

**(2022) 06 SHI CK 0037**  
**In the High Court Of Himachal Pradesh**  
**Case No : Civil Writ Petition No. 4374 Of 2021**

Bhim Sen

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

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**Date of Decision :** 16-06-2022

**Acts Referred:**

Constitution Of India, 1950 — Article 14, 16  
Punjab Civil Services Rules Volume I — Rule 3.17(ii)

**Citation :** (2022) 06 SHI CK 0037

**Hon'ble Judges :** Jyotsna Rewal Dua, J

**Bench :** Single Bench

**Advocate :** D.K. Khanna, Narender Thakur

**Final Decision :** Allowed

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## Judgement

Jyotsna Rewal Dua, J

1. The petitioner superannuated on 20.8.2018 after rendering 26 years of service in different capacities. Respondents have denied him pension, compelling him to file this writ petition.

2. Facts :-

2(i) Petitioner was appointed as a Forest Worker at Pangi Forest Division Killar on 1.1.1992. An original application No. 342/2001 filed by him before the erstwhile H.P. Administrative Tribunal seeking grant of work charge status w.e.f. 1.1.2002 on completion of ten years of service with 240 days in each calendar year was allowed on 19.6.2007. The respondents were directed to confer work charge status upon the petitioner w.e.f. 1.1.2002 with all consequential benefits.

2(ii) The judgment dated 19.6.2007 passed by learned Tribunal was implemented and work charge status was assigned to the petitioner w.e.f. 1.1.2002 vide order dated 20.7.2011.

2(iii) Vide order dated 15.3.2008 service of the petitioner was regularized w.e.f.

12.10.2007.

2(iv) Petitioner superannuated on 20.8.2018. He has not been paid pension by the respondents.

3. During hearing of the case, learned counsel for the petitioner confined his submission only for the grant of pension to the petitioner.

4. Observations :-

I have heard learned counsel for the parties and with their assistance, considered the material on record as well as the applicable legal position. On consideration of the entire material on record and the legal position, I am of the considered view that this petition deserves to be allowed for the following reasons:

4(i) Petitioner has rendered more than 26 years of service. He rendered 10 years of daily waged service w.e.f. 1.1.1992 to 1.1.2002, 5 years 9 months of work charge service w.e.f. 1.1.2002 to 12.10.2007 and 11 years of regular service w.e.f. 12.10.2007 to 20.8.2018. Even after rendering more than 26 years of service, the petitioner is still waiting for his pension.

4(ii) The stand of the respondent-State for denying pension to the petitioner is based on three grounds. Firstly that conferment of work charge status is not included under CCS (Pension) Rules and is not on a post. Therefore, such service cannot be counted as qualifying service for pension. Secondly, that the petitioner was regularized on 15.3.2008. His date of regularization falls beyond the cut off date of 15.5.2003 indicated in new Pension Scheme 2006. The petitioner, therefore, is to be construed as an appointee subsequent to the cut off date of 15.5.2003. The CCS (Pension) Rules, 1972 will not be applicable to the case of petitioner in view of H.P. Civil Services Contributory Pension Rules, 2006 which came into force w.e.f. 15.3.2003. Third ground urged is that the respondent-department does not have any work charge establishment. Therefore, the petitioner is not entitled for the grant of pension by counting the work charge service rendered by him prior to his regularization.

4(iii) The issue whether work charge service is to be counted towards qualifying service for the purpose of pension and other retiral benefits is no more res integra. Hon'ble Division Bench of this Court in CWP No. 2384 of 2018, titled State of Himachal Pradesh & Others versus Sh. Matwar Singh & Another, decided on 18.12.2018 has held that the work charge status followed by regular appointment has to be counted as a component towards qualifying service for the purpose of pension and other retiral benefits. Executive instructions to the contrary, are liable to be ignored. Matwar Singh's was a case where the writ petitioner, a daily waged worker in the Forest Department was retrospectively conferred work charge status w.e.f. 1.5.2002. His services were regularized w.e.f. 6.9.2007. Pension was declined to him on the ground that he did not possess the requisite qualifying service. In the backdrop of these facts, the Hon'ble Bench observed as under:

"3. It is by now well settled that the work charge status followed by regular appointment has to be counted as a component of qualifying service for the purpose of pension and other retiral benefits. Executive instructions, if any, issued by the Finance Department to the contrary, are liable to be ignored/struck down, in the light of view taken by this Court in CWP No.6167 of 2017, titled Sukru Ram vs. State of H.P. & others, decided on 6th March, 2013. A Full Bench of Punjab and Haryana High Court in Keshar Chand vs. State of Punjab through the Secretary P.W.D. B & R Chandigarh and others, (1988) 94(2) PLR 223, also dealt with an identical issue where Rule 3.17(ii) of the Punjab Civil Services Rules excluded the work charge service for the purpose of qualifying service. Setting aside the said Rule being violative of Articles 14 and 16 of the Constitution of India, it was held that the work charge service followed by regular appointment will count towards qualifying service for the purpose of pension and other retiral benefits. The aforesaid view was also confirmed by the Hon'ble Apex Court."

The judgment in Matwar Singh's case supra has admittedly been implemented by the respondents. The petitioner in the instant case was also an employee of the Forest department. He is similarly situated as the petitioner in Matwar Singh's case. The petitioner, therefore, cannot be discriminated vis-a-vis Matwar Singh's case regarding grant of pension.

4(iv) In CWP No.6167 of 2017, titled Sukru Ram vs. State of H.P. & others, decided on 6th March, 2013, the petitioner was an employee of Forest department. He was aggrieved by non-grant of pension to him on the ground that time spent by him as work charge employee cannot be counted for the purpose of grant of pension. The writ petition was allowed. Direction was issued to the respondents to count the service rendered by the petitioner (therein) as work charge employee towards qualifying service and then to calculate the payable pension. The Special Leave Petition (civil), diary No. 32680/2018 filed by the State against the judgment in Sukru Ram's case supra was dismissed by the Hon'ble Apex Court on 10.12.2018. The judgment stands implemented as of now.

4(v) After the judgment passed in Sukru Ram's case supra, the respondent-Forest department issued general instructions on 22.7.2014, placed on record as Annexure P-7. In these instructions the approval of the Government has been conveyed to the Principal Chief Conservator of Forests, H.P.: - "to combine the period of work charge service with regular service for pension purpose as per the judgment of the Hon'ble High court passed in CWP No. 6167/2012 titled as Sh. Shukru Ram vs. State of H.P. You are, therefore, requested to decide all the representations at your level on the analogy of this judgment whether the representationist has filed the writ petition or not. So far as the matter regarding decision in the case of retirees and Jai Devi Gupta's case is concerned, all such cases be sent to the Government with full justification for approval."

It becomes crystal clear that respondent-department is itself very well aware that period of work charge service followed by regular service is to be considered for the purpose of grant of pension. That being so, respondent- department

cannot take contrary plea to defeat the pension claim of the petitioner.

4(vi) The objection that the petitioner was regularized subsequent to the cut off date of 15.5.2003 will also not advance the case of the respondents for denying pensionary benefits to the petitioner. This for the reason that pension is being claimed by the petitioner not on the strength of the date of his regularization but from the date of confirmation of work charge status upon him. The work charge status was conferred upon the petitioner w.e.f. 1.1.2002 i.e. much prior to the cut off date of 15.5.2003 when the Contributory Pension Scheme 2006 came into force.

4(vii) The next objection about the Forest department not having work charge establishment is also misconceived. The petitioner was conferred the status of work charge w.e.f. 1.1.2002 by the respondent-Forest department. Original petitioners in Matwar Singh and Sukru Ram's cases supra were also conferred work charge status and were employees in the Forest department. Both these judgments were implemented by the respondent and the original petitioners therein were granted pension. The respondent-department on its own has issued the instructions dated 22.7.2014 for counting the period of work charge service with regular service for the purpose of grant of pension.

4(viii) In a judgment passed by this Court on 17.11.2021 in CWP(OA) No. 7492 of 2019, titled Door Singh versus State of H.P. & Others, instructions issued by the State on 1.6.2016 regarding counting work charge service rendered by Class-III and Class-IV employee of Public Works and IPH department for purpose of grant of pensionary benefits were noticed as under:

"In the instant case, admittedly, the petitioner was granted work charge status/regularization w.e.f. 01.01.2002. Since petitioner's regularization/grant of work charge status is prior to the cut-off date of 15.05.2003 for the applicability of Contributory Pension Scheme (New Pension Scheme) and he is still stated to be in service of respondent department, therefore, he falls under the Old Pension Scheme, i.e. CCS (Pension) Rules, 1972. Instructions issued by the State on 01.06.2016 placed on record alongwith reply of the respondents are also to the effect that "All Class-III & Class-IV employees of PWD and IPH Departments who had been given the work charged status prior to 15.5.2003 shall be entitled to pensionary benefits as per the CCS (Pension) Rules, 1972 and they shall also be eligible to subscribe towards GPF under the GPF Rules, 1960. However, those employees who had been given the work charged status after 15.5.2003 shall be covered under the CPS or New Pension System because Central Civil Services (Pension) Rules, 1972 and GPF Rules, 1960 ceased to operate w.e.f. 15.5.2003"

Learned Deputy Advocate General, on instructions, submitted that this judgment has also been implemented and further that the instructions noted in the judgment are still holding the field.

Thus, looking from any angle, petitioner has to be held entitled for the grant of pension.

For the foregoing reasons, this petition is allowed. The respondents are directed to treat the petitioner eligible for grant of pension alongwith due and admissible arrears under Central Civil Service (Pension) Rules, 1972 and to take all required steps in that regard within a period of six weeks from today. Pending miscellaneous application(s), if any, shall also stand disposed of.