

**IN THE HON'BLE HIGH COURT OF HIMACHAL
PRADESH AT SHIMLA**

C.W.P. No.....of 2024

In the matter of:

Anjali Gaur & Ors

.....Petitioners

Vs

State of H.P and others

..... Respondents

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...Petitioners

Place: Shimla

Through Counsel

Dated

(Virbahadur Verma, Anu Minhas, Mukul Sharma)

Advocates

B

**IN THE HON'BLE HIGH COURT OF HIMACHAL
PRADESH AT SHIMLA**

C.W.P. No.:.....of 2024

In Re:

Anjali Gaur & Ors

.....**PETITIONERS**

VERSUS

State of Himachal Pradesh and others

...**RESPONDENTS**

List of events

Date	Event
16.06.2008	That the State government had given approval regarding filling up of 4568 vacant posts of TGT's (Arts/Medical/Non-Med) in the elementary education department during the year, 2008-2009. As per requisition given by the Govt. of HP, the entire sanctioned post of TGT's is apportioned in the ratio of 37.5% through Direct recruitment to be conducted by HPSSSB, 37.5% through batch wise, 15% by promotion from JBTs category and rest 10% has to be filled up by promotion from C & V category.

	<p>That it is important to mention here that when the process for recruitment of Trained Graduate Teachers (Non-Medical/Medical/Arts) was initiated there exists “Himachal Pradesh Education Department Class-III (School and Inspection Cadre) Services Rules, 1973” and it is an undisputed fact that as per “Himachal Pradesh Education Department Class-III (School and Inspection Cadre) Services Rules, 1973” there is provision for appointment of TGT’s on regular basis.</p>
<p>Year, 2008</p>	<p>That the respondent education department as per requisition called petitioners for interview to the post of TGT (Non-Medical/Medical/Arts), which was scheduled to be held in the month of August/September,2008. Consequent upon the call letter, petitioners had appeared in the interview before the duly constituted selection committee on the scheduled date and time. Petitioners were selected and recommended for the appointment to the post of TGT (Non-Medical/Medical/Arts). Consequent upon appointment petitioners joined their services at the allotted school.</p>

22.10.2009	That it is important to mention here that the respondent State before the issuance of appointment letters vide Notification dated 22.10.2009, amended the R&P rules of TGT's and included the mode of contract-based recruitment under column 10.
2020-2024	That the petitioners for the regularisation of services with effect from the date of initial engagement/appointment with all consequential benefits had approached the Hon'ble High Court of Himachal Pradesh by filing various Civil Writ Petitions. Few of them are registered as CWPOA/5764/2020, CWP/10633/23, CWP/10730/23, CWP/561/24, CWP/6287/24, CWP/29/24, CWP/8491/24, CWP/10903/23, CWP/10559/23 & CWP/10895/23 respectively.
	Hon'ble Court passed the consideration orders. Upon the directions of Hon'ble High Court, respondent department had issued the orders in favour of petitioners and they were considered regular from the date of their initial appointment i.e. of year 2008, 2009 & 2010 respectively.

	<p>That it is stated that since the petitioners are considered regular from the date of their initial appointment i.e from the year 2010, thus, while doing pay fixation, the benefit of ACP on the completion of 4 years of regular service in the year 2014 should be granted to the petitioners but the respondent department while doing pay fixation did not grant this benefit of ACPS. Which is legally not tenable hence against the scheme.</p>
	<p>This Hon'ble Court has held in CWPOA 5536 of 2020 titled as "Sanjay Kumar Vs State of H.P. & Others" that the annual increment and general pay revision based on pay commission cannot be taken into consideration while granting the benefit of ACP Scheme after completion of 4, 9 & 14 year of regular service</p>
	<p>That it is pertinent to mention here that in view of judgment passed by the Hon'ble High Court petitioners are legally entitled for the benefit of financial upgradation on the completion of 4 years of regular service in the year 2012, 2013 & 2014 in terms of Assured Progression Scheme (4/9/14).</p>

F

30.09.2024	That for the redressal of grievances, the petitioners through their counsel have already preferred a detailed representation to the respondent no-2 with the prayer to grant the benefit of Assured Progression Scheme on the completion of 4 years of regular service from due dates. But till the petitioners have not received any response from the respondents.
	Hence this Petition

Petitioners

Place: Shimla

Through Counsel

Dated

(Virbahadur Verma, Anu Minhas, Mukul Sharma)

Advocates

**IN THE HON'BLE HIGH COURT OF HIMACHAL
PRADESH AT SHIMLA**

CWP NO/...../2024

In the matter of:

1. Anjali Gaur, S/O Sh Ramesh Gaur, age 47 yrs, R/O Near kandi Rest House, Chiranwali, Nahan, P.O. Nahan, Tehsil Nahan, HP presently working as TGT (Medical) at GSSS Burma Papri, VPO Burma Papri, Teshil Nahan, Distt Sirmour, HP.
2. Balbir Singh S/O Sh Bir Singh, aged about 57 yrs, R/O Village Thalla, P.O Guler, Tehsil Haripur, Kangra, HP, presently working as TGT (Arts) at GMS Dhangar Tilla, P.O. Bilaspur, Haripur, Distt Kangra, HP.
3. Renu Gaur D/O Sh Prem Chand Gaur, aged 54 years, R/O House No. 142/3 Durga Colony, Raj Ban Road, Tehsil Nahan, District Sirmaur, H.P. presently working as TGT(Medical) at GSSS Misser wala, Tehsil Paonta Sahib, District Sirmaur, HP.
4. Meenakshi Handa D/o Sh Kishan Lal Handa, aged about 53 yrs, R/O 86/3, Badripur, P.O & Tehsil Paonta Sahib, Distt Sirmour (H.P), presently working as TGT (Medical) at GMSS School, Trilokpur, Distt Sirmour, HP
5. Surinder Kumar Sharma S/o Sh Tarsem Chand Sharma, aged about 55 yrs, R/O Village Raipur Sahore, PO Raipur, Tehsil & Distt Una(H.P), presently

working as TGT (Non-Medical) at GSSS Pallion,
Tehsil Nahan, Distt Sirmour, HP

6. Meena Kumari daughter of Sh. Prem Chand, aged about 47 years, resident of House No. 146, Ward No.7, Gompa Road Manali, Tehsil Manali, District Kullu, H.P, presently working as Lecturer Chemistry (SN) at GSSS Triloknath, Tehsil Udaipur, District Lahaul & Spiti, H.P.
7. Benu Parban D/O Sh Puran Chand Parban, aged 58 years, R/O Hotel Down Town Hoshiarpur Road Kangra, Tehsil & District Kangra, H.P. Retired as TGT(Medical) at GSSS Kachhiari, District Kangra, HP
8. Suresh Kumar S/o Sh Nagpal, aged about 46 yrs, R/O Village Naulkha, PO Kanaid, Tehsil Sundernagar, Distt Mandi(H.P.), presently working as Lecturer Political Science at GSSS Chachiot, Tehsil Chachiot, Distt Mandi, HP.
9. Ruchika Mahajan D/O Sh Kishori Lal, age about 47 yrs, R/O House No 123, Near Bus Stop, V.P.O Tissa, Tehsil Churah, Distt Chamba, HP, presently working as Lecturer S/N Geography at GMSSS Khush-Nagri Chamba, HP.
10. Prem Singh S/O Sh Bahadur Singh, aged about 52 yrs, R/O VPO Bhuthi, Teshil and Distt Kullu, HP, presently

working as TGT (Med) at GHS Bhumteer U/C GSSS Bhuthi, Teshil and Distt Kullu, HP.

11. Suresh son of Sh. Sukh Chand, aged about 43 years, resident of Village Hinsal, Post Office Triloknath, Sub-Tehsil Udaipur, District Lahaul-Spiti, H.P. 175142, presently working as TGT (Non-Medical) at GSSS Triloknath, District Lahaul-Spiti, H.P.-175142
12. Mamta Kumari D/O Sh Bir Singh, aged about 42 yrs, R/O Village Yang Kirting, P.O. Shansha, District Lahaul & Spiti, H.P.-175133, presently working as TGT (Medical) at GSSS Bagan, P.O Bhada, Distt kullu, H.P-175101
13. Amita Devi daughter of Sh. Phunchog Angrup, aged about 51 years, R/o VPO Shansha, District Lahaul Spiti, H.P. 175133, presently working as Lecturer (SN) History at GSSS Kais, District Kullu, H.P.175138.
14. Anil Kumar, son of Sh. Om Prakash, aged about 47 years, R/o Village Dhawansha, P.O. Shansha, Tehsil Keylong, District Lahaul and Spiti, Himachal Pradesh, presently posted as Lect. History at GMSSS Jahalman, District Lahaul and Spiti, HP.
15. Anuradha wife of Sh. Kapil Raj Gupta, aged about 51 years R/o ward No.1, H.No. 56, Near Kullu valley School Akhara Bazar, Kullu, H.P. 175101. presently working as TGT (Non-Medical) at GSSS Kharahal (Kinja), Distt Kullu 175138

16. Tripta Devi W/O Sh Manoj Kumar, aged 53 years, R/O Village Ghanghal, P.O. Mahadev, Tehsil Sundernagar, District Mandi, H.P.-175018 presently working as TGT(Medical) at GSSS Mohal, Tehsil Bhunter, District Kullu, HP
17. Satish Kumar, son of Sh. Ramnath, aged about 52 years, resident of VPO Malang, District Lahaul Spiti, H.P. -175132, presently working as TGT (Arts) at GSSS Malang, District Lahaul-Spiti, H.P. 175132.
18. Bharti Sharma W/O Sh Jitender Sharma, aged about 52 yrs, R/O C/o Raj Intratech, House No-274/6, Near Distt Court Dhalpur, Distt Kullu, H.P-175101, presently working as TGT-Medical at GHS Chansari, Distt Kullu, H.P-175138
19. Neeraj Sharma son of Sh. S.R. Sharma aged about 54 years, R/o VPO Shamti Near Sai Mandir, Tehsil and District Solan, H.P. presently working as TGT (Non-Medical) at GMS Nohra u/c GSSS Narag (Sirmour), Tehsil Pachhad, District Sirmour, H.P.
20. Disha D/o Sh Bansi Lal, aged about 50 yrs, R/O Disha Sadan, 187/8, Green Peace Colony, Dhalpur, Distt. Kullu, HP presently working as TGT (Med) at Shahed Sh BKGSSS(Boys) Dhalpur, Teh & Distt. Kullu HP

Versus

1. State of Himachal Pradesh through its Secretary (Education) to the Govt. of Himachal Pradesh Shimla (H.P)
2. The Director of Elementary Education, Himachal Pradesh, Shimla (H.P)

..... Respondents

Writ petition under Article 226 of the Constitution of India for issuance of writ, orders or directions in the facts and circumstances of the case mentioned herein below.

...Petitioners

Place: Shimla

Through Counsels

Dated

Virbahadur Verma, Anu Minhas & Mukul Sharma

Advocates

Respectfully Showeth:

- 1) That the petitioners are permanent resident of the addresses mentioned in the memo of parties and since, they are aggrieved by the impugned act of omission and commission on behalf of respondent authorities, whereby the respondents are not granting the benefit of Assured Progression Scheme on the completion of 4 years of regular service, therefore they are before this Hon'ble Court for the redressal of their grievances by filing the present Writ Petition.

- 2) That the respondent No.1 & 2 are State thus, a State is defined under Article 12 of the Constitution of India and such are amenable to the writ jurisdiction of this Hon'ble Court

- 3) That the brief facts as are necessary for filing the present petition are that the State government on 16.06.2008 had given approval regarding filling up of 4568 vacant posts of TGT's (Arts/Medical/Non-Med) in the elementary education department during the year, 2008-2009. As per requisition given by the Govt. of HP, the entire sanctioned post of TGT's is apportioned in the ratio of 37.5% through Direct recruitment to be conducted by HPSSSB, 37.5% through batch wise, 15% by promotion from JBTs

category and rest 10% has to be filled up by promotion from C & V category.

- 4) That the respondent education department as per requisition called petitioners for interview to the post of TGT (Non-Medical/Medical/Arts), which was scheduled to be held in the month of August/September,2008. Consequent upon the call letter, petitioners had appeared in the interview before the duly constituted selection committee on the scheduled date and time. Petitioners were selected and recommended for the appointment to the post of TGT (Non-Medical/Medical/Arts). It is submitted that petitioners were appointed on contract basis on the fixed salary @ Rs 8220/- per month. Further it is submitted that the petitioner at Sr no 8 was appointed under ward of Ex-serviceman category on contract basis on the fixed honorarium @ Rs 8220/- per month in the year 2010. Consequent upon appointment petitioners joined their services at the allotted school.
- 5) That it is important to mention here that when the process for recruitment of Trained Graduate Teachers (Non-Medical/Medical/Arts) was initiated there exists “Himachal Pradesh Education Department Class-III (School and Inspection Cadre) Services Rules, 1973”

and it is an undisputed fact that as per “Himachal Pradesh Education Department Class-III (School and Inspection Cadre) Services Rules, 1973” there is provision for appointment of TGT’s on regular basis. It is stated that the State Government before the issuance of appointment letters vide Notification dated 22.10.2009, amended the R&P rules of TGT’s and included the mode of contract-based recruitment under column 10.

6) That it is submitted that the petitioners for the regularisation of services with effect from the date of initial engagement/appointment with all consequential benefits had approached the Hon’ble High Court of Himachal Pradesh by filing various Civil Writ Petitions. Few of them are registered as CWPOA/5764/2020, CWP/10633/23, CWP/10730/23, CWP/561/24, CWP/6287/24, CWP/29/24, CWP/8491/24, CWP/10903/23, CWP/10559/23, & CWP/10895/23 respectively. Hon’ble Court passed the consideration orders in all these petitions. One of such order passed by this Hon’ble Court is annexed here with as **Annexure P-1**.

7) That it is submitted upon the directions of Hon’ble High Court, respondent department had issued the orders in favour of petitioners and they were

considered regular from the date of their initial appointments i.e. of year 2008, 2009 & 2010 respectively. One of such order which is of dated 18-06-2024 vide which the petitioners were considered regular from the date of their initial appointment is annexed herewith as **Annexure P-2**.

- 8) That it is submitted that the respondents, after the issuance of office orders vide which petitioners are considered regular from the date of initial appointment did the re-fixation of pay of the petitioners. The respondents while doing the re-fixation of pay of the petitioners did not give the benefit of ACP of 4 years of regular service to the petitioners. Hence this petition.
- 9) That it is stated that in the year 1996 the State Government has introduced a scheme namely Assured Career Progression Scheme, wherein a government Employee was held entitled for additional increment on the completion of 8, 16, 24 and 32 years of regular service in the cadre and in addition to increment further held entitled for next higher pay scale on the completion of 8 and 32 years. Assured Career Progression Scheme (8/16/24/32) remained in operation till 27.08.2009.

10) That it is further stated that the State Government introduced new Assured Career progression Scheme (4/9/14), vide communication dated 09.08.2012. This scheme was made operative w.e.f 27.08.2009 on notional basis and on actual basis w.e.f 09.08.2012. Copy of new Assured Career Progression Scheme (4/9/14) is annexed herewith as **Annexure P-3**. As per this scheme government employee is entitled for the benefit of 3 financial enhancement in the cadre besides the benefit under general revision, as per clause 3(b), (c), (d) &(e).

“(b) An employee who has completed four years’ service but less than 8 years’ service in a cadre will be placed in next grade pay in the hierarchy of grade pays and his pay will be fixed at next higher stage in the pay band. If the pay so fixed is less than minimum of higher pay band than his pay will be fixed at the minimum of higher pay band. The next increment in such cases will be given after qualifying service of 12 months in the higher pay band.

(c) An employee who has rendered four years of service but less than 09 years of service in the cadre and has availed benefit of placement in the next higher scale in the hierarchy of pay scales after eight years of service shall get nothing as he has already

availed benefit of one increment and placement in the next higher pay scale under the existing Assured Career Progression Scheme of 8,16,24 and 32 years of service.

(d) An employee who has completed 9 years of service but less than 14 years of service in a cadre in the same post and availed one placement in the next higher scale in the hierarchy of pay scales under the existing Assured Career Progression Scheme after a service of 08 years shall be placed in the next higher grade pay in the hierarchy of grade pays and his pay shall be fixed at the next higher stage in that pay band.

(e) An employee who has completed 14 years of service in a cadre but less than 16 years in the same post and availed one placement in the next higher scale in the hierarchy of pay scales under the existing Assured Career Progression Scheme after a service of 8 years shall be allowed two placements in the next higher grade pays in the hierarchy of grade pays i.e. after 9 years and 14 years' service and his pay shall be fixed at the next higher state in that each pay band.”

- 11) That it is stated that since the petitioners are considered regular from the date of their initial

appointment i.e from the year 2008, 2009 & 2010 respectively, thus, while doing pay fixation, the benefit of ACP on the completion of 4 years of regular service in the year 2012, 2013 & 2014 respectively should be granted to the petitioners but the respondent department while doing pay fixation did not grant this benefit of ACPS. Which is legally not tenable hence against the scheme.

12) That the respondent State in the cases of similar situated persons had denied the benefit of 4 years of regular service under ACP scheme (4/9/14) on the ground of enhancement of grade pay vide government order dated 1.10.2012. Further State Government vide communication dated 26.2.2013, had clarified that grade pay granted vide order 1.10.2012 shall be treated as financial enhancement for the purpose of granting benefit under 8-16-24-32 and 4-9-14 ACP scheme.

13) That it is stated that the issue whether pay revision or grant of grade pay vide order dated 1.10.2012 can be termed to be a financial upgradation so as to deny the benefit of financial upgradation under ACPS has come up before this Hon'ble Court in CWPOA 5536 of 2020 titled as "Sanjay Kumar Vs State of H.P. & Others" respondent. This Hon'ble Court has held that the

annual increment and general pay revision based on pay commission cannot be taken into consideration while granting the benefit of ACP Scheme after completion of 4, 9 & 14 year of regular service. The copy of judgment dated 01.11.2023 is annexed herewith as **Annexure P-4**.

- 14) That it is submitted that the respondent State has implemented the judgment passed in CWPOA 5536 of 2020 titled as “Sanjay Kumar Vs State of H.P. & Others”. The copy of order dated 12-06-2024 is annexed herewith as **Annexure P-5**.
- 15) That it is pertinent to mention here that in view of judgment passed by the Hon’ble High Court petitioners are legally entitled for the benefit of financial upgradation on the completion of 4 years of regular service in the year 2012, 2013 & 2014 respectively in terms of Assured Progression Scheme (4/9/14).
- 16) That for the redressal of grievances, the petitioners through their counsel have already preferred a detailed representation to the respondent no-2 with the prayer to grant the benefit of Assured Progression Scheme on the completion of 4 years of regular service from due dates.

Copy of representation dated 30.09.2024 made jointly by the petitioners is annexed herewith as **Annexure P-6**.

- 17) That the impugned act of omission and commission of the respondent department not granting the benefit of Assured Progression Scheme on the completion of 4 years of regular service in the year 2012, 2013 & 2014 respectively are highly unjust, illegal and contrary to the principles of natural justice.
- 18) That the petitioners have no other equally efficacious alternative remedy available except to approach this Hon'ble Court by way of filing the present petition.
- 19) That the petitioners have not filed any other writ petition on the same and similar ground either before this Hon'ble Court or before the Hon'ble Supreme Court of India.

In view of the aforesaid facts and circumstances of the case the petitioner prays for following reliefs: -

- I. Issue a writ of Mandamus directing respondents to grant the benefit of Assured Progression Scheme on the completion of 4 years of regular

service from due date with all consequential benefits.

- II. Issue a writ of Mandamus directing the respondents to pay the consequential arrear along with interest @ 9% per annum from due date to till the date of realization.
- III. That the entire relevant record of the case may kindly be ordered to be summoned from the respondents for the kind perusal of this Hon'ble Court.
- IV. That any other order, direction or relief to which the petitioner may be found entitled by this Hon'ble Court may also be granted to the petitioner & necessary directions may also be passed in this regard to the respondents.

...Petitioners

Place: Shimla

Through Counsels

Dated

Virbahadur Verma, Anu Minhas, Mukul Sharma,
Advocates

**IN THE HON'BLE HIGH COURT OF HIMACHAL
PRADESH AT SHIMLA**

CWP No..... /2024

In the matter of:

Anjali Gaur & Ors**Petitioners**

Vs

State of H.P and others **Respondents**

Affidavit in support of Writ Petition

I, Anjali Gaur, S/O Sh Ramesh Gaur, age 47 yrs, R/O Near kandi Rest House, Chiranwali, Nahan, P.O. Nahan, Tehsil Nahan, HP presently working as TGT (Medical) at GSSS Burma Papri, VPO Burma Papri, Teshil Nahan, Distt Sirmour, HP., do hereby solemnly affirm and declare oath as under;

1. That I have been instructed by petitioner No. 2 to 20 to file and sworn affidavit on their behalf.
2. That the contents of accompanying Civil Writ petition are drafted at my instance and under my instructions, which have been read over and explained to me in vernacular and that the contents of paras 1 to 21 of the same are true and correct to the best of my personal knowledge.
3. That the deponent further solemnly affirms and verifies that this affidavit of mine is true, no part of it is false and nothing material has been concealed therein.

Verified and signed at Shimla on this ...day of 2024.

**IN THE HON'BLE HIGH COURT OF HIMACHAL
PRADESH AT SHIMLA**

C.W.P. No.....of 2024

In the matter of:

Anjali Gaur & Ors

.....**Petitioners**

Vs

State of H.P and others

..... **Respondents**

List of documents

1.	Annexure P-1: A copy of judgment passed in CWP/10633/23	18-31
2.	Annexure P-2: The Relevant Copy of letter dated 18-06-2024.	32-37
3.	Annexure P-3: Copy of new Assured Career Progression Scheme (4/9/14)	38-42
4.	Annexure P-4: The copy of judgment dated 01.11.2023	43-52
5.	Annexure P-5: The copy of order dated 12-06-2024.	53
6.	Annexure P-6: Copy of representation filed jointly	54-59

Place: Shimla

Through Counsel

Dated

(Virbahadur Verma, Anu Minhas, Mukul Sharma)

Advocates



IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

CWP No.10633 of 2023

Decided on: 22nd December, 2023

Meena Kumari and others

.....Petitioners

Versus

State of Himachal Pradesh and others

.....Respondents

Coram

Hon'ble Mr. Justice Ranjan Sharma, Judge

¹ *Whether approved for reporting?*

For the petitioners: Mr. Virbahadur Verma and Mr. Mukul
Sharma, Advocates.

For the respondents: Mr. Ravi Chauhan, Deputy Advocate
General.

Ranjan Sharma, Judge (Oral)

Notice. Mr. Ravi Chauhan, learned Deputy
Advocate General, appears and waives service of notice on
behalf of the respondents.

2. With the consent of the parties, the instant writ
petition is taken up for disposal, at this stage, in view of the
peculiar facts as borne out from the pleadings.

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

3. The petitioners, initially appointed as Trained Graduate Teachers [TGTs] and some are presently working as Lecturers [School Cadre] have filed the instant writ petition with the following prayers:-

(I) Issue a writ of Mandamus directing respondents to regularize the services of the petitioners with effect from the date of their initial engagement/appointment with all consequential benefits in term of the judgments passed by this Hon'ble Court in CWP/7602/2010, titled as Om Prakash Vs. State of H.P. & Others, and connected matters, CWP No.3144 of 2011, titled as Anju Devi Versus State of H.P. and Others and CWP No.3143 of 2011, titled as Manju Devi vs. State of H.P and others.

(II) Issue a writ of Mandamus directing the respondents to release the entire consequential benefits along with interest @ 9% per annum from the date of their initial appointment to till the date of realization.

(III) Issue a writ of Mandamus directing respondents to extend same and similar benefits as has been extended to Ms. Rakhi (LT), Mr. Tej Ram (LT) & Mr. Kuldip Chand (TGT, now Lecturer) in terms of judgments passed in CWP/7602/2010, titled as Om Parkash Vs. State of H.P. & Others, and connected matters, CWP No.3144 of 2011, titled as Anju Devi Versus State of H.P. and Others by this Hon'ble Court."

4. In the background of the reliefs prayed for above, the only grievance of the petitioners is that the Respondents had started the selection process for appointment as TGTs [Arts] in August, 2008 (Annexure P-1), on Batch wise Basis, on regular basis, in the Department of Education, of the State Government in accordance with the Himachal Pradesh Education Department, Class-III (School and Inspection Cadre) Services Rules, 1973 but, instead of appointing them on regular basis as TGTs [Arts] they were appointed on contractual basis on 07.11.2008 and 28.05.2009. The petitioners continued as such and they were regularized as TGTs.

5. Now, the only grievance of the petitioners is that though as per the Himachal Pradesh, Education Department Class-III [School and Inspection Cadre] Service Rules, 1973, the petitioners had undergone the selection for appointment as TGTs [Arts] on regular basis but, were wrongly and illegally appointed on contract basis when, contractual mode-nomenclature of appointment was introduced in the *Himachal Pradesh Elementary Education Department, Trained Graduate Teachers [Class-III]*

[Non Gazetted], Recruitment and Promotion Rules on 22.10.2009 and once these Rules of 2010 were only prospective in nature then, the petitioners could not have been appointed on contract basis, meaning thereby, that the petitioners had a right to be appointed on regular basis from the date of initial appointment.

In this background, the action of the respondents in denying the "deemed regular appointment to the petitioners, as TGTs [Arts] from the date they were appointed as such on contract basis on 07.11.2008, 28.05.2009 and 21.02.2017 [prior to insertion of contractual mode-nomenclature of appointment in Rules on 22.10.2009]; has resulted in depriving the petitioners of the regular status, regular pay scale, pay fixation in regular pay scale, benefit of ACP from such deemed date of regular appointment and the benefit of higher pay in the applicable revised pay scale w.e.f. 01.01.2006 and, thereafter till day, but denial to the same is a recurring loss till day. Even this inaction shall result in depriving the petitioners of the pension on superannuation, which is violative of Articles 14 & 16 of the Constitution of India.

6. The question, as to whether the incumbents who had undergone selection for the post of Trained Graduate Teachers or for the post of Lecturers (School Cadre) under the Himachal Pradesh Education Department Class-III, (School and Inspection Cadre) Service Rules 1973 for regular posts, in the regular pay scales, could be appointed on contractual basis in 2008 and 2009 when, the contractual mode-nomenclature of appointment was introduced by issuing the Amended Rules on 22.10.2009 [in case of Trained Graduate Teachers] and on 22.09.2010 [in case of Lecturers, School Cadre], and once the amended rules cannot be applied retrospectively to selection undertaken under the amended Rules but were to apply prospectively only; stands adjudicated/answered this Court; in **CWP No.7602 of 2010**, titled as **Om Parkash Versus State of Himachal Pradesh** alongwith connected matters, decided on 02.05.2012, Annexure P-3, and in **CWP No.3143 of 2011**, titled as **Manju Devi versus State of Himachal Pradesh and others**, decided on 07.11.2012; and **CWP No. 3144 of 2011**, titled as **Anju Devi vs. State of Himachal Pradesh and others**, decided on 08.10.2012, Annexure P-4; and the

judgments passed by the Coordinate Bench of this Court have also been affirmed in **LPA No. 54 of 2013** along with other connected LPA's titled as **State of H.P. and others vs. Om Prakash**, decided on 04.10.2019, whereby, the Division Bench of this Court, has recorded its findings as under:-

4. Observations:

4(i) It is not in dispute that even though the State Government on 12.12.2003 had requested all the Heads of Departments to amend Clause-10 of R&P Rules, for including contractual appointment as one of the mode of recruitment in accordance with the decision taken by the State, yet, Recruitment & Promotion Rules for lecturers (school cadre) were not amended in tune with 12.12.2003 decision of the State Government. The mode of recruitment under the Recruitment & Promotion Rules for appointment lecture (School cadre) continued to be only on regular basis. It was only on 20.9.2010, that Clause10 of the R&P Rules for the posts in question was amended and notified, incorporating contractual appointments, as one of the mode of recruitment.

4(ii) The college in question was taken over by the State on 6.2.2007. In terms of

notification dated 25.8.1994, services of the eligible staff were also required to be taken over w.e.f. 6.2.2007. State though had taken over the services of the staff of the Kanwar Durga Chand Memorial College, Jaisinghpur only on 21.6.2010. Fact remains that services of writ petitioners were taken over prior to amendment of R&P Rules.

The services of the petitioners were required to be taken over in terms of Recruitment & Promotion Rules, which were in existence on the date of taking over the college i.e. 6.2.2007. The R&P Rules as they existed on 6.2.2007 did not provide for contractual appointments. The Rules only provided for regular recruitments. Service of petitioners were taken over w.e.f. 6.2.2007. College itself was taken over on 6.2.2007. Therefore, clause providing appointment on contractual basis inserted in the R&P Rules by way of amendment of Rules on 20.09.2010, could not be retrospectively applied to the petitioners.

It is apt to refer the judgment passed by this Court, in CWP No.1811 of 2008, titled Dev Raj Vs. State of H.P & others, relevant segment reproduced hereinafter:-

“25.....Government appointments are made in accordance with the Rules

framed under Article 309 of the Constitution of India. When such Rules are framed the Government is expected to act and make appointments in accordance with the Rules. If the Rules do not permit the Government to make appointment on contract basis they must be made on regular basis.

4(iii) The notification dated 25.8.1994, under which State Government took over the privately managed colleges as well as services of staff working there, provides for granting them Government scales as admissible to their respective corresponding categories. Clause-9 of this notification reads as under:-

“9. Provided that services of only those employees will be taken over who furnish a written acceptance on non-judicial paper duly attested by the competent authority to the effect that they are willing to be absorbed in Government services on the terms and conditions laid down in these rules.”

There is no provision in the above notification for taking over services of staff of privately managed colleges on contract basis, more so, in the facts of instant case, in view of Recruitment and Promotion Rules of Lecturer (School cadre) as they existed on 6.2.2007 i.e. the date of take over, whereunder no provision for appointment on contract basis

was there, regular recruitment was the only prescribed mode.

5. Thus, services of the petitioners' were thus required to be taken over w.e.f. 6.2.2007 on regular basis. There is no infirmity in the judgment passed by learned Single Judge. All these appeals are therefore dismissed alongwith pending application(s), if any."

7. Learned counsel further submits that based on the judgment in case of **Om Prakash** [CWP No. 7600 of 2010, affirmed in LPA No.54 of 2013 on 04.10.2019] and other connected LPAs, and the principle of law answered therein, the benefit of deemed regular appointment as Shastri Teachers [in C&V Cadre of Shastri-Language teachers etc.] has been granted to similar incumbents, from the date of their initial appointment on contract basis w.e.f. 30.01.2009; even during the pendency of **COPCT No.1125 of 2020** in case, titled as **Tej Ram versus Rajeev Sharma** and **Execution Petition No.327 of 2020** in case titled as **Rakhi versus State of Himachal Pradesh & ors.**, and in compliance thereof the respondents have issued communication on 26.09.2020 and on 29.09.2020, *Annexure P-7 (Colly)*.

Even a perusal of the orders in **Execution Petition No.94 of 2020**, titled as **Kuldip Chand versus State of Himachal Pradesh and others**, decided on 28.11.2023 (**Annexure P-9**), whereby the similarly placed Language Teacher [of C&V Cadre in Mandi District] has been treated as regular Language Teacher w.e.f. 30.01.2009 i.e. the date of her initial contractual appointment in regular-applicable pay scale, with pay fixation, ACP and Pension.

8. By applying the above principle of law in **LPA No.21 of 2013**, titled as **State of H.P. versus Ravinder Kumar**, decided on **04.10.2019** (Annexure P-6) the benefit of deemed regular appointment from the date of initial contractual appointment has been given to the Lecturers (School Cadre).

9. Moreover, by applying the same principle of law, declared in **CWP No.3144 of 2011**, upheld in **LPA No. 4059 of 213**, titled as **State of Himachal Pradesh & ors. versus Anju Devi** and on the basis of CWP No.7602 of 2010, affirmed in **LPA No.54 of 2013** titled as **State of Himachal Pradesh & ors. versus Om Prakash**, decided on 04.10.2019 (**Annexure P-6**) the benefit of deemed regular appointment

was granted to *Trained Graduate Teachers* from the date of initial contractual appointment.

10. Case records reveal that once this Hon'ble Court has adjudicated upon a principle of law mandating that once the selection process in accordance with the existing Recruitment & Promotion Rules of 1973 only provided for regular appointment in regular pay, then the respondents cannot give have given appointment to incumbents on contractual basis, in fixed emoluments; by acting *dehors* the Recruitment & Promotion Rules existing at the relevant time and when, the contractual mode of recruitment/ appointment was incorporated in the Rules, much after the incumbents-petitioners had joined; and once the amendment in Rules introducing contractual mode of appointment(s) could not apply retrospectively to the disadvantage and prejudice of the incumbents so as to curtail their rights which had accrued under the Rules of 1973, under which then selection-recruitment process was initiated.

11. In this view of the matter, the Government- Respondents have issued *an order on 01.12.2023 (Annexure P-10), to implement the judgment and to give*

deemed regular appointments [to the appellants-petitioners therein as Shastri Teachers-Language Teachers; as *Trained Graduate Teacher (Arts-Medical/Non-Medical)*; and as Lecturers (School Cadre) in the applicable regular pay scale, with pay fixation and other benefits from the date they were initially appointed on contract basis; then, once the petitioners are similarly placed, therefore, they are entitled to deemed regular appointment as Trained Graduate Teachers w.e.f. 07.11.2008 and 28.05.2009 or such like date, i.e. the date from which they were initially appointed on contract basis; with all admissible benefits; but the denial of regular status as Trained Graduate Teachers, in the regular pay scale, pay fixation in regular scale from the date of their initial contract appointment in the applicable pay scales and then in the revised pay scale w.e.f. 01.01.2016 till day, is a recurring loss till day; and the same amounts to treating the “petitioners-equals as unequal” which is violative of Articles 14 & 16 of the Constitution of India.

12. Per contra, Mr. Ravi Chauhan, learned Deputy Advocate General submits that so far as the mandate of this Court in case of **Om Prakash, Anju Devi, Manju Devi,**

Ravinder Kumar [relating to TGTs and Lecturers (School Cadre) as mentioned in Paras 6 to 8 and 9] and the directions/orders passed in case of **Tej Ram, Rakhi** and **Kuldip Chand** [relating to Shastri and Language Teachers as mentioned in Para 7] supra and the implementation order dated 01.12.2023 (Annexure P-10), is not in dispute but, the factual aspects needs to be looked into and verified.

13. In these circumstances, and on the request of learned counsel for the petitioners, on instructions of the petitioners, this Court permits the petitioners to make representation, either jointly or separately, to Respondent No.2-Director of Elementary Education, Himachal Pradesh/Competent Authority, within three weeks; with further directions to the aforesaid Respondent/Competent Authority to verify the facts and, in case, the petitioners are similarly placed then, to consider/examine the case of the petitioners, for extending similar benefit of regular appointment as TGTs from the date the petitioners were appointed on contractual basis in the light of above referred judgments within six weeks thereafter.

14. Upon consideration, in case, the respondents

decide to extend the benefit of deemed regular appointment to the petitioner(s), as Trained Graduate Teachers, from the date of initial appointment on contractual basis, then, the respondents shall grant the consequential benefits notionally. However, it is clarified that the respondents shall give the eligible monetary benefits, admissible to the petitioner(s), in accordance with law.

15. Needless to say that, this Court has *not adverted to the rival contentions and merits of the matter and all Questions of facts and law are left open.*

In aforesaid terms, the writ petition as well as the pending miscellaneous application(s), if any, shall also stand disposed of, accordingly.

(Ranjan Sharma)
Judge

December 22, 2023
(Bhardwaj)

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Ann-P-2

No:EDN-H(2)B(2)54/2013-CC
 Directorate of Elementary Education,
 Himachal Pradesh Lalpani Shimla-1.
 Dated Shimla-the 171001 the

प्रारम्भिक शिक्षा निदेशालय (हि.प्र.)

18 JUN 2024

June, 2024 शिमला-1

OFFICE ORDER

Whereas, in the year of 2008 the Government conveyed the approval to fill up 4568 posts of TGTs on contract basis vide letter No. EDN-C-B(15)6/2007-Loose dated 16.06.2008 and the Department, accordingly, advertised the posts purely on contract basis through batchwise basis vide requisition No. EDN-H(2)B(2)3/2008-Requisition dated 27.06.2008 and requisitions were also sent to the Secretary, H.P. Subordinate Services Selection Board, Hamirpur, Director, Ex-servicemen Employment Cell, Hamirpur, Physically Handicapped Cell H.P., and Director, Sports Cell, H.P. vide requisition No. EDN-H(2)B(2)3/2008-Requisition dated 27.06.2008 & 14.07.2008 to fill up the posts of TGTs purely on contract basis, however, the specific amendment related to contract appointment was inserted in the R&P Rules, of TGTs on dated 22.10.2009 and prior to this, in the R&P Rules of TGTs provision of regular appointment was in vogue. In response to the Department requisition No. EDN-H(2)B(2)3/2008-Requisition dated 14.07.2008, Director, Ex-servicemen Cell, Hamirpur, vide letter No.DSW/Emp(Ex-Cell)OC-19/2008 dated 27.08.2008 & 20.09.2008, No.DSW/Emp(Ex-Cell)OC-20/2008 dated 27.08.2008 & 20.09.2008 and No.DSW/Emp(Ex-Cell)OC-18/2008 dated 19.11.2008 issued NAC (Non Availability Certificate) to fill up 131 posts of TGT NM, 126 posts of TGT Medical and 54 posts of TGT Arts respectively amongst Ward of Ex-servicemen, and accordingly, the Department placed requisition to all Employment Exchanges to fill up the vacancies reserved for Ward of Ex-Servicemen category on contract basis vide Ednst. No.EDN-H(2)B(2)3/2008-Requisition (Vol-I) dated 02.01.2009. Thereafter, as per Batchwise Merits drawn against the requisition dated 27.06.2008 & 02.01.2009, recommendation received through Secretary, HPSSSB, Hamirpur against the requisition dated 27.06.2008, recommendation received through Ex-servicemen Cell, Hamirpur from time to time against the requisition dated 27.06.2008 and recommendation received through Sports Cell, H.P. from time to time against the requisition dated 27.06.2008, the Department offered appointment to all eligible candidates on contract basis selected through batchwise basis, selected through HPSSSB, Hamirpur, Ex-servicemen recommended by Ex-servicemen Cell, Hamirpur and sportspersons recommended by Sports Cell H.P. vide office order, No. EDN-H(2)B(2)5/2008-(Medical)-Deptt. Dated 25.11.2008, No. EDN-H(2)B(2)6/2008-

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Medical/(Deptt.) Dated 27.01.2009, No. EDN-H(2)B(2)6/2008-Med-(Deptt.)
 Dated 21.02.2009, No. EDN-H(2)B(2)5/2008-Medical-(Deptt) Dated 28.05.2009,
 No. EDN-H(2)B(2)5/2008-Medical-(Deptt) Dated 19.08.2009, No. EDN-
 H(2)B(2)5/2008-Medical-(Deptt) Dated 05.10.2009, No. EDN-H(2)B(2)5/2008-
 Med-(Deptt.) Dated 17.04.2010, No. EDN-H(2)B(2)5/2008-Med-(Deptt.) Dated
 19.06.2010, No. EDN-H(2)B(2)5/2008-Med-(Deptt.) Dated 06.08.2010,
 No.EDN-H(2)B(2)5/2009-10(Medical)-HSSSB dated 17.08.2010, 04.09.2010,
 No.EDN-H(2)B(2)6/2009-10(Med)-HPSSSB dated 18.06.2011, No.EDN-
 H(2)B(2)5/2008-(Non-Med.)-Deptt. Dated 14.11.2008, No.EDN-
 H(2)B(2)6/2008-NM(Deptt.) Dated 21.02.2009, No.EDN-H(2)B(2)5/2008-NM-
 (Deptt.) Dated 28.05.2009, No.EDN-H(2)B(2)5/2008-NM-(Deptt.) Dated
 05.10.2009, No. EDN-H(2)B(2)5/2008-NM-(Deptt.) Dated 20.04.2010, No.
 EDN-H(2)B(2)CWP-2645/2008 Dated 27.12.2010, No. EDN-H(2)B(2)5/2009-
 10(Non-Medical)-HPSSSB dated 24.09.2010, 28.09.2010, No. EDN-
 H(2)B(2)6/2009-10(NM)-HPSSSB dated 18.06.2011, No. EDN-H(2)B(2)6/2008-
 (Arts)-Deptt. Dated 07.11.2008, No. EDN-H(2)B(2)6/2008-Arts-(Deptt.) Dated
 21.02.2009, No. EDN-H(2)B(2)6/2008-Arts-(Deptt.) Dated 28.02.2009, No.
 EDN-H(2)B(2)6/2008-Arts-(Deptt.) Dated 22.05.2009, No. EDN-
 H(2)B(2)6/2008-Arts-(Deptt.) Dated 28.05.2009, No. EDN-H(2)B(2)6/2008-
 Arts-(Deptt.) Dated 19.08.2009, No. EDN-H(2)B(2)6/2008-Arts-(Deptt.) Dated
 05.10.2009, No. EDN-H(2)B(2)5/2008-Arts-(Deptt.) Dated 17.04.2010, No.
 EDN-H(2)B(2)5/2008-Arts-(Deptt.) Dated 27.04.2010, No. EDN-H(2)B(2)-
 CWP-1268/2008 Dated 09.09.2010, No. EDN-H(2)B(2)5/2008-Arts-(Deptt.)
 Dated 16.09.2010, No. EDN-H(2)B(2)5&6/2008-(Arts)B.W. Dated 01.03.2011,
 No.EDN-H(2)B(2)5/2009-10(Arts)-HPSSSB dated 21.07.2010, 04.09.2010, NO.
 EDN-H(2)B(2)-6/2010-HPSSSB-Hamirpur dated 19.03.2011, No. EDN-
 H(2)B(2)6/2009-10(Arts)-HPSSSB dated 18.06.2011, No. EDN-
 H(2)B(2)34/2005-Contract (Ex-Man) Dated 20.12.2008, No. EDN-
 H(2)B(2)34/2005-Contract (Ex-Man) Dated 26.12.2008, No. EDN-
 H(2)B(2)6/2008-(Ex-Man) Dated 28.02.2009, No. EDN-H(2)B(2)6/2008-(Ex-
 Man) Dated 06.08.2009, No. EDN-H(2)B(2)6/2008-EXM Dated 15.03.2010, No.
 EDN-H(2)B(2)6/2008-EXM Dated 24.05.2010, No. EDN-H(2)B(2)5&6/2008-
 Sports Dated 28.02.2009, 06.08.2009, No.EDN-H(2)B(2)-5&6/2009-
 WEXM(A/NM/M) dated 21.11.2009, 27.11.2009, 30.11.2009, 29.01.2010,
 06.03.2010, 17.04.2010, 24.05.2010 & 19.06.2010.

Whereas, some of the TGTs who were appointed on contract basis in the year of 2008 & 2009 prior to the insertion of contract condition in the R&P Rules of TGTs filed various civil writ petitions in the Hon'ble High Court of H.P. for regular appointment instead of contract appointment from the date of initial appointment on contract basis as such the provision of contract appointment was not inserted in the R&P Rules of TGTs and provision of regular appointment was in vogue. The Hon'ble High Court of H.P. disposed of these writ petitions in terms of the judgments passed in CWP No. 7602 of 2010, titled Om Prakash Versus State of H.P. and others, and connected matters, and CWP No. 3144 of 2011, titled as Anju Devi Versus State of H.P. and others, subject to the outcome of LPAs No. 54 of 2013 and 500 of 2013.

Whereas, the matter of regular appointment instead of contract appointment without the amendment of R&P Rules was decided by the Hon'ble High Court of H.P. in LPA No. 21/2013 and other connected LPAs on dated 04.10.2019 and the Director of Higher Education implemented the judgment passed LPA No. 54/2013 titled as State of Himachal Pradesh & Ors. Vs Sh. Om Parkash (connected with LPA No. 21/2013) filed in CWP No. 7602 of 2010, titled Om Prakash Versus State of H.P. and others, and connected matters vide office order No. EDN-H (19)B(1)6/2013- Court Case dated 08.12.2020 and allowed the benefit of taking over the services on regular basis instead of contract to the eligible petitioners as lecturer w.e.f. 06.02.2007.

Whereas, in the matter of petitioners (TGTs) in CWP No. 414/2014-Kuldip Chaud Vs State of HP & connected matters, CWP No. 6383/2014- Manoj Kumar Vs State of HP & Others, CWP No. 6746/2014- Som Dutt Vs State of H.P. & Ors, CWP No. 6751/2014- Manohar Lal Vs State of H.P. & Ors, CWP No. 6748/2014-Disha Sharma Vs State of H.P. & Ors, CWP No. 6749/2014- Nirmla Shashni vs State of HP & Others, CWP No. 6750/2014- Chhime Angmo Vs State of HP & Others and connected matters, the matter of LPA No. 54/2013 was again taken up with the Govt. vide letter No EDN-H(2)B(2)54/2013 CC date 24.06.2020 & 01.11.2023 and the Government vide letter No. EDN-C-E(3)3/2020 dated 30.11.2023 conveyed the approval to implement the orders of the Hon'ble High Court in letter and spirit. Accordingly, the Department implemented the order of the Hon'ble High Court of H.P. vide office order No. EDN-H(2)B(2)54/2013-CC dated 01.12.2023 by considering the petitioner deemed regular employee from the date of their initial appointment on contract basis with all consequential benefits. However, the Government had further also directed that in similar situated cases, the advice of the Ld. Advocate

General may be sought as to how proceed further in the matter. Accordingly, the matter was also discussed with Ld. Advocate General who opined that "decide the representations if any in accordance with Law as laid down qua including notional benefits for fence seater".

Whereas, in other similar cases of TGTs the Hon'ble High Court has directed that in case the petitioners are found entitled to the benefits of aforesaid judgment, they shall be granted all similar benefits as have been granted to the beneficiaries of judgment passed in LPA No. 21 of 2013. It is clarified that monetary benefits, if any available to the petitioner shall be restricted to a period of three years only immediately preceding the date of filing of instant petition".

Whereas, many other TGTs who were appointed on contractual basis after the amendment of R&P Rules of TGTs against the posts which were requisitioned/advertised before the amendment of R&P Rules of TGTs have also filed various court cases in the Hon'ble High Court of H.P. for regular appointment from the date of initial appointment as they are also appointed against the posts which were requisitioned/advertised before the amendment of R&P Rules of TGTs and the Hon'ble High Court in these cases has ordered that "in case the respondents decide to extend the benefit of deemed regular appointment to the petitioner(s), as Trained Graduate teachers, from the date of initial appointment on contractual basis, then respondents shall grant the consequential benefits notionally. However, it is clarified that the respondents shall give the eligible monetary benefits, admissible to the petitioner (s) in accordance with law". As such the appointment of the petitioner is against the posts which were requisitioned/advertised much prior to the amendment of R&P Rules of TGTs when provision of regular appointment was in vogue, therefore, the appointment of such TGTs will also be governed by the R&P Rules which were in vogue at the time of requisition/advertisement.

Whereas, the matter was taken up with the Government vide letter No. EDN-H(2)B(2)54/2013-CC dated 24.04.2024 and in reference to the Department letter, the Secretary, (Education) to the Govt. of H.P. with the prior approval of Finance Department (Regulation) obtained vide File No. Fin(C)-B(15)-2/2020-L dated 09.05.2024 conveyed the approval to implement the orders of the Hon'ble High Court of H.P. in similar situated cases (TGTs/C&V categories) qua petitioners as well as to fence seater (including notional benefits to fence seater) vide letter No. EDN-C-E(3)3/2020 dated 15.05.2024.

In view of above facts and circumstances and in compliance to the orders passed by the Hon'ble High Court of H.P. in various CWPs and further approval conveyed by the Government vide letter No. EDN-C-E(3)3/2020 dated 15.05.2024, the following petitioners are hereby considered as deemed regular employees of the State in the pay scale of Rs. 10300-34800 + 3600 Grade Pay plus other allowances from the date when they were initially appointed/joined on contract basis with all consequential benefits, however, monatory benefits are restricted to a period of three years only immediately preceding the date of filing of petition:-

Sr. No.	CWP/CW POA No.	Name And Address Of The Petitioner At The Time Of Initial Appointment On Contract Basis As TGT	Sub	D.O.A. on contract basis
1	31/2024	Urmila Sharma W/O Karam Chand Near Pwd Colony Mehre Po Mehre Teh. Barsar (Hamirpur) 174305	Arts	07.11.08
2	29/2024	Madan Lal Chandel S/O Sh. Nikka Ram Vill. Dola P.O. Chandpur District. Bilaspur, H.P.	Arts	07.11.08
3	29/2024	Asha Devi D/Oram Murti Chopra, Moh. Surada, Chamba-District. Chamba	Arts	07.11.08
4	1804/2024	Indra Doris W/O Sh. Neeman Deep Bindra Vpo-Rajpurteh-Palampur Kangra 176061	Arts	07.11.08
5	10633/2023	Poonam Kalia W/O Sh Mukesh Chand Vpo Jakhera District Una	Arts	07.11.08
6	9305/2023	Chander Kanta D/O Udham Singh Near Deshta Niwas Opposite Engineghar Car Parking Sanjauli Shimla-6	Arts	07.11.08
7	29/2024	Sangeeta Shankar W/O Rajeev Shankar C/O Gautam Medical Store Sundernagar District Mandi	Arts	07.11.08
8	29/2024 and 5764/2020	Poonam Sharma D/O Kishori Lal Sharma Vill Bari P.O & Tehsil Dehra District Kangra 177107	Arts	07.11.08
9	9135/2023	Varindera Kumari D/O Bachiter Singh Vill Nalsua P.O. Nalsua Tehsil Dehra District Kangra	Arts	07.11.08
10	10633/2023	Kuldeep Singh S/O Sh. Piyara Singh Vill-Tharu Po-Nagrota Bagwantehsil & District Kangra 176047	Arts	07.11.08
11	29/2024	Shama Awasthi W/O S.K Awasthi Vill Mesrehar Po Mandal Teh. D/Sala Kangra Kangra 176215	Arts	07.11.08
12	10462/2023	Alpna W/O Sh. Ajay Mehta Raj Cottage Old Chari Road K.B. Tehsil D/Sala, Kangra -176215	Arts	07.11.08
13	CWPOA NO. 4187/2020	Shashi Katoch D/O Inderjeet Katoch Vill Jhikkar P.O Gharo Tehsil D/Sala District. Kangra	Arts	07.11.08

AK

1240	2642/2024	Rinkesh Kumar S/O Sh. Sarwan Kumar , Village Bagehra Bhulla, Po Bir Bagehra, Tehsil Sujanpur, Distt Hamirpur-176110 ,Hp-	Med	18.06.2011
1241	3300/2024	Davinder Singh S/O Sh. Sant Singh , Vpo Bhadsali, Distt Una-174317 ,Hp-	Med	18.06.2011
1242	2642/2024	Sobha D/O Sh. Sat Pal Ghai , Sjuraj Kkund Road Kanga-176001 ,Hp-	Med	18.06.2011
1243	1808/2024	Mustaq Ammad S/O Sh. Basir Deen, Village Kharotta , Po Berthin, Tehsil Jhandutta, Distt Bilaspur-174029 ,Hp-	Med	18.06.2011

The concerned Principal/Headmaster/Incharge of GSSS/GHS/GMS of H.P. is further directed that consequential benefits regarding monetary benefits qua the petitioners shall be released as per the instructions issued by the Finance Department H.P. vide letter No. FIN(PR)-B(7)-16/98-III (Agriculture) dated 15.12.2011, letter No. Fin-E-I-C(17)-6/08 dated 07.01.2012, and No. Fin-(PR)B(7)-1/2021-Loose dated 17.09.2022 and entry in this regard may also be made in the service book of the petitioners. May inform the parties accordingly.

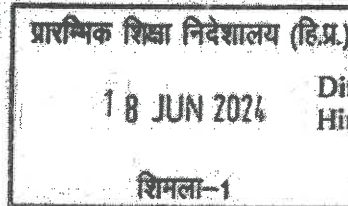
Director Elementary Education,
Himachal Pradesh.

No:EDN-H(2)B(2)10902/2023-CC Dated

June, 2024

Copy forwarded for information and necessary action to:-

1. The Secretary (Education) to the Government of H.P. w.r.t. letter No. EDN-C-E(3)3/2020 dated 15.05.2024.
2. All the Dy. Directors of Elementary/Higher Education of H.P.
3. The concerned Principal/Headmaster of GSSS/GHS/GMS of H.P. with the direction that before proceeding further in the matter as per above directions it may be strictly ensured that the concerned TGT is a petitioner in the above referred CWP and the appointment of the petitioner is as per requisition/advertisement issued before the amendment of R&P Rules of TGT i.e. before, 22.10.2009. If any petitioner who is appointed against the posts requisitioned/advertised after the amendment of R&P Rules, the cases of such petitioner shall be referred back to this Directorate immediately.
4. The Dealing Assistant Seniority Seat/Pay Fixation Seat, TGTs.
5. The concerned petitioner.
6. Nodal Officer, IT Cell, Dte. of Ele. Edu. H.P. with the request to upload the same on Departmental website.
7. The Guard file.



Director Elementary Education,
Himachal Pradesh.

Ann - P - 3

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No. Fin(PR)B(7)-59/2010
Government of Himachal Pradesh
Finance (Pay Revision) Department.

From

Principal Secretary (Finance) to the
Government of Himachal Pradesh.

To

1. All the Administrative Secretaries to the Government of Himachal Pradesh.
2. All Heads of the Department in Himachal Pradesh.
3. All Divisional Commissioners in Himachal Pradesh.
4. All Deputy Commissioners in Himachal Pradesh.

Dated: Shimla-171002, the 9th August, 2012.

Subject:-

Introduction of new Assured Career Progression Scheme on completion of 4, 9 & 14 years of service in a cadre and restoration of old (8-16-24-32) Assured Career Progression Scheme for government employees.

Sir/Madam

I am directed to invite a reference to the subject cited above and to state that the matter regarding grant of Assured Career Progression Scheme on completion of 4, 9 and 14 years of service in a cadre has been engaging the attention of the State Government for some time past. The Governor, Himachal Pradesh, is pleased to introduce "Assured Career Progression Scheme" on completion of 4, 9 and 14 years of service in a cadre w.e.f 27.08.2009 (i.e. date before which earlier scheme was in operation) which shall apply to all categories of State Government employees governed by Himachal Pradesh Civil Services (Revised Pay) Rules, 2009, except in respect of the following cases/categories:-

- (i) Such categories of government employees who have been allowed three or more grade structure of pay scales under the H.P. Civil Services (Revised Pay) Rules, 1998 and further corresponding conversion under H.P. Civil Services (Revised Pay) Rules, 2009.
- (ii) Those categories of government employees for whom benefit of Career Progression is/was available under any other rules/ instructions notified earlier.
- (iii) Those categories of government employees, whose pay scales are governed by MHRD/UGC guidelines, All India Service Officers, Judicial Service Officers etc. having different pay structures.



Continued Page No. 2/-

-:2:-

2. This scheme is optional. An existing employee "including employee having less than four years service" will have the option either to continue in the existing Assured Career Progression Scheme after a service of 8, 16, 24 & 32 years or to opt 4, 9 & 14 years Assured Career Progression Scheme. An employee who wants to opt this new scheme will have to exercise an option within two months from the date of issue of this letter along with an undertaking in the enclosed proforma through a sworn affidavit that he wants to accept this scheme effective from 27.08.2009 and will not claim any arrears. Consequently, on restoration of earlier Assured Career Progression Scheme (8-16-24-32), in new pay structure w.e.f. 27.08.2009 an employee may also exercise his option for the aforesaid scheme. However, an employee who does not exercise any option within the above stipulated period of two months shall be deemed to have opted for continuance in the earlier (8-16-24-32) Assured Career Progression Scheme with effect from 27.08.2009. Service in a cadre rendered by an employee in the same post before 27.08.2009 shall count for the purpose of grant of benefit under this scheme.

3.(a) After a service of 4, 9 and 14 years in a post or posts without any financial enhancement in the same cadre (herein after referred to as the same post) and service rendered in the same post in different Government Departments, who is not promoted to a higher level on account of non availability of a vacancy or non existence of a promotional avenue in the cadre, shall be granted the grade pay, which is next, higher in the hierarchy of grade pays given in the schedule annexed to Revised Pay Rules, 2009, upto the maximum grade pay of ₹ 8900. On placement in the next higher grade pay in the hierarchy of grade pays after a service of 4, 9 and 14 years, the pay of an employee shall be fixed at the next higher stage in the pay band and he shall be allowed next increment from the date he would have earned his next increment had he continued in the existing pay band. If the minimum of higher pay band is higher than the stage arrived at, his pay shall be fixed at such minimum and next increment shall be allowed after qualifying service of 12 months in higher pay band.

(b) An employee who has completed four years service but less than 8 years service in a cadre will be placed in next grade pay in the hierarchy of grade pays and his pay will be fixed at next higher stage in the pay band. If the pay so fixed is less than the minimum of higher pay band than his pay will be fixed at the minimum of higher pay band. The next increment in such cases will be given after qualifying service of 12 months in the higher pay band.

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Continued Page No. 3/-

-:3:-

(c) An employee who has rendered 4 years of service but less than 9 years of service in the cadre and has availed benefit of placement in the next higher scale in the hierarchy of pay scales after eight years of service shall get nothing as he has already availed benefit of one increment and placement in the next higher pay scale under the existing Assured Career Progression scheme of 8, 16, 24 and 32 years of service.

(d) An employee who has completed 9 years of service but less than 14 years of service in a cadre in the same post and availed one placement in the next higher scale in the hierarchy of pay scales under the existing Assured Career Progression scheme after a service of 8 years shall be placed in the next higher grade pay in the hierarchy of grade pays and his pay shall be fixed at the next higher stage in that pay band.

(e) An employee who has completed 14 years of service in a cadre but less than 16 years in the same post and availed one placement in the next higher scale in the hierarchy of pay scales under the existing Assured Career Progression scheme after a service of 8 years shall be allowed two placements in the next higher grade pays in the hierarchy of grade pays i.e. After 9 years and 14 years service and his pay shall be fixed at the next higher stage in that each pay band.

(f) An employee who has completed 16 years of service in a cadre but less than 24 years of service in the same post and has availed one placement in higher scale in the hierarchy of pay scales and one benefit of proficiency step-up under the existing Assured Career Progression scheme shall be placed in the next two higher grade pays in the hierarchy of grade pays with benefit of one increment only and his pay shall be fixed at next stage in the pay bands.

(g) An employee who has completed 24 years of service in a cadre and has already availed benefit of one placement in the higher pay scale in the hierarchy of pay scales and two Proficiency Step-ups under ACP scheme after 8,18/16 and 24 years of service, he shall only be allowed two placements in the next higher grade pays in the hierarchy of grade pays without any benefit of increment as he has already availed benefit of three increments i.e. one on placement and two Proficiency step ups under the existing schemes.

4.(a) An employee shall be entitled to a maximum of three placements in the next higher grade pays in the hierarchy of grade pays with benefit of one increment each at every placement under this scheme. An employee who opts for this scheme but has already availed benefit of two

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Continued Page No. 4/-

placements in the higher scales in the hierarchy of pay scales after 8 years and 32 years and two proficiency step ups after 16 and 24 years of service in a cadre under the existing Assured Career Progression scheme of 8, 16, 24, 32 years of service will have to lose benefit of one increment granted after 32 years of service and his pay will be refixed with w.e.f 27.08.2009 accordingly.

(b) The procedure for assessing the work and conduct for placement in the higher scale shall be the same as applicable to the case of promotion. The placement in higher scale shall be allowed only to these employees whose overall service record during the span of satisfactory service, is adjudged as 'Good' and the employee is otherwise suitable for promotion "Good" record shall mean that more than 50% Annual Confidential Reports are good and out of last three years report at least two should be 'Good'. For all the remaining years the benchmark may be 'Average'.

(c) On placement in next higher grade pay under this scheme, an employee would continue to do the same work with same designation and there will be no need for creation of any separate post(s) and the employee shall remain on the strength of the same cadre.

(d) An employee who is dismissed or is under suspension or on leave will be allowed to exercise his option under this scheme within two months from the date he/she joins duty.

(e) If the higher grade pay is not granted on account of unsuitability, it shall not be considered as punishment under the C.C.S (C.C.A) Rules, 1965. Competent Authority for grant of higher grade pay shall be the same as in the case of promotion. Representations/Appeals against the non-grant of higher grade pay under this scheme shall also lie in the same manner as in the case of promotion.

(f) As a necessary corollary to this decision the existing system of Assured Career Progression Scheme shall undergo a change to the extent indicated above. Other existing conditions governing the grant of Proficiency step-up/ACP scheme already notified shall continue to be applicable mutatis mutandis in accordance with the above orders. The cases of ACP/proficiency step-up, which fell due prior to 27.08.2009, shall be settled according to the then prevalent instructions.

(g) The progressions granted under this scheme shall be purely personal to the employee and shall have no relevance to his seniority position. As such, the senior employees shall have no claim of parity of pay on the ground that the junior employee working on the same post has got

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-:5:-

higher pay or grade pay under this scheme. While implementing this scheme, the difference in pay scales on account of grant of financial upgradation under the old ACP Scheme (15.12.98) and under this scheme within the same cadre shall not be construed as an anomaly.

(h) No stepping up of pay in the pay band and grade pay would be admissible with regard to junior getting more pay than the senior on account of pay fixation under this scheme.

(i) The benefits under this new Assured Career Progression Scheme (4-9-14) and old Assured Career Progression Scheme (8-16-24-32) shall be granted on notional basis with effect from 27th August, 2009 and on actual basis from the date of issue of these orders.

(j) For interpretation/ clarification/ modification of the decisions contained in the circular letter, the Finance Department shall be the final authority.

(k) The benefit gained by an employee under the existing scheme (8-16-24-32) will be adjusted in this scheme.

(l) The competent authority for the grant of placement in the next higher grade pay and grant of intrement(s) shall be the same as in the case of promotion.

Yours faithfully,


Joint Secretary (Finance) to the
Government of Himachal Pradesh.

Endst. No. As above. Dated: Shimla-171002, the 9th August, 2012.

Copy forwarded to:-

1. The Principal Accountant General (Audit), Himachal Pradesh, Shimla-3.
2. The Accountant General (A&E), Himachal Pradesh, Shimla-3.
3. The Registrar General, High Court of Himachal Pradesh, Shimla.
4. The Resident Commissioner, Himachal Bhawan, 27-Sikandra Road, New Delhi-110001.
5. The Secretary, H.P. Vidhan Sabha, Shimla -171004.
6. The Secretary, H.P. Public Service Commission, Nigam Vihar, Shimla-2.
7. The Secretary, H.P. State Electricity Regulatory Commission, Khalini, Shimla-171002.
8. The Secretary, H.P. Subordinate Services Selection Board, Hamirpur.
9. The Resident Commissioner, Killar at Pangi, District Chamba, H.P.
10. The Controller(F&A), Department of Personnel, H.P, Secretariat, Shimla.


Joint Secretary (Finance) to the
Government of Himachal Pradesh.



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.5536 of 2020 a/w
CWPOA No.5545, 5553 and 5561 of 2020

Decided on: 01.11.2023

1. CWPOA No.5536 of 2020

Sanjay Kumar

.... Petitioner

Versus

State of Himachal Pradesh & others

.... Respondent

2. CWPOA No.5545 of 2020

Shashi Kant

.... Petitioner

Versus

State of Himachal Pradesh & others

.... Respondent

3. CWPOA No.5553 of 2020

Som Dutt

.... Petitioner

Versus

State of Himachal Pradesh & others

.... Respondent

4. CWPOA No.5561 of 2020

Jai Prakash

.... Petitioner

Versus

State of Himachal Pradesh & others

.... Respondent

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge

The Hon'ble Mr. Justice Sandeep Sharma, Judge

Whether approved for reporting¹ : Yes.

For the Petitioner(s):

Mr. Onkar Jairath, Advocate.

For Respondent(s):

Mr. Anup Rattan, Advocate General with
Mr. Varun Chandel, Additional Advocate
General

Sandeep Sharma, J (oral)

Since all these petitions lay challenge to order dated 3.08.2018, issued by Deputy Director Elementary Education, District Sirmour, Himachal Pradesh, same were heard together and are now

¹ Whether Reporters of local newspaper are permitted to see the judgment ?

being disposed of by a common judgment. However, for the sake of clarity, facts of CWPOA No. 5636 of 2020 are being discussed.

2. Petitioners herein being fully eligible to be appointed as JBT, submitted their applications for the said posts lying vacant in District Sirmour, Himachal Pradesh. Pursuant to selection process initiated by the Education Department, the petitioners were called for interview held on 11.05.1999 and 12.05.1999 being fully qualified. After their being declared successful, petitioners were offered appointments to the post of JBT Teacher vide office order dated 22.05.1999 but they joined their duties on 1.06.1999, 31.05.1999 and 29.05.1999, respectively and since then they had been performing their duties to the satisfaction of the employer. The Government of Himachal, Finance Department introduced a scheme namely as Proficiency Step up w.e.f.1.1.1986, whereby incumbents were held entitled for grant of financial benefits under the scheme on completion of 8/18 years in the cadre. However, in the year 1998 a new scheme namely Assured Career Progression Scheme (*for short 'ACPS'*) came to be introduced in place of old scheme, w.e.f.1.1.1996 wherein government employee became entitled for additional increment on completion of 8-16-24-32 years regular service in the cadre and in addition to afore increment, employees were also held entitled for next higher pay scale on completion of 8 and 32 years. Aforesaid ACPS remained in operation till 27.8.2009, whereafter vide communication dated 8.8.2012 Principal Secretary (Finance) introduced new ACPS on completion of 4-9-14 years of service in a cadre and also restored old 8-16-24-32 for government employees. The new scheme was made optional (Annexure P-4). As per aforesaid new scheme a government

employee became entitled for the benefit of three financial enhancement as per Clause 3(b)(c)(d) and (e), which is reproduced as under:-

- (b) An employee who has completed four years service but less than 8 years service in a cadre will be placed in next grade pay in the hierarchy of grade pays and his pay will be fixed at next higher stage in the pay band. If the pay so fixed is less than minimum of higher pay band than his pay will be fixed at the minimum of higher pay band. The next increment in such cases will be given after qualifying service of 12 months in the higher pay band.
- (c) A employee who has rendered four years of service but less than 09 years of service in the cadre and has availed benefit of placement in the next higher scale in the hierarchy of pay scales after eight years of service shall get nothing as he has already availed benefit of one increment and placement in the next higher pay scale under the existing Assured Career Progression Scheme of 8, 16, 24 and 32 years of service.
- (d) An employee who has completed 9 years of service but less than 14 years of service in a cadre in the same post and availed one placement in the next higher scale in the hierarchy of pay scales under the existing Assured Career Progression Scheme after a service of 08 years shall be placed in the next higher grade pay in the hierarchy of grade pays and his pay shall be fixed at the next higher stage in that pay band.
- (g) An employee who has completed 14 years of service in a cadre but less than 16 years in the same post and availed one placement in the next higher scale in the hierarchy of pay scales under the existing Assured Career Progression Scheme after a service of 8 years shall be allowed two placements in the next higher grade pays in the hierarchy of grade pays i.e. after 9 years and 14 years service and his pay shall be fixed at the next higher state in that each pay band."

3. Since petitioners herein were appointed as JBT Teacher on regular basis on 1.06.1999, 31.05.1999 and 29.05.1999, respectively they were considered to have completed eight years regular service as on 1.6.2007 in the cadre of JBT teacher and as such, came to be granted first financial benefit on completion of eight years of service under old 8-16-24-32 ACPS w.e.f. 1.06.2007. Since aforesaid scheme subsequently came to be replaced by new ACPS Scheme, petitioners exercised their option and opted for new ACPS. Since petitioners had been working in

the same cadre of JBT and had completed 9 years service on 1.6.2008 they claimed to have become entitled for second financial benefit under ACPS, which was actually made operative w.e.f.27.8.2009. As per new scheme government employee is entitled for benefit under new ACPS on notional basis w.e.f. 27.8.2009, however actual benefit from the date of issuance of the scheme w.e.f.9.8.2012. Petitioners stand granted second financial benefit on notional basis w.e.f.27.8.2009 and on actual basis from the date of issuance of notification dated 9.8.2012, but since after completion of 14 years of regular service, petitioners are denied third financial benefits under the new ACPS scheme, as is evident from impugned communication dated 3.8.2018, issued under the signature of Deputy Director Elementary Education, they approached erstwhile H.P. Administrative Tribunal by way of Original Applications No.6803 of 2018, 6806 of 2018, 6808 of 2018 and 6809 of 2018, which now on account of abolishment of Tribunal stand transferred to this Court and stand re-registered as CWPOA No.5536 of 2020, 5545 of 2020, 5553 of 2020 and 5561 of 2020, praying therein for following main reliefs:-

- i. That impugned order dated 03.08.2018 (Annexure A-8) may be quashed and set aside.***
- ii. That the respondents may be directed to grant third financial enhancement/upgradation under the new ACPS on the completion of 14 years of service w.e.f.01.06.2013 with all consequential benefits.***
- iii. That the respondents may be further directed to calculate the arrears on account of grant of their financial upgradation under the new ACPS (4/9/14) alongwith interest @ 12% per annum.***

4. Having heard learned counsel representing the parties and perused the material adduced on record, especially reply filed by the

respondent-State, this Court finds that facts, as have been noticed hereinabove, are not in dispute. Precisely, the ground raised on behalf of the respondent to refute the claim put forth by the petitioners, is that they have been already given three financial upgradation under ACPS and as such, not entitled to third financial benefit under ACPS w.e.f. 1.6.2013.

5. Mr. Onkar Jairath, learned counsel representing the petitioners submitted that the financial upgradation/ enhancement, if any, on account of the pay revision cannot be counted towards the benefit, if any, under ACPS, rather for that purpose three clear cut financial upgradations are required to be given to an employee in terms of ACPS opted by him.

6. To the contrary, Mr. Varun Chandel, learned Additional Advocate General supported the impugned action of the respondent and claimed that petitioners after being appointed as JBT on regular basis on 1.06.1999, 31.05.1999 and 29.05.1999, respectively were granted benefit of ACPS on 1.6.2007, 31.5.2007 and 29.5.2007 in old ACPS Scheme. He submitted that since after implementation of new ACPS Scheme petitioners opted for new ACPS scheme, therefore, benefit already granted after completion of eight years was to be adjusted in new ACPS Scheme. He submitted that after completion of nine years of service benefit under new ACPS Scheme 4-9-14 already stands granted to the petitioners as per provision of the scheme, however third benefit as being claimed after 14 years of service is not admissible on account of the fact that grade pay of the petitioners has been enhanced by the government order w.e.f. 1.10.2012. He submitted that vide communication dated 26.2.2013 government has clarified that grant of grade pay vide order

dated 1.10.2012 shall be treated as financial enhancement for the purpose of granting benefit under 8-16-24-32 and 4-9-14 ACPS Scheme. He submitted that careful perusal of letters dated 7.7.2014 and 9.9.2014 issued by Finance Department, Government of Himachal Pradesh clearly suggests that maximum three financial up-gradations/ enhancements/ promotions are admissible to a regular employee in entire service career and as per new ACPS scheme, service in cadre rendered by an employee in the same post before 27.8.2009 shall count for the purpose of grant of benefit under this new ACP Scheme.

7. Having heard learned counsel for the parties and perused the material available on record, this Court finds that as of today, two benefit of financial upgradation already stands granted to the petitioners in terms of new ACP scheme and dispute is only with regard to entitlement, if any, of the petitioner for third benefit after 14 years of service. Third benefit under new ACP scheme is sought to be denied to the petitioners on the ground that on account of enhancement of grade pay vide government order dated 1.10.2012 pay of the petitioners has been already enhanced and same in terms of order dated 26.2.2013 issued by the Government of Himachal Pradesh is to be treated as financial enhancement for the purpose of granting benefit under 8-16-24-32 and 4-9-14 ACP scheme. Much reliance has been placed on communication dated 26.2.2013 issued by Government of Himachal Pradesh, whereby it came to be clarified that grade pay granted vide order 1.10.2012 shall be treated as financial enhancement for the purpose of granting benefit under 8-16-24-32 and 4-9-14 ACP scheme.

8. There cannot be any quarrel with the stand taken by the respondents that after implementation of new ACP scheme, benefit already granted under old scheme after completion of eight years was to be adjusted in new ACP scheme, which came into force w.e.f.27.8.2009. Similarly, it is also not in dispute that after completion of nine years service benefit under new ACP scheme i.e.4-9.2014 already stands granted in favour of the petitioners.

9. Now question which needs to be determined in the instant proceedings as to "whether pay revision or grant of grade pay vide order dated 1.10.2012 can be termed to be a financial upgradation so as to deny the benefit of financial upgradation under ACPS.

10. Careful perusal of communication dated 7th July 2014 whereby old ACP scheme came to be replaced by new ACPS, clearly reveals that annual increment or general pay revision shall not be considered as financial upgradation for the purpose of benefit, if any, under ACPS. If it is so, there appears to be merit in the claim of the petitioners that they are entitled to the benefit of third financial upgradation after their having completed 14 years of service. At this stage, it would be apt to take note of para-5 of the afore letter, which reads as under:-

"Moreover, the overriding objective on an assured career progression scheme is to ensure at least three financial up-gradations/ enhancements/ promotions to a regular employee in his entire service career. Therefore, in partial modification of earlier orders on ACP schemes it is directed that, once an employee has already got three enhancements / financial up-gradations i.e. grant of progression under the new or old ACPS or promotion or any other financial enhancement except the annual increment or the general pay revision based on the pay commission, in fourteen years or more his/her entire service., thereafter, he will not be entitled for placement in next

higher grade pay in the ACPS Scheme introduced vide FD's instructions dated 9th August 2012. However, it is clarified that after availing three enhancements / upgradation/ promotion, an employee will be eligible to take the benefit of normal promotions available in his service career."

11. Careful perusal of aforesaid instructions clearly reveals that an employee is granted three enhancements/upgradations/promotion, he/she shall not be eligible for grant of further benefit, if any, under ACPS, but in the case at hand, petitioners after being appointed as JBT though were given two benefits of financial upgradation under ACPS, first benefit was granted under old ACPS after their having completed eight years service, whereas second benefit was granted in their favour after their having completed nine years service under new ACPS and third benefit in terms of new ACPS, for which petitioners have already opted, is being denied on the ground that vide order dated 26.02.2013 grade pay of the petitioners has been enhanced w.e.f. 1.10.2012. However, as observed hereinabove, financial upgradation, if any, on account of pay revision/revision of grade pay cannot be a ground to deny benefit of financial upgradations under ACPS, which become due after completion of four, nine and fourteen years as per new ACPS. Though, it has been vehemently argued on behalf of the respondents/State that grade pay of the petitioners was enhanced, as a result of which, their pay was enhanced, but as has been taken note above, financial enhancement on account of annual increment or general pay revision, based on pay commission, is not to be considered while considering the case of an employee for grant of benefit of ACPS. Since, in the case at hand pay of the petitioners came to be enhanced on account of grant of grade pay,

benefit of financial upgradation in terms of provision contained under ACPS cannot be denied.

12. True, it is that careful perusal of communication 26.02.2023, which has been relied heavily by the respondents, suggests that a government employee after rendering service of 4,9 and 14 years in a post or posts without any financial enhancement in the same cadre/post, if not promoted to higher level on account of non availability of a vacancy or non- existence of promotional avenue in the cadre, shall be granted the grade pay, which is next higher in the hierarchy of grade pay given in the schedule annexed to Revised Pay Rules, 2009 upto maximum grade pay of Rs.8900/- and on placement in the next higher grade pay in the hierarchy of grade pays after service of 4, 9 and 14 years, but such benefit of re-revision of pay shall be treated as financial enhancement for the purpose of granting benefit under 4-9-14 and 8-16-24-32 but there is nothing to dispute that vide notification dated 7th July 2014 (Annexure P-5), it specifically came to be clarified that once an employee has already got three enhancements/ financial up-gradations i.e. grant of progression under the new or old ACPS or promotion or any other financial enhancement, except the annual increment or the general pay revision based on the pay commission, in fourteen years or more during his/her entire service will not be entitled for placement in next higher grade pay in the ACP Scheme introduced vide instructions dated 9th August 2012. It is quite apparent from perusal of aforesaid letter that financial upgradation, if any, on account of pay revision cannot be a ground to deny benefit under ACPS. Since pay of the petitioners came to be enhanced on

account of enhancement in grade pay, benefit of financial upgradation in terms of ACPS cannot be denied.

13. Consequently, in view of the discussions made hereinabove, this Court finds merit in the instant petitions and accordingly same are allowed. Office order dated 3.08.2018 (Annexure A-8) is quashed and set aside and the respondents are directed to consider the case of the petitioners for grant of financial upgradation under ACPS (4-9-14) time scale/enhancement after their having completed 14 years of service at par with their counterparts from the due date. Since petitioners have been fighting for their rightful claim for years together, this Court hopes and trusts that needful shall be done in terms of the directions contained in the instant judgment expeditiously, preferably within a period of six weeks. Pending applications, if any, also stands disposed of.

(Vivek Singh Thakur)
Judge

(Sandeep Sharma)
Judge

November 01, 2023
(shankar)

Ann-P-5
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No. ES-73/2024 (Ele. Edu.) Pay Fixation/ACP-4/9/14 /JBT/NT/GHT-
Office of the Dy. Director Elementary Education,
Distt. Sirmour at Nahar (H.P.)

OFFICE ORDER

Dated: Nahar, the 12-06-2024

In compliance to the Director of Elementary Education, Shimla office letter No. EDN-H-141E-W/18)-CWPOA No.5536/2020-SMR dated 22.05.2024 vide which directions to compliance the order/judgement passed by the Hon'ble High Court of Himachal Pradesh on 01.11.2023 in CWPOA No. 5536 of 2020 alongwith No. 5545, 5553 and 5561 of 2020 to extend the benefits of 14 years ACPs in favour of petitioners and further in pursuance of the Principal Secretary Finance letter No. Fin(PRI/87)-59/2012 dated 9th August 2012, 7-7-2014, 9-9-2014 & 3-11-2016 and on the recommendation of the DPC meeting held on 11.06.2024, the pay of the following JBT's are hereby fixed on completion of 14 years of service in the same post as under:-

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.
Sr. No.	Name & Designation	CWPOA No.	Date of Initial Appointment	Whether New ACPs opted or Not	Whether benefit of ACPs is granted, if yes, date from which granted.	Date of completion of 4/9/14 years of Service	Pay as on 27.8.2009 or on the date of benefit admissible	EOU/ Dies Non period not counted for benefit	Pay proposed to be fixed on completion of 14 years after granting benefits of ACPs as per option	DNI	Whether WC/VCC /ACRS attached Or not
1.	Sajjay Kumar, JBT, GPS Karkis Barog	5536 of 2020	01.06.1999	Yes	01.06.2007 ACP 8 yrs 27.08.2009 ACP 9 yrs(National upto 08.08.2012)	01.06.2013 14 yrs	14900++4200 = 19100	No	15480++4200= 19680 (in the pay scale of 10300-34800++4200 G.P.)	01.06.2014	Yes
2.	Shashi Kant, TGT(A) GSSS, Werni	5545 of 2020	29.05.1999 as JBT Promoted as TGT on 29.12.2020	Yes	29.05.2007 ACP 8 yrs 27.08.2009 ACP 9 yrs(National upto 08.08.2012)	29.05.2013 14 yrs	14900++4200 = 19100	No	15480++4200= 19680 (in the pay scale of 10300-34800++4200 G.P.)	01.05.2014	Yes
3.	Soni Dutt JBT, GPS Kalahat	5553 of 2020	01.06.1999	Yes	01.06.2007 ACP 8 yrs 27.08.2009 ACP 9 yrs(National upto 08.08.2012)	01.06.2013 14 yrs	14900++4200 = 19100	No	15480++4200= 19680 (in the pay scale of 10300-34800++4200 G.P.)	01.06.2014	Yes
	Jai Prakash, JBT, GPS Kujji	5561 of 2020	31.05.1999	Yes	31.05.2007 ACP 8 yrs 27.08.2009 ACP 9 yrs(National upto 08.08.2012)	31.05.2013 14 yrs	14900++4200 = 19100	No	15480++4200= 19680 (in the pay scale of 10300-34800++4200 G.P.)	01.05.2014	Yes

Deputy Director Ele. Education
Distt. Sirmour : Nahar (H.P.)

54

Anni-P6

To
The Director,
Elementary Education,
Directorate of Elementary Education, Lal Pani,
Shimla-171001

Subject: Regarding grant of Assured Career Progression Scheme benefit after completion of 4 years of regular service in the cadre of Trained Graduate Teacher.

Respected Sir,

With due respect it is submitted that on behalf of my clients namely: -

1. Anjali Gaur, S/O Sh Ramesh Gaur, age 47 yrs, R/O Near kandi Rest House, Chiranwali, Nahan, P.O. Nahan, Tehsil Nahan, HP presently working as TGT (Medical) at GSSS Burma Papri, VPO Burma Papri, Teshil Nahan, Distt Sirmour, HP.
2. Balbir Singh S/O Sh Bir Singh, aged about 57 yrs, R/O Village Thalla, P.O Guler, Tehsil Haripur, Kangra, HP, presently working as TGT (Arts) at GMS Dhangar Tilla, P.O. Bilaspur, Haripur, Distt Kangra, HP.
3. Renu Gaur D/O Sh Prem Chand Gaur, aged 54 years, R/O House No. 142/3 Durga Colony, Raj Ban Road, Tehsil Nahan, District Sirmaur, H.P. presently working as TGT(Medical) at GSSS Misser wala, Tehsil Paonta Sahib, District Sirmaur, HP.
4. Meenakshi Handa D/o Sh Kishan Lal Handa, aged about 53 yrs, R/O 86/3, Badripur, P.O & Tehsil Paonta Sahib, Distt Sirmour (H.P), presently working as TGT (Medical) at GMSS School, Trilokpur, Distt Sirmour, HP
5. Surinder Kumar Sharma S/o Sh Tarsem Chand Sharma, aged about 56 yrs, R/O Village Raipur Sahore, PO Raipur, Tehsil & Distt Una(H.P), presently working as TGT (Non-Medical) at GSSS Pallion, Tehsil Nahan, Distt Sirmour, HP
6. Meena Kumari daughter of Sh. Prem Chand, aged about 47 years, resident of House No. 146, Ward No.7, Gompa

O/c

- Road Manali, Tehsil Manali, District Kullu, H.P, presently working as Lecturer Chemistry (SN) at GSSS Triloknath, Tehsil Udaipur, District Lahaul & Spiti, H.P.
7. Benu Parban D/O Sh Puran Chand Parban, aged 58 years, R/O Hotel Down Town Hoshiarpur Road Kangra, Tehsil & District Kangra, H.P. Retired as TGT(Medical) at GSSS Kachhiari, District Kangra, HP
 8. Suresh Kumar S/o Sh Nagpal, aged about 46 yrs, R/O Village Naulkha, PO Kanaid, Tehsil Sundernagar, Distt Mandi(H.P.), presently working as Lecturer Political Science at GSSS Chachiot, Tehsil Chachiot, Distt Mandi, HP.
 9. Ruchika Mahajan D/O Sh Kishori Lal, age about 47 yrs, R/O House No 123, Near Bus Stop, V.P.O Tissa, Tehsil Churah, Distt Chamba, HP, presently working as Lecturer S/N Geography at GMSSS Khush-Nagri Chamba, HP.
 10. Prem Singh S/O Sh Bahadur Singh, aged about 52 yrs, R/O VPO Bhuthi, Teshil and Distt Kullu, HP, presently working as TGT (Med) at GHS Bhumteer U/C GSSS Bhuthi, Teshil and Distt Kullu, HP.
 11. Suresh son of Sh. Sukh Chand, aged about 43 years, resident of Village Hinsia, Post Office Triloknath, Sub-Tehsil Udaipur, District Lahaul-Spiti, H.P. 175142, presently working as TGT (Non-Medical) at GSSS Triloknath, District Lahaul-Spiti, H.P.-175142
 12. Mamta Kumari D/O Sh Bir Singh, aged about 42 yrs, R/O Village Yang Kirting, P.O. Shansha, District Lahaul & Spiti, H.P.-175133, presently working as TGT (Medical) at GSSS Bagan, P.O Bhadai, Distt kullu, H.P-175101
 13. Amita Devi daughter of Sh. Phunchog Angrup, aged about 51 years, R/o VPO Shanshah, District Lahaul Spiti,H.P. 175133, presently working as Lecturer (SN) History at GSSS Kais, District Kullu, H.P.175138.
 14. Anil Kumar, son of Sh. Om Prakash, aged about 47 years, R/o Village Dhawansha, P.O. Shansha, Tehsil Keylong, District Lahaul and Spiti, Himachal Pradesh, presently

posted as Lect. History at GMSSS Jahalman, District Lahaul and Spiti, HP.

15. Anuradha wife of Sh. Kapil Raj Gupta, aged about 51 years R/o ward No.1, H.No. 56, Near Kullu valley School Akhara Bazar, Kullu, H.P. 175101. presently working as TGT (Non-Medical) at GSSS Kharahal (Kinja), Distt Kullu 175138
16. Tripta Devi W/O Sh Manoj Kumar, aged 53 years, R/O Village Ghanghal, P.O. Mahadev, Tehsil Sundernagar, District Mandi, H.P.-175018 presently working as TGT(Medical) at GSSS Mohal, Tehsil Bhunter, District Kullu, HP
17. Satish Kumar, son of Sh. Ramnath, aged about 52 years, resident of VPO Malang, District Lahaul Spiti, H.P. - 175132, presently working as TGT (Arts) at GSSS Malang, District Lahaul-Spiti, H.P. 175132.
18. Bharti Sharma W/O Sh Jitender Sharma, aged about 52 yrs, R/O C/o Raj Intratech, House No-274/6, Near Distt Court Dhalpur, Distt Kullu, H.P-175101, presently working as TGT-Medical at GHS Chansari, Distt Kullu, H.P-175138
19. Neeraj Sharma son of Sh. S.R. Sharma aged about 54 years, R/o VPO Shamti Near Sai Mandir, Tehsil and District Solan, H.P. presently working as TGT (Non-Medical) at GMS Nohra u/c GSSS Narag (Sirmour), Tehsil Pachhad, District Sirmour, H.P.
20. Disha D/o Sh Bansi Lal, aged about 50 yrs, R/O Disha Sadan, 187/8, Green Peace Colony, Dhalpur, Distt. Kullu, HP presently working as TGT (Med) at Shahed Sh BKGSSS(Boys) Dhalpur, Teh & Distt. Kullu HP.

It is humbly submitted that the State had sent requisition for recruitment of candidates to the post of Trained Graduate Teachers in the year 2008. As per requisition given by the Govt. of HP the entire sanctioned post of TGTs is apportioned in the ratio of 37.5% through Direct recruitment to be

conducted by HPSSSB, 37.5% through batch wise, 15% by promotion from JBTs category and rest 10% has to be filled up by promotion from C & V category.

That the education department as per requisition called my clients for interview to the post of TGT (Non-Medical/Medical/Arts), which was scheduled to be held in the month of August/September, 2008.

That consequent upon the call letter, my clients had appeared in the interview before the duly constituted selection committee on the scheduled date and time. My clients were selected and recommended for the appointment to the post of TGT (Non-Medical/Medical/Arts). It is submitted that my clients were appointed on contract basis on the fixed salary @ Rs 8220/- per month.

It is stated that client at Sr no 8 was appointed under ward of Ex-serviceman category on contract basis on the fixed honorarium @ Rs ~~8220/-~~ per month in the year 2010.

Consequent upon appointment my clients joined their services at the allotted school.

It is stated that in the year 1996 the State Government has introduced a scheme namely Assured Career Progression Scheme, wherein a government Employee was held entitled for additional increment on the completion of 8, 16, 24 and 32 years of regular service in the cadre and in addition to increment further held entitled for next higher pay scale on the completion of 8 and 32 years. Assured Career Progression Scheme (8/16/24/32) remained in operation till 27.08.2009.

It is stated that the State Government introduced new Assured Career progression Scheme (4/9/14), vide communication dated 09.08.2012. This scheme was made operative w.e.f 27.08.2009 on notional basis and on actual basis w.e.f 09.08.2012. As per the notification dated 09.08.2012 a government employee is entitled for the grant of benefit of Assured Career Progression Scheme on the completion of 4, 9 and 14 years in the cadre.

That the services of my client were regularized in the year 2015, at that time they were due for the benefit of ACP on the completion of 4 years of regular service in the years 2019 but the State had not granted the benefit of ACP on the completion of 4 years of regular service in the year 2019.

It is submitted that State had granted the higher grade pay on account of general pay revision of pay scale under pay Rules 2012. It is presumed that on account of general pay revision of pay scale, State had not granted the benefit of ACP on the completion of 4 years of regular service.

It is stated that as per the instruction issued on 07.07.2014, while granting the benefit of ACP Scheme on completion of 4, 9 and 14 years regular service, the benefit of annual increment and general revision of pay based on pay commission cannot be taken into consideration.

Division Bench of Hon'ble High Court of Himachal Pradesh in CWPOA 5536 of 2020 titled as "Sanjay Kumar Vs State of H.P. & Others" has been pleased to hold that the annual increment and general pay revision based on pay commission cannot be taken into consideration while granting the benefit of ACP Scheme after completion of 4, 9 & 14 year of regular service.

It is important to mention here that when the process for recruitment of Trained Graduate Teachers (Non-Medical/Medical/Arts) was initiated there exists "Himachal Pradesh Education Department Class-III (School and Inspection Cadre) Services Rules, 1973" and as per "Himachal Pradesh Education Department Class-III (School and Inspection Cadre) Services Rules, 1973" there is provision for appointment of TGT's on regular basis. Accordingly, my clients had approached the Hon'ble High Court of Himachal Pradesh by filing the Civil Writ Petitions for regularisation of their services with effect from the date of their initial engagement/appointment with all consequential benefits. Upon the directions of Hon'ble High Court, Education department has issued the orders in favor of my

clients and they were considered regular from the date of their initial appointment i.e. of year 2008 & 2009 respectively.

It is stated that since my clients' services are regularized in the year 2008 & 2009 respectively by virtue of Hon'ble Court orders thus, they are legally entitled for the benefit of ACP on the completion of 4 years of regular service in the year 2012 & 2013 respectively. While doing pay fixation, the benefit of ACP on the completion of 4 years of regular service in the year 2012 & 2013 respectively was to be granted to my clients a per scheme but the respondent department while doing pay fixation did not grant the benefit of ACP scheme of 4 years of regular service in the year 2012 & 2013 respectively, which is legally not tenable hence against the scheme.

As stated above that the State must be on the pretext of general pay revision of pay scale is not extending the benefit of ACP to my clients after completion of 4 years of regular service. It is stated that the pay revision ground is not available to the department to deny benefit under ACP scheme in view of judgment passed by Hon'ble High Court in CWPOA 5536 of 2020 titled as "Sanjay Kumar Vs State of H.P. & Others".

Thus, my clients are legally entitled for the benefit of financial upgradation on the completion of 4 years of regular service in in the year 2012 & 2013 respectively in terms of Assured Progression Scheme (4/9/14).

It is therefore, respectfully prayed that the benefit of Assured Progression Scheme on the completion of 4 years of regular service from due date may kindly be granted to my clients at the earliest with all consequential benefits.

Place: Shimla

Dated:30.09.2024

Applicants

Through Counsel

Anu Minhas, Advocate

Chamber No. 130, HP High Court

Shimla, HP-171001

Mobile No. - 7018942502

advocateanuminhas@gmail.com

**IN THE HON'BLE HIGH COURT OF HIMACHAL
PRADESH AT SHIMLA**

CMP. No.....of 2024

In

C.W.P. No.....of 2024

In Re:

Anjali Gaur & Ors

...**Applicants/Petitioners**

VERSUS

State of Himachal Pradesh and others

.....**Non-Applicants/Respondents**

**Application under Rule 13 Part-C of the
Writ Rules of High Court of Himachal
Pradesh for interim order.**

May it please Your Lordship:

1. That the applicants/petitioners have filed Civil Writ Petition against impugned action of the respondents. The grounds of the petition may kindly be read as part of this application.
2. That in the petition the applicants/petitioners have raised arguable points which require determination from this Hon'ble Court. The grounds of the petition will show that the applicants have very good prima facie case in their favour and the petition filed by them is likely to be allowed in all probabilities.

Balance of convenience also lies in the favour of applicants.

3. That it is submitted that the applicants had made detailed representation to respondent no-2 through their counsel for considering their cases for the benefit of ACP on the completion of 4 years of regular service from the date of their initial appointment. But till date the applicants have not received any reply from the respondents. Due to the conduct of the respondents, the applicants will suffer irreparable loss. Hence this application.

It is, therefore, respectfully prayed that keeping in view the submissions made herein above, the applicant humbly prays that during the pendency of Civil Writ Petition before this Hon'ble Court, the respondents are directed to decide the representation of the applicants (Annexure P-6) in the interest of justice.

Any other suitable relief as may be deemed just and fit in the facts and circumstances of the case may kindly be granted in favour of the petitioner.

Applicants

Place: Shimla

Through Counsel

Dated

(Virbahadur Verma, Anu Minhas, Mukul Sharma,
Advocates

**IN THE HON'BLE HIGH COURT OF HIMACHAL
PRADESH AT SHIMLA**

CMP. No.....of 2024

In

C.W.P. No.....of 2024

In Re:

Anjali Gaur & Ors

...**Applicants/Petitioners**

VERSUS

State of Himachal Pradesh and others

.....**Non-Applicants/Respondents**

AFFIDAVIT IN SUPPORT OF APPLICATION

I, Anjali Gaur, S/O Sh Ramesh Gaur, age 47 yrs, R/O Near kandi Rest House, Chiranwali, Nahan, P.O. Nahan, Tehsil Nahan, HP presently working as TGT (Medical) at GSSS Burma Papri, VPO Burma Papri, Teshil Nahan, Distt Sirmour, HP., do hereby solemnly affirm and declare oath as under;

1. That I have been instructed by petitioner No. 2 to 20 to file and sworn affidavit on their behalf.
2. That the accompanying application has been prepared at my instance and under my instructions.
3. That the contents of paras No: 1 to 3 are correct to the best of my knowledge and believed to be correct as per legal advice received.
4. That I further declare that the contents of above affidavit are true and correct to the best of my

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knowledge. No part of it is false and nothing material has been concealed therefrom.

Signed and verified at Shimla on this.....day of
2024