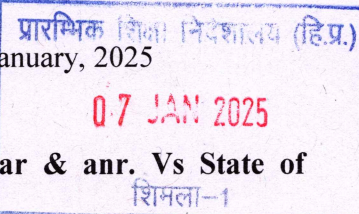


No. EDN-H(2)B(2)6842/2024-CC
Directorate of Elementary Education,
Himachal Pradesh, Lalpani, Shimla-171001

Dated: Shimla-171001, the January, 2025



In the matter of CWP No. 6842 of 2024 titled as Raj Kumar & anr. Vs State of Himachal Pradesh and ors.

ORDER

Whereas, CWP No. 6842 of 2024 titled as Raj Kumar & anr. Vs State of Himachal Pradesh and ors. was filed by the petitioner in the Hon'ble high Court of H.P. for the following relief:-

"A writ of amandamus may kindly be issued and respondents department be directed to count the contractual services rendered by the petitioners before regularization be counted for the purpose of pension and increment with all consequential benefits under Old pension scheme in view of the judgment passed in CWP No. 2411 of 2019 titled as Jagdish Chand Versus State of H.P. and CWPOA No. 5507 of 2020 titled as Omawati Versus State of H.P. and others and the arrear accrued thereon be paid alongwith interest from the date of accrual til the date of realization in the interest of justice and fair play."

Whereas, after thorough examination of the case of the petitioners it is found that the petitioners were appointed as TGT(Arts) as a temporary measure on "Contract Basis" in the year of 1998 and their services were regularized by the Department vide office order No. EDN-H(2)B(2)-34/2005-Contract dated 20.12.2008 with immediate effect, however, later on their services were regularized w.e.f. 01.01.2007 vide office order No. EDN-H(2)B(2)34/2022- Contract-Regl. dated 17.11.2022.

And whereas as per latest instructions of the Govt. received on 24.08.2024 in CWPOA No. 5507 of 2020 titled as Oma Wati and another Vs State of H.P. stating that SLP filed in the case of Jagdish etc was tagged with the Sheela Devi case and disposed of by the Hon'ble Apex Court vide judgment dated 07.08.2023 rendered in the Sheela Devi case. The Hon'ble Apex Court in Sheela Devi case has not passed any orders on the issue of grant of increments for the contractual service period. The Hon'ble Apex Court vide judgment dated 07.08.2023 has allowed to count contractual service for pensionary benefits in terms of saving clause of Rule 2 and Rule 17 of the CCS(Pension) rules, 1972. It is pertinent to mention here that the provisions for grant of increments are enshrined in FR 26 of FRSR (Fundamental Rules & Supplementary Rules). Under the said provisions the increments are not permissible for the contractual service period.

Further, the District Attorney of this Directorate has opined in the similar nature cases is as under:-

At the outset, it is pertinent to mention here that in CWPOA No. 5507 of 2020 in OA No. 6668/2018 titled as Omavati and others V/s State of H.P., the opinion of finance Department (Pension) reference whereof has been made in letter No. EDUC-E05/34/2023-EDU-C Govt. of H.P., Department of Elementary Education dated 23.08.2024 has been mentioned. The FD (Pension) Department has observed that SLP filed in the case of Jagdish etc was tagged with Sheela Devi Case and disposed of by the Hon'ble Apex Court vide judgment dated 07.08.2023. The Hon'ble Apex court in Sheela Devi case

has not passed any orders on the issue of grant of increments for the contractual service period. The Hon'ble Apex Court vide judgment dated 07.08.2023 has allowed to count the contractual service for pensionary benefits in terms serving clause of rule 2 and rule 17 of the CCS (Pension) rules 1972. It is pertinent to mention that Department of Elementary Education filed SLP No. 8012-8013/2021 against the judgment of Hon'ble High in which apart of counting the contractual service for pensionary benefits, benefit of annual increment was also specifically granted.

SLP No. 8012-8013 of 2021 were tagged with SLP (C) No. 10399/2020 i.e. State of H.P. & others V/s Sheela Devi and Hon'ble Apex Court vide order dated 07.08.2023 disposed of the SLP (C) No. 10399/2020. However in this order SLP (C) No. 8012-8013/2021 were permit to be withdrawn at the request of Ld. Counsel of the petitions. Thereafter State of H.P. filed miscellaneous application Diary No. 40148 of 2023 before the Hon'ble Apex Court and same was allowed/ disposed of by the Hon'ble Court and consequently SLP (C)No. 8012-8013/2021 which were dismissed as withdrawn were restored and same were disposed of in terms of Civil Appeal No. 5148/2023, meaning thereby that the relief of counting the contract service for pensionary benefits was only granted and no relief qua granting benefits of annual increment was granted.

In CWP No. 6737 of 2021 titled as Bant Ram and others V/s State of H.P. and others decided on 13.05.2024, the Hon'ble High Court of H.P. in para No. 5 of the judgment/order has observed as order:-

“As far as the prayer of some of the petitioners for grant of annual increment for service rendered on contract basis is concerned, this court is rejecting this prayer in view of the judgment passed by the Hon'ble Supreme Court in state of H.P. & another V/s Sheela Devi SLP (C)10399 of 2020 wherein in para 9, Hon'ble Superme Court has been pleased to categorically hold that “it is only for the purpose of pension that the past service as a contractual employee is to be taken in to account.”

Further in CWP No. 2130 of 2021 titled as Narayan Dutt Sharma and others V/s State of H.P. & others decided on 12.09.2024, the Hon'ble High Court of H.P. has categorically held in para No. 6 that Jagdish Chand's case had been disposed of by the Apex Court in terms of Sheela Devi, therefore relief can only be extended the petitioners in terms of Sheela Devi's case.

At the back drop of above discussion, it is amply clear and candid that no other benefit except counting the contract service for the purpose of pensionary benefit was granted in Sheela Devi Case.

In view of the above, since SLP(C) No. 8012-8013 of 2021 were tagged with SLP(C) No. 10399/2020 i.e. State of H.P. & others Vs Sheela Devi and the Hon'ble Apex Court vide judgment dated 07.08.2023 and 31.10.2023 disposed of the SLP(C) No. 10399/2020. However, in this order SLP(C) No. 8012-8013/2021 were permitted to be withdrawn at the request of the Ld. Counsel of the petitioners. Thereafter, State of H.P. filed Miscellaneous application Diary No. 40148 of 2023 before the Hon'ble Apex Court and the same was allowed/disposed of by the Hon'ble Court and consequently SLP(C) No. 8012-8013/2021 which were dismissed as withdrawn were restored and same were disposed of in terms of Civil Appeal No. 5148/2023, meaning thereby that only the relief of counting the

contract service for pensionary benefit was granted and further no relief qua granting benefit of annual increment was granted by the Hon'ble Apex Court. Accordingly, in Sheela Devi's case, the Govt. of H.P. Finance(Pension)Department vide OM No. Fin(Pen)E(I)-I/2020, dated 10th June 2024 has issued directions to count the contractual service followed by regular appointment on same post by way of "Regularization Policy" of the Government for pensionary benefits under the CCS(Pension)Rules, 1972.

Now, therefore, the petitioners of the present petition who were initially appointed on contractual basis against the post of TGTs are hereby granted the benefits of counting of their services on contract basis followed by regular appointments for the purpose of pensionary benefits under CCS (Pension) Rules, 1972 and entry in this regard may also be made in the service book of the petitioners. The details of the petitioners are as given:-

Sr. No.	Name	Address	Subject	Date of first appointment on Contract Basis	Date of Regularization
1.	Raj Kumar	S/o Sh. Roop Chand, R/o H. No. 504, Ward no 11 Subhash Nagar (Kala Amb road) Opposite Girls PG Hostel District Hamirpur H.P.	TGT (Arts)	28.08.1998	01.01.2007
2.	Mohinder Singh	S/o Sh. Hari Ram resident of Village and Post Office Kheri, Tehsil Suhanpur District Hamirpur H.P.	TGT (Arts)	29.07.1998	01.01.2007

SLD
Director Elementary Education
Himachal Pradesh, Shimla-I

Endst. No. Even Dated: Shimla-01, the January, 2025

Copy forwarded for information and necessary action to:-

1. The Secretary (Education) to Govt. of Himachal Pradesh w.r.t. CWP ibid.
2. The Ld. Distt. Attorney (Education), Directorate of Elementary Education, HP w.r.t. above CWP.
3. All the concerned Deputy Directors of Higher/Elementary Education concerned in H.P.
4. The concerned Principal with the direction that before extending the benefits it shall be ensured that the services of the petitioner on contractual basis against the post of TGT (Arts/NM/med) is followed by regular appointment to the post of TGT (Arts/NM/Med).In case, the petitioner is not found similar the case may be referred back to this Directorate immediately.
5. The In-charge IT Cell to upload the same on departmental website.
6. The DA dealing with TGTs Pay fixation/ ACPs for necessary information.
7. Individual concerned.

प्रारम्भिक शिक्षा निदेशालय (हि.प्र.)

07 JAN 2025

शिमला-1

Director Elementary Education
Himachal Pradesh, Shimla-I