consists of Principal Secretary (Education), H.P., who happens to be the Chairman, Principal Secretary (Finance), H.P., Secretary Rural Development, Secretary HPPWD, Under Secretary, Department of Education, MHRD Govt. of India, Secretary (Social Justice & Empowerment), Advisor Planning, Director, Higher Education, Director, Elementary Education and Principal, State Council of Education, Research & Training, Solan. The Chairman of Governing body of the HPSES. is the Chief Minister. The Society has promulgated its byelaws, rules and regulations. The HPSES has been created to execute the policy of the government of achieving the goal of complete literacy through SSA and for this purpose funds are provided by the Central Government. 23 Thus, it is clear that the HPSES, wherein the writ petitioners had been working, is wholly owned and controlled by the State Government and is thus a “State” within meaning of articles 12 and 226 of the Constitution of India and is required to act as a model employer. 24 It is also not in dispute that SAS had been implemented in the State since the year 1996 when the Himachal Pradesh School Education Society Service Regulation, 1996 was

promulgated and thereafter the services of the writ petitioner were engaged in different years ranging from 1996 to the year 2000.

25 This clearly establishes that the project in no manner can be said to be temporary and more over some of the writ petitioners have worked on contractual basis for nearly two decades. Therefore, the writ petitioners were required to be afforded minimal guarantee of security of tenure and the respondents cannot deny the writ petitioners the benefits arising out of continuous service like pay scale and other service benefits.

26. As rightly held by the learned writ court, the action of the writ respondent-State in not regularizing the service of the writ petitioners, who have rendered long and continuous service for two decades is not only arbitrary, but would amount to exploitation and unfair labour practice and thus is clearly violative of Articles 14 and 16 of the Constitution of India.

27. Long continuous service rendered by the writ petitioners clearly proves that there is master and servant relationship between the respondent-State and writ petitioners and if that be so, then there is no justification for the writ respondents to take a defence that after permitting utilization of the services of large number of people like the writ petitioners for decades to say that there are no sanctioned posts to absorb the writ petitioners. After all, sanctioned posts do not fall from heaven. The State has to create them by a conscious choice on the basis of some rational assessment of the need as was held by the Hon'ble Supreme Court in **Nihal Singh and Ors. Vs. State of Punjab and Ors.**, (2013) 14 SCC 65.

28 Apart from the above, the State has tried to play fraud and indulged in mischief with the writ petitioners. This would be clearly evident from the fact that the writ petitioners had already earned judgment in their favour by way of CWP No. 6275/2012 and CWP No. 1497/2012 (supra), whereby directions have already been issued qua their regularization from the date when they completed 8 years with consequential benefits restricting to three years. LPA No. 66/2015 assailing the aforesaid judgment was also withdrawn by the State as is evident from the order dated 10.10.2017, quoted in

extenso above, yet the benefits in terms of order passed in their favour were not granted to them.”

26. In the afore case, Division Bench of this Court, having taken note of various judgments passed by Hon'ble Apex Court, held that continuing an employee on contract for long years, not following pay parity or granting pension, would not be to the satisfaction of the theme and spirit of Articles 14 and 16 of the Constitution of India. Any arrangement or agreement, loaded in favour of the respondents and denying the right to claim regularization, is indubitably against public policy.

27. Since, in the case at hand, it is apparent that many similar situated persons have been granted the benefit of regularization in terms of regularization policy framed by the Government of Himachal Pradesh, respondents cannot be permitted to deny the rightful claim of the petitioners on the pretext that their engagement was under the MGNREGA scheme, formulated in terms of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005. As has been discussed hereinabove, under afore Act, there is no provision, if any, for engaging skilled persons, rather only unskilled manual work, who can do physical work, can be granted appointment that too for a limited period of 100 days, however in the instant case, petitioners are not only skilled computer operations, but they have been rendering services for more than 18 years and w.e.f. 9th October, 2017, they are being paid regular pay scale.

28. Though, Mr. Anup Rattan, learned Advocate General, strenuously argued that appointment of the petitioners was not against the sanctioned posts, but careful perusal of Annexure P-1 clearly suggests that 93 posts were created by the Government in various Development Blocks of Computer Operators. Mere mention of the fact that salary/remuneration, if any, of persons employed against afore posts shall be paid from MGNREGA funds, may not be a ground to deny regularization, especially when petitioners have been working without any interruption for more than 18 years, coupled with the fact that many similar situated persons have been already regularized.

29. Hon'ble Apex Court in **Central Inland Water Transport Corporation Ltd. and another vs. Brojo Nath Ganguly and another AIR 1986 SC 1571**, has declared the terms in an appointment order as unconscionable terms of contract and also held that the State must act as a model employer and cannot take undue advantage of the need of the employee, who does not have any choice in the matter of employment due to the economic compulsions.

30. Similarly, Hon'ble Apex Court in **State of Haryana and others vs. Piara Singh and others (1992) 4 SCC 118**, held that the main concern of the Court in such matters is to ensure the rule of law and to see that the Executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16.

31. In **Bhupendra Nath Hazarika and another vs. State of Assam and others (2013) 2 SCC 516**, Hon'ble Apex Court, while laying emphasis on the role of the State as a model employer observed that a sense of calm sensibility and concerned sincerity should be reflected in every step and atmosphere of trust has to prevail and when the employees are absolutely sure that their trust shall not be betrayed and they shall be treated with dignified fairness then only the concept of good governance can be concretized.

32. Leaving everything aside, once it is not in dispute that w.e.f. 2017, petitioners have been in receipt of regular pay scales as have been received by regularly appointed Computer Operators, coupled with the fact that there is nothing in the reply suggestive of the fact that scheme under which petitioners were appointed has closed, prayer made on behalf of the petitioners for regularization deserves to be allowed.

33. It is none of the case of the respondents that at the time of their appointment, may be on contract basis, petitioners were not in possession of the requisite qualifications for the post of Computer Operators, which has been otherwise provided under Common Recruitment & Promotion Rules, 2012. If it is so, this Court sees no justification to accept the stand of the respondents that initial appointment of the petitioners against the post of Computer Operators

was not made through Himachal Pradesh Public Service Commission or by the Himachal Pradesh Rajya Chayan Aayog.

34. Though, even at that stage, option was very much available to the respondents to fill up such posts, perhaps on contract basis, through the Himachal Pradesh Public Service Commission or by the Himachal Pradesh Rajya Chayan Aayog, but once respondents themselves decided to engage petitioners and other similar situated persons of their own by creating 93 posts, they cannot be permitted at this stage to contend that petitioners were not appointed against the sanctioned posts.

35. At this stage, it would be also apt to take note of recent judgment passed by Hon'ble Apex Court in Civil Appeal No.8558 of 2018, titled **Dharam Singh and others vs. State of U.P and another**, wherein it has been held as under:-

“17. Before concluding, we think it necessary to recall that the State (here referring to both the Union and the State governments) is not a mere market participant but a constitutional employer. It cannot balance budgets on the backs of those who perform the most basic and recurring public functions. Where work recurs day after day and year after year, the establishment must reflect that reality in its sanctioned strength and engagement practices. The long-term extraction of regular labour under temporary labels corrodes confidence in public administration and offends the promise of equal protection. Financial stringency certainly has a place in public policy, but it is not a talisman that

overrides fairness, reason and the duty to organise work on lawful lines.

18. Moreover, it must necessarily be noted that “ad-hocism” thrives where administration is opaque. The State Departments must keep and produce accurate establishment registers, muster rolls and outsourcing arrangements, and they must explain, with evidence, why they prefer precarious engagement over sanctioned posts where the work is perennial. If “constraint” is invoked, the record should show what alternatives were considered, why similarly placed workers were treated differently, and how the chosen course aligns with Articles 14, 16 and 21 of the Constitution of India. Sensitivity to the human consequences of prolonged insecurity is not sentimentality. It is a constitutional discipline that should inform every decision affecting those who keep public offices running.

19. Having regard to the long, undisputed service of the appellants, the admitted perennial nature of their duties, and the material indicating vacancies and comparator regularizations, we issue the following directions:

- i. **Regularization and creation of Supernumerary posts:** All appellants shall stand regularized with effect from 24.04.2002, the date on which the High Court directed a fresh recommendation by the Commission and a fresh decision by the State on sanctioning posts for the appellants. For this purpose, the State and the successor establishment (U.P. Education Services Selection Commission) shall create supernumerary posts in the corresponding cadres, Class-III (Driver or equivalent) and Class-IV (Peon/Attendant/Guard or equivalent) without any caveats or preconditions. On regularization, each appellant shall be placed at not less than the minimum of the regular pay-scale for the post, with protection of last-drawn wages if higher and the appellants shall be entitled to the subsequent increments in the pay scale as per the pay grade. For seniority and promotion, service shall count from the date of regularization as given above.
- ii. **Financial consequences and arrears:** Each appellant shall be paid as arrears the full difference

between (a) the pay and admissible allowances at the minimum of the regular pay-level for the post from time to time, and (b) the amounts actually paid, for the period from 24.04.2002 until the date of regularization /retirement/death, as the case may be. Amounts already paid under previous interim directions shall be so adjusted. The net arrears shall be released within three months and if in default, the unpaid amount shall carry compound interest at 6% per annum from the date of default until payment.

iii. **Retired appellants:** Any appellant who has already retired shall be granted regularization with effect from 24.04.2002 until the date of superannuation for pay fixation, arrears under clause (ii), and recalculation of pension, gratuity and other terminal dues. The revised pension and terminal dues shall be paid within three months of this Judgement.

iv. **Deceased appellants:** In the case of Appellant No. 5 and any other appellant who has died during pendency, his/her legal representatives on record shall be paid the arrears under clause (ii) up to the date of death, together with all terminal/retiral dues recalculated consistently with clause (i), within three months of this Judgement.

v. **Compliance affidavit:** The Principal Secretary, Higher Education Department, Government of Uttar Pradesh, or the Secretary of the U.P. Education Services Selection Commission or the prevalent competent authority, shall file an affidavit of compliance before this Court within four months of this Judgement.

20. We have framed these directions comprehensively because, case after case, orders of this Court in such matters have been met with fresh technicalities, rolling "reconsiderations," and administrative drift which further prolongs the insecurity for those who have already laboured for years on daily wages. Therefore, we have learned that Justice in such cases cannot rest on simpliciter directions, but it demands imposition of clear duties, fixed timelines, and verifiable compliance. As a constitutional employer, the State is held to a higher standard and therefore it must organise its perennial workers on a sanctioned footing, create a budget for lawful engagement, and implement judicial directions in letter and spirit. Delay to follow these obligations is not mere negligence but rather it is a conscious method of denial that erodes livelihoods and dignity for these workers. The operative scheme we have set here comprising of creation of supernumerary posts, full regularization, subsequent financial benefits, and a sworn affidavit of compliance, is therefore a pathway designed to convert rights into outcomes and to reaffirm that fairness in engagement and transparency

in administration are not matters of grace, but obligations under Articles 14, 16 and 21 of the Constitution of India”

36. Though, in afore case, Hon'ble Apex Court had an occasion to deal with the case of outsourced employee, but if the afore judgment is read in its entirety, it clearly suggests that long-term extraction of regular labour under temporary labels cannot be permitted as it corrodes public confidence. Though, Hon'ble Apex Court in afore judgment held that Financial stringency certainly has a place in public policy, but it is not a talisman that overrides fairness, reason, and the duty to organize work on lawful lines.

37. Consequently, in view of the detailed discussion made hereinabove as well as law taken into consideration, this Court finds merit in the present petitions and accordingly same are allowed. The respondents are directed to regularize the services of the petitioners with effect from the date they were granted regular pay scale i.e. 9th October, 2017, but certainly period of regularization shall be counted for the purpose of seniority. Pending applications, if any, also stand disposed of.

**(Sandeep Sharma),
Judge**

September 01, 2025
(shankar)