

**(2023) 09 SHI CK 0085**  
**In the High Court Of Himachal Pradesh**  
**Case No : CWPOA No.5559 Of 2020**

Kuldeep Singh Rana

APPELLANT

Vs

State Of H.P. & Ors

RESPONDENT

**Date of Decision :** 26-09-2023

**Acts Referred:**

Constitution Of India, 1950 — Article 14

**Citation :** (2023) 09 SHI CK 0085

**Hon'ble Judges :** Vivek Singh Thakur, J: Bipin Chander Negi, J

**Bench :** Division Bench

**Advocate :** Dilip Sharma, Manish Sharma, Tejasvi Dogra, Anup Rattan, Manoj Chauhan, Rakesh Kumar Sharma, Yudhbir Singh Thakur, Archana Dutt

**Final Decision :** Allowed/Disposed Of

## Judgement

Vivek Singh Thakur, J

1. Petitioner who was serving as Associate Professor in M.L.S.M. College, Sunder Nagar (respondent No.3) approached Erstwhile H.P. State Administrative Tribunal on 20.11.2018, seeking direction to the respondents to continue him in service till the end of Academic Session of 2018-2019 i.e. 30.6.2019, notwithstanding the fact that he was going to complete 60 years of age on 27th November, 2018, with all consequential benefits.

2. Admittedly, on filing the petition, vide order dated 26.11.2018, interim direction was passed allowing the petitioner to continue in service and in sequel thereof, petitioner was allowed to continue upto 30.6.2019. However, payment of salary, which he was getting prior to completing 60 years of age, was not made to him on the ground that he had been permitted to continue on account of interim order passed by this Court.

3. As per stand of respondent No.3-College, payment of 5% share of salary was to be paid by the College to the petitioner, but after receipt of 95% Grant-in-Aid from the Government.

4. Stand of the State is that petitioner was liable to be retired in November 2018, with further contention that retirement of a Teacher in the College is governed by the Service Rules and the petitioner is claiming his right on the basis of provisions contained in H.P. University Ordinance, 1973, whereas Government is not governed by the provision of such Ordinance and, therefore, Court was liable to provide Grant-in-Aid only upto the age of 60 years, as per GIA Rules, applicable in the present case.

5. The entitlement of a teacher to continue in service after attaining the age of 60 years, but till the end of on-going Academic Session, is flowing from Rule 12 of Himachal Pradesh University Ordinance and, therefore, it is not an extension to an employee by the employer, but is a right conferred on such Teacher by virtue of Statue. The said extendable period of service is akin to extended period provided to the Government employee till end of the month, in which such employee attains the age of superannuation.

6. Right to continue after attaining age of superannuation till the end of ongoing Academic Session stands affirmed by the Supreme Court in its pronouncement in case titled O.P. Kaushal vs. State of H.P & others, (2004) 13 Supreme Court Cases 695, wherein in similar circumstances, petitioner was not allowed to continue in service by employer till end of Academic Session after attaining age of superannuation, it was held that the petitioner should have been allowed by the respondents to continue in service till the end of Academic Session 2003-2004. In that case, though the petitioner was not continued in service after attaining the age of retirement, however Supreme Court held him entitled to get all pecuniary benefits, which would have accrued to the petitioner had he been continued in service.

7. The issue involved in the present case is also covered by judgment dated 28.11.2019, passed by Division Bench of this Court in CWP No.3301/2019, titled Ajay Kapoor vs. State of Himachal Pradesh and others, wherein, in similar circumstances, petitioner was permitted to continue in service till the end of Academic Session i.e. 30.6.2020, though he had attained age of retirement i.e. 60 years on 20.11.2019.

8. It is also apt to record that though Ajay Kapoor-petitioner in CWP No.3301/2019, was allowed to continue till 30.6.2020, however neither Grant-in-Aid was released to him nor salary was paid by the College for the extended period. Therefore, he again approached this Court by filing CWP No.3156/2020, titled Ajay Kapoor vs. State of Himachal Pradesh and others, which was allowed, vide order dated 22 nd September, 2022, with observation that right to continue in service was in terms of the norms providing such continuation till the end of Academic Session and accordingly, respondents/State was directed to release Grant-in-Aid in order to ensure disbursement of the due and admissible salary to the said petitioner. Present case is squarely covered by the judgment referred (supra).

9. As recorded above, in Ajay Kapoor's case (supra) (CWP No.3156/2020) earlier in case of one Pawan Kumar Jamwal, Grant-in-Aid fund/budget for disbursing salary to said Pawan Kumar Jamwal, for the period of extension, after attaining age of superannuation till end of Academic Session was approved by the Government. In Ajay Kapoor's case also, Grant-in-Aid is stated to have been released for payment of salary to Ajay Kapoor for the extendable period till end of Academic Session.

10. It is also apt to record that in case of Pawan Kumar Jamwal, no petition was filed and Government on its own had released Grant-in-Aid fund/budget for granting salary to said Pawan Kumar Jamwal, which clearly establishes that Government having knowledge of the aforesaid provision of Statute and accepting the same, had acted upon in case of Pawan Kumar Jamwal. In similar circumstances, the Government has denied the same relief to the similarly situated petitioner. Such arbitrary and discriminatory conduct of the State is antithesis to mandate of Article 14 of the Constitution of India. The State must act in a fair manner as a Model Employer instead of contesting the cases like a chronic litigant.

11. In view of above discussion, petitioner is entitled for Grant-in-Aid of salary out of Grant-in-Aid fund/budget to be provided by respondent/State by releasing 95 % Grant-in-Aid for payment thereof for the period from 1.12.2018 to 30.6.2019.

12. Accordingly, respondent/State is directed to release the Grant-in-Aid for disbursement of due and admissible salary to the petitioner on or before 31st October, 2023, failing which State shall also be liable to pay interest at the rate of 5 % from the date of accrual of right to receive salary till final payment thereof. In such eventuality interest shall be recovered from Incharge of the Department causing delay in disbursement.

13. Petition is allowed and disposed of in aforesaid terms. Pending application(s), if any, also stand(s) disposed of.