

**PERSONAL ATTENTION**

No.Fin(Pen)A(3)-10/2016  
Government of Himachal Pradesh  
Finance (Pension) Department.

From

Additional Chief Secretary (Finance) to the  
Government of Himachal Pradesh.

To

All the Administrative Secretaries to the  
Government of Himachal Pradesh.

Dated: Shimla-171002 the

14<sup>th</sup> February, 2019.

Subject:-

Regarding allowing benefit in compliance to Supreme Court Decision in Civil Appeal No. 6309/2017 titled as Sunder Singh versus State of HP and others to Class-IV employees situated similarly to Sh. Sunder Singh w.e.f. 01.01.2018.

Sir/Madam,

1. I am, directed to invite reference to the subject noted above and to say that the Supreme Court of India has delivered a Judgment in Civil Appeal No. 6309/2017 titled as Sunder Singh vs State of HP and others on 08.03.2018 (Copy enclosed). Para-2 and the operative part of the Judgement (Para-6) is re-produced as under:-

**“2. The appellants represent class of Class-IV employees who were recruited initially as daily wagers such as Peon/ Chowkidar/ Sweeper/ Farrash/ Malis/ Rasoia etc. Their services, thereafter, were regularized pursuant to the decision of this Court in Mool Raj Upadhyaya Vs. State of H.P. and Ors. 1994 Supp(2) SCC 316 under a Scheme. Regularization was after 10 years of service.**

**6. Accordingly, we direct that w.e.f 01.01.2018, the appellants or other similarly placed Class-IV employees will be entitled to pension if they have been duly regularized and have been completed total eligible service for more than 10 years. Daily wage service of 5 years will be treated equal to one year of regular service for pension. If on that basis, their services are more than 8 years but less than 10 years, their service will be reckoned as ten years.”**

2. The CCS (Pension) Rules, 1972 are applicable to regular government employees appointed on or before, 14.05.2003. In terms of Rule 2 of CCS (Pension) Rules, 1972, these rules apply to Government Servants who are appointed substantively to the Civil Services and posts in connection with the affairs of the State and who are borne on pensionable establishments. As per Rule 2(b) and 2(c) of the rules ibid, the persons who are in casual and daily rated employment and who are paid from contingencies are excluded from the purview of CCS (Pension) Rules,

confd

1972. Therefore, the daily wage service rendered by Government employees prior to their regularization is not countable for pensionary benefits.

3. The case of Shri Sunder Singh is that he was engaged as a Beldar on daily wage basis in the IPH Department on 21.08.1989 and his services were regularized on completion of his 10 years of daily wage service with minimum of 240 days in each calendar year w.e.f. 01.01.2002 on the analogy of Mool Raj Upadhyay's case and he retired on attaining the age of his superannuation on 31.01.2011. On his retirement, he had rendered 9 years and 1 month regular service but pension was not granted to him as he had not completed the requisite qualifying service of 10 years as required under CCS (Pension) Rules, 1972.

4. Despite provisions of the Rules, the Apex Court has passed orders in aforesaid Judgment, operative part of which is reproduced at Para-1 above. In view of the Apex Court's judgment dated 08.03.2018, the same would have an overriding effect on the provisions of the CCS (Pension) Rules, 1972 in respect of only the appellant Sunder Singh and similarly placed class-IV employees. The Court in its order has held that even though strictly construing the Rules, the appellants are not entitled to pension, however, reading the rules consistent with Articles 14, 38 and 39 of the Constitution of India and applying the doctrine of proportionate equality, they may be given weightage of service rendered as daily wagers towards regular service for the purpose of pension. Some CWPs/OAs have thereafter been preferred by various persons in the Tribunal/ High Court for allowing benefit pursuant to the Supreme Court Judgment, referred to above.

5. This matter was examined in the Finance Department. After due examination and with the approval of the Competent Authority, it has been decided to extend the benefit of the Supreme Court Judgment to class IV persons who are similarly situated, in order to avoid unnecessary litigation and in view of the reason cited by the Court in the Judgment.

6. Therefore, the Administrative Department concerned, while implementing the Judgment, may invariably keep the following points in view at the time of consideration of the case(s) for allowing the benefit for pension in respect of petitioner or Class-IV employees similarly situated to Sh. Sunder Singh before forwarding it to the Accountant General, HP:-

1. Such Class-IV Employees should have been regularized prior to 15.05.2003 and should be governed by the Central Civil Services (Pension) Rules, 1972.
2. In view of Para-2 & 6 of the Judgment, only similarly placed class-IV employees who have been duly regularized and have completed 10 years daily wage service and whose cases are similar to appellant Shri Sunder Singh will be entitled to

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pension w.e.f. 01.01.2018. The weightage of service rendered as daily wage service of five years will be treated as one year of regular service for the purpose of pension.

3. While sending the cases to the Accountant General, HP for authorization of pension, a certificate to the effect that the case is similar to the case of Sh. Sunder Singh and is covered by the Judgment of the Hon'ble Supreme Court of India may invariably be recorded.
4. The financial benefits shall accrue w.e.f. 01.01.2018 only.

7. These instructions may be brought to the notice of all concerned and are also available on <http://himachal.nic.in/finance>.

Yours faithfully,



(Akshay Sood, IAS)  
Secretary (Finance) to the  
Government of Himachal Pradesh.

Endst. No. Fin(Pen)A(3)-10/2016 dated: Shimla 14<sup>th</sup> February, 2019

Copy forwarded to:

1. The Divisional Commissioner Shimla, Mandi and Kangra at Dharamshala Himachal Pradesh for information and similar necessary action.
2. All the Heads of Departments in Himachal Pradesh for information and similar necessary action.
3. The Accountant General (A&E) Himachal Pradesh Shimla-I/71 003.
4. The Incharge, NIC, H.P. Sectt. Shimla-2 with the request to upload this letter alongwith its enclosures on the State Finance Department Website.



(Akshay Sood, IAS)  
Secretary (Finance) to the  
Government of Himachal Pradesh.

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6309 OF 2017

SUNDER SINGH

...APPELLANT(S)

VERSUS

THE STATE OF HIMACHAL PRADESH & ORS.

...RESPONDENT(S)

WITH

SLP(C) NO. 1866 OF 2013

SLP(C) NO. 5269 OF 2013

SLP(C) NO. 13674-13675 OF 2013

O R D E R

1. Heard learned counsel for the parties.
2. The appellants represent class of Class-IV employees who were recruited initially as daily wagers such as Peon/Chowkidar/Sweeper/Farrash/Malis/Rasoia etc. Their services, thereafter, were regularized pursuant to the decision of this Court in Mool Raj Upadhyaya Vs. State of H.P. and Ors. 1994 Supp(2) SCC 316 under a Scheme. Regularization was after 10 years of service.

3. It is undisputed that the post-regularization

an employee who had served for 10 years is entitled pension for which work charge service is counted. Earlier, in terms of O.M. dated 14.05.1998, 50% of daily-wage service was also counted for pension after regularization but the rules have undergone change.

4. Since the appellants have not rendered the requisite 10 years of service they have been denied pension.

5. Even though strictly construing the Rules, the appellants may not be entitled to pension. However, reading the rules consistent with Articles 14, 38 and 39 of the Constitution of India and applying the doctrine of proportionate equality, we are of the view that they are entitled to weightage of service rendered as daily wagers towards regular service for the purpose of pension.

6. Accordingly, we direct that w.e.f 01.01.2018, the appellants or other similarly placed Class-IV employees will be entitled to pension if they have been duly regularized and have been completed total eligible service for more than 10 years. Daily wage service of 5 years will be treated equal to one year of regular service for pension. If on that basis, their services are more than 8 years but less than 10 years, their service will be reckoned as ten years.

7. The appeal as well as special leave petitions are disposed of in above terms.

.....J  
[ADARSH KUMAR GOEL]

.....J.  
[ROHINTON FALI NARIMAN]

NEW DELHI  
8<sup>th</sup> MARCH, 2018

.....J.  
[UDAY UMESH LALIT]

ITEM NO.101

COURT NO.11

SECTION XIV

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 6309/2017

SUNDER SINGH

Appellant(s)

VERSUS

THE STATE OF HIMACHAL PRADESH IPH PRINCIPAL SECRETARY &amp; ORS.

Respondent(s)

WITH

SLP(C) No. 13674-13675/2013 (XIV)SLP(C) No. 1866/2013 (XIV)SLP(C) No. 5269/2013 (XIV)

Date : 08-03-2018 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ADARSH KUMAR GOEL

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Appellant(s)

Mr. Amit Anand Tiwari, Adv.  
Mr. Vinod Sharma, Adv.  
Mr. Arun Singh, Adv.  
Mr. Bhaskar Y. Kulkarni, AOR

Mr. Ashwini Kumar Gupta, Adv.  
Mr. Vikrant Yadav, Adv.  
Mr. Piyush Kant Roay, Adv.  
Mr. M. C. Dhingra, AOR

Mr. Balraj Dewan, AOR

Ms. Pragati Neekhra, AOR

For Respondent(s)

Mr. P.S. Patwalia, Sr. Adv.  
Mr. Abhinav Mukerji, AAG  
Mrs. Bihu Sharma, Adv.  
Ms. Purnima Krishna, Adv.  
Mr. Dhruv Sheoran, Adv.  
Mr. Siddharth Garg, Adv.

Mr. Y.P. Adhyaru, Sr. adv.  
Mr. K. Parameshwar, Adv.  
Mr. Mukul Singh, Adv.

Mr. Mukesh Kumar Maroria, AOR

Mr. Varinder Kumar Sharma, AOR

Mr. B. V. Balaram Das, AOR

Ms. Pragati Neekhara, AOR

Mr. M. C. Dhingra, AOR

UPON hearing the counsel the Court made the following  
O R D E R

The civil appeal as well as special leave petitions are disposed of.

Pending application(s), if any, shall also stand disposed of.

(MADHU BALA)  
COURT MASTER (SH)  
(Signed order is placed on the file)

(PARVEEN KUMARI PASRICHA)  
BRANCH OFFICER