

No. EDN-H(2)B(2)6779/2020-CC
Directorate of Elementary Education,
Himachal Pradesh, Lalpani, Shimla-171001

Dated: Shimla-171001, the October, 2024

In the matter of CWPOA No. 6779/2020 titled as Sunil Dutt Agnihotri Vs State of H.P. & ors decided on 18.11.2023.

ORDER

Whereas, CWPOA No. 6779/2020 titled as Sunil Dutt Agnihotri 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 18.11.2023 as under:-

The claim of petitioners in these cases is covered by the decision render today in CWPOA No. 3477 of 2020.

Therefore, for the reasons alike, the petitioners in these cases are also entitled to count their period of contractual service for the purpose of pension and also for annual increments. They shall however be entitled to benefits including annual increments other than pension only for a period of three years prior to filing of OAs by them before Himachal Pradesh Administrative Tribunal seeking the said benefis.They shall also be entitled to due and admissible gratuity.

In view of the above, the Writ petitions are disposed of, alongwith pending miscellaneous application(s), if any."

Whereas, the Hon'ble High Court of H.P. in CWPOA No. 3477 of 2020 titled as Smt. Prabha Kanwar through her legal heirs has passed the following judgment on dated 08.11.2023:-

"8. Since the original writ petitioner has made the claim for the first time post her retirement on 31.03.2015 through a resrepresentation dt. 13.06.2016 and then filed OA No. 4739 of 2017 before the Himachal Pradesh Administrative Tribunal, which was disposed of on 01.11.2017 directing consideration of her case, and thereafter her representation was rejected by the State on 04.04.2019, the financial benefit of such annual increments shall be confined to period of three years prior to the filing of OA No. 4739 of 2017; and any other service benefis, other than due and admissible gratuity, to which the original writ petitioner is entitled to, shall also be confined for the said period only.

9. In view of the above, the Writ petition is disposed of alongwith pending miscellaneous application(s), if any."

And whereas, now the petitioner in the present petition vide representation dated 11.11.2023 & 16.08.2024 has sought the relief to count his contractual services rendered before regularization for the purpose of increment and pension alongwith all consequential benefits in light of Jagdish Chand & Sheela Devi Vs HP decided in the supreme court of India in Aug.2023.

Whereas, after thorough examination of the case of the petitioner, it is found that the petitioner was appointed as TGT as a temporary measure on "Contract Basis" in the year of 1998 and the services of the petitioner were regularized by the Department vide office order No. EDN-H(2)B(2)-34/2005-Contract dated 01.01.2007 .

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 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 petitioner of the present petition who was initially appointed on contractual basis against the post of TGTs is hereby granted the benefit of counting of his 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 petitioner.


Director Elementary Education
Himachal Pradesh, Shimla-I

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


Director Elementary Education
Himachal Pradesh, Shimla-I

