

No. EDN-H(2)B(2)6977/2024-CC
Directorate of Elementary Education,
Himachal Pradesh, Lalpani, Shimla-171001

प्रारम्भिक शिक्षा निदेशालय (हि.प्र.)

30 SEP 2024

शिमला-1

Dated: Shimla-171001, the September, 2024

In the matter of CWP No. 6977/2024 titled as Som Dutt & Others Vs State of H.P. & ors decided on 19.07.2024.

ORDER

Whereas, CWP No. 6977/2024 titled as Som Dutt & others Vs State of H.P. & ors. was filed by the petitioners in the Hon'ble high Court of H.P. and after hearing the same has been disposed of by the Hon'ble High Court on 19.07.2024 as under:-

“Learned counsel appearing on behalf of the petitioner submits that with respect to the grievance being raised in the present petition, an appropriate representation dated 01.07.2023 i.e. Annexure P-6 stands filed with the concerned authority.

Leaned Additional Advocatge General submits that the representation so made shall be decided within a period of six weeks from today.

In view thereof, the present petition is disposed of, so also, pending miscellaneous application, if any.”

Whereas, after thorough examination of the case of the petitioner it is found that the petitioners were appointed as TGT as a temporary measure on “Contract Basis” in the year of 1995 to 1998 and the services of the petitioners number 1 & 3 were regularized by the Department vide office order No. EDN-H(2)B(2)-34/2005-Contract dated 21.06.2006 with effect from 01.01.2005 & 01.01.2006 respectively and petitioners number 2 & 4 were regularized vide office order No. EDN-H(2)B(2)-34/2005-Contract dated 20.12.2008 with immediate effect.

And whereas,, now the petitioners in the present petition have sought the relief to count their contractual services rendered before regularization for the purpose of increment and pension alongwith all consequential benefits under Old pension scheme in view of the judgment passed in CWPOA No. 5507 of 2020 titled as Omawati Versus State of H.P. and others.

And whereas, the Hon'ble High Court of H.P. in CWPOA No. 5507 of 2020 titled as Omawati Versus State of H.P. and others has passed the following judgment on dated 21.08.2023:-

The claims of the petitioners are squarely covered by the judgments in Sheela Devi, Jagdish Chand as well as Youdhishther Kumar Sharma, referred supra. Therefore, the aforesaid judgments shall mutatis mutandis be applicable to the present cases also, subject to clarification that petitioner No.1 shall be entitled for counting of contract service only for the purpose of pensionary benefits, whereas, benefits to the husband of petitioner No.2 shall be extended by counting his contract service for the purpose of annual increments as well as pensionary benefits

Present petition was filed on 30.10.2018. The actual consequential financial benefits shall, however be restricted to three years prior to

filing of the writ petition. Due and admissible benefits be released to the petitioners within a period of three months from today. 11. Needless to say that the benefits beyond three years prior to filing of the writ petition shall be extended to them on notional basis.”

And whereas, after thorough examination of the case of the petitioner it is found that the case of the petitioner is similar to Omawati's case and in a similar matter of CWP No. 2411 of 2019 titled as Jagdish Chand Versus State of H.P., the Government vide letter No. EDN-C-E(1)07/2015-L dated 27.05.2024 has conveyed the approval to extend the benefit of counting of contractual services for the purpose of pension on case to case basis on the analogy of jagdish Chand's case.

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 the 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 is 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 matter 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 Supreme 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 is hereby granted the benefit of counting of their services on contract basis followed by regular appointment 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.

Sr. No	Name of the petitioners	D.O.B.	D.O.A. on contract basis as TGT	Date of regularization
1	Som Dutt S/o Sh. Nand Lal Sharma R/o Village & Post Office Kot, Tehsil Ghumarwin, District Bilaspur, HP aged about 51 years presently working as lecturer in Commerce and posted at GSSS Mehal Tehsil Bhoranj District Hamirpur HP.	14.08.1973	27.11.1995	01.01.2007
2	Rajinder Paul S/o Sh. Garja Ram R/o Village and Post office Rohin, Tehsil Ghumarwin, District Bilaspur, HP aged about 55 years presently posted at GSSS Balh Churani Tehsil Ghumarwin District Bilaspur HP	16.06.1969	29.09.1997	20.12.2008
3	Balbir Singh S/o Sh. Banka Lal R/o Village Dehra, Post Office Hatwar Teshil Ghurmarwin, District Bilaspur, HP aged about 54 years old presently working as TGT (Arts) at GMS Nagrota under complex GSSS Baldwara District Mandi HP	01.06.1970	04.10.1997	01.01.2006
4	Rakesh Kumar S/o Sh. Harbans Chand, R/o Village Kauswar, Post Office Baliyah, Teshil Barsar, District Hamirpur HP aged about 54 years old presently working as lecturer in Pol Science at GSSS Saroh Tehsil Bangana District Una HP	27.02.1970	01.10.1997	20.12.2008

Director Elementary Education
Himachal Pradesh, Shimla-I

Endst. No. Even Dated: Shimla-01, the September, 2024

Copy forwarded for information and necessary action to:-

1. The Secretary (Education) to Govt. of Himachal Pradesh w.r.t. letter No. EDN-C-E(1)07/2015-L dated 27.05.2024.
2. The Ld. Distt. Attorney (Education), Directorate of Elementary Education, HP w.r.t. above CWP.
3. All the 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).**
5. **Individual concerned.**
6. The In-charge IT Cell to upload the same on departmental website.
7. The DA dealing with TGTs Pay fixation/ ACPs for necessary information.
8. Guard file.

Director Elementary Education
Himachal Pradesh, Shimla-I