
(2025) 06 SHI CK 0726

In the High Court Of Himachal Pradesh

Case No : CWPOA Nos.8020, 8028, 8119, 8124, 8127 Of 2019, 14, 600, 623, 657, 5287, 5401, 5783, 5844, 6535, 6539, 6635, 6681, 6693, 6703, 6820, 7042, 7194, Of 2020, 3729 Of 2021

Neena Puri & Others

APPELLANT

Vs

State Of H.P. & Others

RESPONDENT

Date of Decision : 24-06-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 313
Negotiable Instruments Act, 1881 — Section 138

Citation : (2025) 06 SHI CK 0726

Hon'ble Judges : Rakesh Kainthla, J

Bench : Single Bench

Advocate : O.C. Sharma, Jitender Pal, Jitender Sharma

Final Decision : Dismissed

Judgement

Satyen Vaidya, J

1. All these petitions have been heard and are being decided together as common questions of facts and law have arisen.
2. The petitioners were initially appointed as Trained Graduate Teachers (TGTs) on contract basis. Later, their services were regularized as TGTs under the regularization policy of the State Government.
3. It is not in dispute that the date of initial appointment of the petitioners on contract basis was prior to 24.09.2012, when the Himachal Pradesh Civil Services (Category/Post Wise Revised Pay) Rules 2012 (for short, "2012 Rules") were notified. The orders of their regularization of petitioners were issued after coming into force of said Rules.
4. As a sequel to 2012 Rules, notification dated 27.09.2012 was issued and the category of TGTs was also included in the Schedule annexed to the said Rules. The TGTs were placed in the pay band of Rs.10300-34800 with 3600 as Grade

Pay with the initial start of Rs.14430. Further enhancement of Grade Pay to Rs.5000/- was made applicable after two years of regular service.

5. The petitioners on regularization as TGTs were granted the pay scale of Rs.10300-34800+Grade Pay Rs.3600 with initial start of Rs.10830+3600=Rs.14430.

6. Respondent No.2 vide communication dated 26.07.2016 issued to all the Deputy Directors of Elementary Education and the Principals/Headmasters of GSSS/GHS in the State directed to re-fix the pay of those TGTs who were regularized after 24.09.2012 by granting initial start of Rs.13900/- in place of Rs.14430/- and also to seek recoveries from such incumbents of excess amount paid to them.

6. Aggrieved against the communication dated 26.07.2016, the petitioners have filed the instant petitions. Their grievance is that they had been rendering contract service prior to 24.09.2012 and hence their category could not be said to have been freshly appointed after 24.09.2012 merely because the date of their regularization was after the enforcement of 2012 Rules. It is also the case of the petitioners that the category of TGTs was included in the Schedule annexed to 2012 Rules w.e.f. 27.09.2012 and as per the Schedule also they were entitled to the pay band of Rs.10300-34800 + Grade Pay of Rs.3600 with initial start of Rs.14430/-. The petitioners have contended that the Schedule was neither changed or amended, therefore, the reduction of initial start from Rs.14430/- to Rs.13900/- vide communication dated 26.07.2016 (Annexure A-1) was clearly discriminatory. According to them, no distinction could be drawn by the respondents between the TGTs appointed before 24.09.2012 and the petitioners, who had been rendering the same service though on contract basis prior to 24.09.2012.

7. The respondents have contested the claim of the petitioners. They have placed reliance on Finance Department letter dated 01.09.2015 to assert that the incumbents, who were appointed after 24.09.2012, were not entitled to the benefit of initial start of Rs.14430/- in terms of Rule 5(ii) of 2012 Rules. It has been contended that the pay of the petitioners was to be fixed at the minimum of the pay band + Grade Pay i.e. Rs.10300+3600=Rs.13900 instead of Rs.10830+3600= Rs.14430/- because they were regularized after 24.09.2012. It has also been asserted that the grant of pay scales is in the domain of State Government.

8. On 17.12.2024, this Court had passed the following order:

"Heard for some time.

2. Admittedly, under Article 309 of the Constitution of India, the Finance [Pay Revision] Department of State Government notified Himachal Pradesh Civil Services [Category/Post-Wise Revised Pay] Rules on 24.09.2012 and based on Rule 3 and Rule 9 of these Rules, the Finance [Pay Revision] Department issued

another Notification on 27.09.2012, Annexure A/4, given the initial start of Rs.14,430/- [against Sr. No.10] to Trained Graduate Teachers.

3. Learned Counsel for the petitioners contend that after issuance of Himachal Pradesh Civil Services [Category/Post-Wise Revised Pay] Rules, on 24.09.2012 and Schedule notified for TGTs on 27.09.2012, Annexure A/4, though the petitioners were regularized on different dates in 2014 and 2015 onwards but the Impugned Order dated 26.07.2016, Annexure A/1, giving the initial start at Rs.13,900/- per month to the Trained Graduate Teachers de hors the Rules dated 24.09.2012 and Schedule dated 27.09.2012, which entitle the petitioners for initial pay of Rs.14430/- is illegal.

4. The Impugned Order dated 26.07.2016, Annexure A-1, is assailed firstly on the ground being de hors the Rules and Schedule; secondly, once the Schedule to Rules notified on 27.09.2012, prescribing Basic Pay of Rs.14,430/- for TGTs still holds the field and has not been rescinded, withdrawn or modified, then, the grant of lower basic pay/initial start of Rs.13,900/- was alleged to be illegal and thirdly, administrative decision or order cannot restrict the operation and applicability of Statutory Rules; and fourthly, the action of changing the nomenclature of initial pay from Rs.14,430/- to Rs.13,900/- de hors the mandate in Rules and Schedule but without affording the opportunity of hearing to the petitioners, is per se violative of natural justice; and lastly, the denial of initial start of Rs.14,430/- as given to other TGTs is discriminatory, arbitrary and hostile discrimination, when, petitioners and other appointed incumbents perform same work, job, duties and functions.

5. Learned Counsel faced with the above situation, as prayed, State Counsel to file Supplementary Affidavit, on following aspects:-

(i) Whether Civil the Himachal Services Pradesh [Category/Post-Wise Revised Pay] Rules dated 24.09.2012 still holds the field or has been rescinded, withdrawn by the respondents?

(ii) Why and on what grounds the Schedule notified on 27.09.2012, is not applicable, in case, of petitioners?"

9. In compliance, the affidavits have been filed in CWPOA No.6703 of 2020, titled Manjeet Goswami vs. State of H.P. & others and CWPOA No.6820 of 2020, titled Sumedha Thakur vs. State of H.P. & others. In the supplementary affidavit of the Director, Primary School Education, Himachal Pradesh, nothing new has been stated. The relevant extract of the affidavit is reproduced as under:

"3. That in reply to the point no. 2, it is submitted that the schedule notified on 27-09-2012 is not applicable to the petitioners in view of the provision contained in HPCS (Category / post-wise revised pay) Rules dated 24-09-2012 and subsequently clarification issued by the Department of Finance (PR) vide letter No. Fin (PR)B (7) 64/2010-III, dated 1-9-2015 at point 5(ii) indicated that "In case of Government servant appointed on or after the date of commencement of

these rules, the pay will be fixed at minimum of pay band plus grade pay as mentioned in the "Schedule" against the respective category/post".

10. I have heard learned counsel or the parties and have perused the record carefully.

11. In the above stated factual background, the question that needs determination is whether the impugned action of the respondents in marking distinction between the petitioners and those who were appointed before 24.09.2012 is arbitrary and hence discriminatory?

12. The above question stands already answered by Division Bench of this Court vide judgment dated 28.05.2025 passed in CWP No.2489 of 2018, titled State of H.P. vs. Suresh Chand Heer & others along with connected matters. In the said cases, the factual aspect was similar to the facts of the instant cases, save and except that the category of employees in the said cases was that of Post Graduate Teachers, whereas in the instant cases the petitioners belong to the category of Trained Graduate Teachers.

13. In the cases decided by Hon'ble Division Bench, the petitioners therein were placed in the pay band of Rs.10300-34800 + Grade Pay of Rs.4200 with initial start of Rs.16290/-. On the same analogy as has been applied by the respondents in the instant cases, vide order dated 10.10.2016 the initial start of pay to the Post Graduate Teachers was reduced from Rs.16290/- to Rs. 14500/-. Hon'ble Division Bench while dealing with the same factual aspect has held as under:

"18. From the perusal of the Regularization Order dated 18.12.2014 (Annexure R-3), it would be clear that the appointments of the persons concerned were done by the Government in 2004 in different subjects under PARA Teacher Policy-2003 in Government Senior Secondary Schools in HP against the sanctioned posts. However, regularization of services of the said persons was done after they had completed 10 years of continuous service by the order passed on 18.12.2014, by the Director of Higher Education. Therefore, the fall back as such was upon Rule 5(ii) of the Revised Pay Rules that the appointment made on or after the commencement of the Rule was not justified by passing the order dated 10.10.2016 by the same Officer, namely, the Director of Higher Education, since the said persons were appointed much prior in the year 2004.

19. Apparently, the revision of pay was done on account of the instructions issued on 01.09.2015 (Annexure R-6) by the Finance Department of the Government. From the perusal of the same, it would be apparent that there was no amendment made in the Schedule as provided under Rule 9 of the Revised Pay Rules.

20. In the absence of any such amendment to the Schedule, we are of the considered opinion that the State was bound, firstly by the Recruitment and Promotion Rules and secondly, by the Pay Revision Rules and the Schedule

appended thereto, apart from the fact that the employees as such had been appointed prior to the Regularization Order as such. Therefore, Clause 5(ii) of the Revised Pay Rules could not be used therein.

14. Further, the Hon'ble Division Bench also observed that though the learned State Administrative Tribunal had passed similar orders in favour of large number of incumbents, but the State had chosen only a few of them for challenge, whereas in the remaining cases the orders had been implemented. With the above observations, Hon'ble Division bench has ruled in favour of the Post Graduate Teachers and has refuted the defence raised by the respondents.

15. Thus, the petitioners herein being similarly situated to the Post Graduate Teachers in above noted cases as far as the proposition of law is concerned cannot be treated differently.

16. Learned Additional Advocate General while placing reliance in State of Punjab & others vs. Amar Nath Goyal & others, (2005) 6 SCC 754 has asserted that the grant of pay scale is the sole domain of the State Government for which one of the necessary factors is the financial condition of the State, therefore, the petitioners are not entitled to compel the State to pay them a particular pay scale. The respondents have also placed reliance on communication dated 01.09.2015 issued by the Finance Department. The said communication also deals with wrong interpretation of Rule 5(ii) of 2012 Rules. The aspect of aforesaid communication has also been dealt with by Hon'ble Division Bench in Suresh Chand Heer (supra).

17. The proposition as propagated by learned Additional Advocate General cannot be disputed, however, the respondent-State is excepted from discriminating in the matters of public service between the similarly situated persons as it becomes antithetic to the right of equality enshrined under Articles 14 and 16 of the Constitution of India.

18. In light of above discussion, the impugned communication dated 26.07.2016 is quashed and set aside. The respondents are directed to re-fix the pay of the petitioners in pay scale of Rs.10300-34800 + Grade Pay of Rs.3600 with initial start of Rs.14430/- from the date of their respective regularization. The respondents are further directed not to make any recovery from the petitioners in pursuance to communication dated 26.07.2016

19. Accordingly, these petitions are disposed of along with pending application(s), if any.