

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**CWP No: 9983 of 2011**

**Date of Decision: 31.08.2016**

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Shri Krishan Dutt .....Petitioner.

Vs.  
State of Himachal Pradesh  
and another .....Respondents.

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**Coram:**

***The Hon'ble Mr. Justice Ajay Mohan Goel, Judge***

***Whether approved for reporting?*<sup>1</sup> No.**

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For the petitioner: Mr. B.C. Verma, Advocate.

For the respondents: Mr. Pankaj Negi & Ms. Parul Negi, Deputy Advocate Generals.

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**Ajay Mohan Goel, Judge (Oral) :**

This writ petition has been filed praying for the following reliefs:

*“(a) That the petitioner may be regularized from the date after completion of 10 years service in the department.*

*(b) That the petitioner may be given all benefits including seniority from the date when he has completed 10 years service in the Department.*

*(c) That the petitioner may be granted all the consequential benefits including financial benefits for which he is entitled under the provisions of Law.*

*(d) Any other suitable relief as deemed fit under the facts and circumstances of the case may*

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*Whether the reporters of the local papers may be allowed to see the Judgment?*

*kindly be ordered to be given to the present petitioner in the interest of justice and fair play.”*

**2.** During the course of arguments, it was contended by learned counsel appearing for the petitioner that one Smt. Har Dei, who was otherwise junior to the petitioner, stood regularized by the respondent-State, whereas the services of the petitioner had not been regularized at par with Smt. Har Dei. As the factum of Smt. Har Dei being junior or not to the petitioner was not clear, accordingly this Court passed the following order on 21<sup>st</sup> July, 2016:

*“By way of present petition, the petitioner is praying for parity with one Smt. Hardei, who was also engaged as a Part Time Water Carrier but whose services were regularized after completion of six years of service. Annexure P-6, i.e. communication dated 19<sup>th</sup> July, 2011 addressed by the Deputy Director, Higher Education, Shimla to the Director, Elementary Education, Himachal Pradesh demonstrates that as per the respondents, Smt. Hardei was quite senior to the petitioner as she was engaged as a Part Time Water Carrier on 09.12.1996, whereas petitioner joined as such on 05.11.1997. It is further mentioned in the said communication that the seniority number assigned to Hardei was 213, whereas that assigned to Krishan Dutt was 664. Mr. Verma has further drawn the attention of this Court to document Annexure P-7, which has been supplied to the petitioner under the Right to Information Act, a perusal of which demonstrates that Hardei Devi in fact has joined as a Part Time Water Carrier on 12<sup>th</sup> November,*

1997. Incidentally, Annexure P-7 happens to be the joining report of said Smt. Hardei.

Faced with this situation, learned Additional Advocate General submits that he may be granted three weeks' time to ascertain the true factual position with regard to actual date of joining of Smt. Hardei. Request allowed. Let needful be done within a period of three weeks. Learned Additional Advocate General is further directed to inform this Court as to under which particular policy of the State Government the services of Smt. Hardei were regularized on completion of six years of service and why the said benefit has not been conferred upon the petitioner. The relevant information be made available on the affidavit of respondent No. 2.

*List on 31<sup>st</sup> August, 2016."*

**3.** In compliance to the said order, an affidavit has been filed by Director of Elementary Education, Himachal Pradesh, which reads as under:

"....2. That the CWP No. 9983/2011 titled as Krishan Dutt V/S State of H.P. & others was listed before the Hon'ble High Court on 21.7.2016, when the Hon'ble Court has directed the respondent No. 2 to file affidavit explaining therein the exact date of joining of Smt. Har Dei and to clarify as to whether petitioner is junior to said Smt. Har Dei or not.

3. That it is submitted that as per record Smt. Har Dei joined her duty as Part Time Water Carrier in GPS, Dawaru on 12.11.1997 and petitioner joined his duty as Part Time Water Carrier on

*05.11.1997, therefore, the petitioner is senior to Smt. Har Dei. It is further submitted that the promotion from Part Time Water Carrier to PTWC-Cum-Peon on Daily Wage Basis is done by the Director of Higher Education and seniority of Part Time Water Carrier is also prepared by the Deputy Director of Higher Education and the Director of Elementary Education has no role regarding promotion of Part Time Water Carrier.”*

**4.** Therefore, it is apparent from the perusal of the affidavit so filed by Director of Elementary Education, Himachal Pradesh that Smt. Har Dei in fact was junior to the petitioner.

**5.** Accordingly, in view of the contents of the said affidavit, the petition is disposed of with a direction to respondent No. 1/competent authority to consider the case of the petitioner for regularization at par with that of Smt. Har Dei within a period of three months from the date a certified copy of this judgment is made available to the competent authority by the petitioner. The competent authority shall also afford an opportunity of being heard to the petitioner, if so desired before passing any order. The petitioner shall be at liberty to approach this Court/appropriate authority in case he is dissatisfied by the order so passed by the competent authority.

Petition is disposed of in above terms. No order as to costs.

**(Ajay Mohan Goel)**  
**Judge**

**August 31, 2016**  
(bhupender)