

**(2023) 07 SHI CK 0099**

**In the High Court Of Himachal Pradesh**

**Case No : Civil Writ Petition No. 6484 Of 2022**

Naresh Kumar & Others

APPELLANT

Vs

State Of Himachal Pradesh & Others

RESPONDENT

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**Date of Decision : 26-07-2023**

**Acts Referred:**

**Citation : (2023) 07 SHI CK 0099**

**Hon'ble Judges : M.S. Ramachandra Rao, CJ;Ajay Mohan Goel, J**

**Bench : Division Bench**

**Advocate : Ravinder Singh Jaswal, Anup Rattan, Rakesh Dhaulta, Pranay Pratap Singh, Arsh Rattan, Sidharth Jalta**

**Final Decision : Disposed Of**

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## **Judgement**

Ajay Mohan Goel, J

1. By way of this Writ Petition, the petitioners have, inter alia, sought the following substantive reliefs:-

"i) That the impugned order dated 01.04.2022 i.e. annexure P-1 be set aside and quashed to the extent it refused to grant the earned leave from the retrospective date.

ii) That the respondent department be directed to grant the benefits of earned leave w.e.f. 27.04.2016 to 03.07.2020."

2. The case of the petitioners is that they were initially appointed as Lecturer (Commerce) on contract basis vide office order dated 19.10.2010. They were entitled for regularization after completion of five years of service, but they were denied the same by the Department on the pretext that they were not possessing the B.Ed. Degree.

3. According to the petitioners, possessing B.Ed. Degree was not an essential criteria for the purpose of regularization as the Notification in vogue, inter alia, provided that for M.Com. candidates the B.Ed. qualification was not essential till

expiry of period of three years from the date Himachal Pradesh University allowed the B.Com candidates to undertake the B.Ed. Courses.

4. Feeling aggrieved by the act of the respondents of not regularizing their services, the petitioners filed an Original Application, i.e. O.A. No.1062 of 2017, titled Yashwant Singh and others Versus State of H.P. and others, before erstwhile learned Himachal Pradesh Administrative Tribunal. In terms of order dated 29.05.2019 (Annexure P-5), the Original Application was allowed by the learned Tribunal and the respondents were directed to regularize the services of the applicants therein on completion of five years of service from the date persons similarly situated as the original applicants were regularized, with all consequential benefits within two months. Thereafter, the services of the petitioners were regularized alongwith other similarly situated persons in terms of order dated 03.07.2020 (Annexure P-7) w.e.f. 31.03.2016.

5. The grievance of the petitioners is that after regularization w.e.f. 27.04.2016, the petitioners have been denied Earned Leave from the date of their regularization till the date of issuance of Notification dated 03.07.2020, on arbitrary ground that there is no provision in the CCS (Leave) Leave Rules, 1972 to grant the benefit of Earned Leave from retrospective date.

6. Learned counsel for the petitioners has drawn the attention of the Court to Annexure P-1, appended with the petition, which is a copy of communication dated 01.04.2022, addressed by Deputy Director, Higher Education, Kullu, District Kullu, H.P. to the Principal GMSSS, Anni, on the subject "Clarification regarding Earned Leave benefits in r/o Sh. Naresh Singh, Lecturer Commerce, GMSSS Anni, Distt. Kullu", in which there is reference of communication dated 23.03.2022, addressed by Director of Higher Education, Himachal Pradesh to Deputy Director, Higher Education, Kullu, District Kullu, H.P. on the same subject, in terms whereof, Earned Leave from retrospective date has been denied to one of the petitioners on the ground that as the petitioner stood regularized from retrospective date on account of the Court order will all consequential benefits, in such circumstances the Earned Leave from retrospective date was not admissible. Learned Counsel submitted that denial of Earned Leave from the actual date of regularization is bad in law, because it was the Department whose act of omission resulted in delay in the regularization and the petitioners cannot be made to suffer for the fault of the Department.

7. Mr. Anup Rattan, learned Advocate General, on the otherhand, while justifying the act of the respondent-Department, submitted that the order of regularization of the petitioners was passed on 03.07.2020, though w.e.f. 27.04.2016, but as fact of the matter remained that in between 27.04.2016 upto 03.07.2020, the petitioners were employed on contract basis, therefore, they are not entitled for Earned Leave for this period as there is no provision in the CCS (Leave) Rules, which provides for Earned Leave from retrospective date.

8. We have heard learned counsel for the petitioners as well as learned Advocate

General and we have also gone through the pleadings as well as documents appended therewith.

9. It is an admitted factual position that the petitioners were regularized as Lecturer (School-New) Commerce) w.e.f. 27.04.2016, in compliance to the orders passed in their favour by the learned Tribunal, though the office order, ordering their regularization was issued on 03.07.2020. The order passed by the learned Tribunal itself is dated 29.05.2019 and the same was complied after the petitioners invoked the contempt jurisdiction of this Court.

10. Be that as it may, a regular employee of the respondent-Department is entitled for Earned Leave as from the date he is appointed in regular service.

11. In the present case, the date of regular appointment of the petitioners with the respondent-Department for all intents and purposes is 27.04.2016. In fact, in terms of the order passed by the learned Tribunal, direction issued to the respondents was to regularize the services of the petitioners upon completion of five years of service from the date persons similarly situated as the petitioners were regularized "with all consequential benefits."

12. In our considered view "with all consequential benefits", includes all benefits, including Earned Leave. The order of the learned Tribunal, in terms whereof, the Department was directed to regularize the services of the petitioners upon completion of five years of service has attained finality. This means that the Department accepted the judicial verdict that the petitioners were entitled for regularization upon completion of five years of service on contract basis. Meaning thereby, that denial of regularization to the petitioners upon completion of five years of service from the date when persons similarly situated to the petitioners were regularized, was an arbitrary act of the respondent-Department and therefore, the delay in passing of the order of regularization of the petitioners with retrospective effect cannot be used as a tool by the Department to deny the Earned Leave to the petitioners as from the date of their regularization.

13. The plea that there is no provision for grant of Earned Leave in case of retrospective regularization in CCS (Leave) Rules has no legal force, because fact of the matter remains that the delay in regularization of the petitioners is attributable to the Department and now the Department cannot take the benefits of its own acts of omission and commission.

14. Accordingly, this writ petition is allowed by holding that denial of Earned Leave as from the date of regularization to the petitioners by the respondent-Department is bad in law. The communications dated 01.04.2022 and 23.03.2022 (Annexure P-1) are hereby quashed and set aside and the petitioners are held entitled for the benefit of Earned Leave as from the date of their regularization, i.e. 31.03.2016.

15. The petition stands disposed of. Pending applications, if any, also stand disposed of. No order as to costs.