

**IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA****CWPOA No.297 of 2019****Decided on: 12<sup>th</sup> May, 2026**

Ramesh Kumar

**...Petitioner****Versus**

State of H.P. and Anr.

**...Respondents***Coram***Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge***Whether approved for reporting?<sup>1</sup>*

For the petitioner: Mr. Sanjeev Bhushan, Senior Advocate with Mr. Sparsh Bhushan, Advocate.

For the respondents: Mr. Amandeep Sharma, Additional Advocate General.

**Jiya Lal Bhardwaj, Judge** *(Oral)*

The petitioner has filed the present petition, claiming therein, the following substantive reliefs:-

*"(I) That a writ in the nature of mandamus may be issued and the respondents may very kindly be directed to release the salary of the petitioner with effect from September, 2006 upto 20<sup>th</sup> December, 2006 and the interest on such salary may kindly be ordered to be recovered from the then headmaster Varinder Kumar.*

*(ii) That a writ in the nature of mandamus may be issued and the respondents may very*

<sup>1</sup> *Whether reporters of Local Papers may be allowed to see the judgment?*



*kindly be directed to grant the benefit of Assured Career Progression Scheme to the petitioner with effect from April, 2009 when it became available to him with further benefits of arrears, interest etc.*

*(iii) That a writ in the nature of mandamus may be issued and the respondents may very kindly be directed to pay the arrears of Dearness allowance for the period from July, 2006 to December, 2006 which was paid in October, 2006 to other similarly situated employee, but was not paid to the petitioner by the then headmaster Varinder Kumar."*

2. The facts which emerge from the pleadings are that the petitioner was appointed, vide office order dated 22.03.2001 as Trained Graduate Teacher (in short 'TGT') (Non-Medical), who joined his duties on 17.04.2001. Later on, he was transferred from Government High School, Shikhal, Shimla to Government Middle School, Udeep under complex, Government High School, Kumarkha, Chamba.

3. The petitioner had challenged the said transfer order before the H.P. State Administrative Tribunal by filing O.A. No.2068 of 2006, which was ordered to be treated as representation, since the petitioner had already served in the



Hard and tribal area, to be decided by the respondents. However, the respondents-State rejected the representation on 16.06.2006 and the transfer order passed earlier was maintained. The petitioner feeling aggrieved by the said order, again approached the H.P. Administrative Tribunal by filing O.A. No.2956 of 2006, which was disposed of on 27.09.2006 (Annexure P-I), again giving directions to the respondents to decide the representation and till then the transfer order was stayed.

4. The petitioner after the decision by the Tribunal on 27.09.2006, had gone to join service, but other incumbent who was already officiating on the said post, refused to accept the joining of the petitioner. The petitioner continuously kept on going to the school, but was not permitted to mark his presence. The petitioner has placed on record the letters (Annexures P-2 to P-4).

5. Later on, vide office order dated 20.12.2006



(Annexure P-5), the petitioner was relieved of his duties and was directed to join duties at Government High School, Bhaloon, Tehsil Rohru, District Shimla. Consequent upon the said office order, the petitioner joined his duties at Government High School, Bhaloon, Tehsil Rohru, District Shimla. Since the petitioner had not been allowed to mark his presence, his salary was not released from September 2006 till 20<sup>th</sup> December, 2006.

6. The grievance of the petitioner is that his salary for the period from September 2006 till 20<sup>th</sup> December, 2006 was not released and further his dearness allowance was also not paid to him, though the other persons, who had been working were released the arrears of dearness allowance. The petitioner has also prayed that he may be granted the benefits of Assured Career Progression Scheme (hereinafter referred to as "ACPS") w.e.f. April 2009, when it had become available to him with further benefits of arrears, interest etc.



7. The respondents have filed reply to the petition and averred that the petitioner has been paid salary for the period 12.09.2006 to 20.12.2006, as per office order dated 31.01.2013 and his services for the said period have been duly verified by the concerned Principal. As per the records, Dearness Allowance arrears have been paid to the petitioner by the concerned Principal, vide Bill No.3 dated 08.05.2013. So far as the grant of the benefit of ACPS is concerned, it has been averred that the case of ACPS had been examined by the Joint Controller (Finance & Accounts) and it was found that neither the petitioner had opted for new ACPS (4-9-14) nor was any option found attached and recorded in the service book of the said teacher.

8. The new ACPS was introduced by the Government vide Finance Department instructions No. FIN(PR)13(7)-59/2010 dated 09.08.2012 and this scheme was optional only. The government servants who had opted for this new ACPS



(4-9-14) were allowed the benefits, but since the petitioner had not opted for new ACPS within two months of introduction of the scheme, his case was required to be considered under the old ACPS. It is further mentioned that as per Finance Department instructions dated 07.07.2014, 09.09.2014 and 03.11.2016, once an employee has got three enhancements/up-gradations/promotions in 14 years or more in the entire service career, he will not be entitled for placement in next higher grade pay in the ACPS. Since, the petitioner has already availed three financial benefits within first 14 years of service on account of ACPs/promotion/re-revision of grade pay, hence his case does not seem fit for allowing any other benefit under ACPS.

9. The petitioner has filed rejoinder to the reply and controverted the facts and has also placed on record the Form of Undertaking dated 06.10.2012, whereby he has opted for the Career Progression Scheme on completion of 4-



9-14.

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

11. So far as relief Nos.(i) & (ii) are concerned, the same have been rendered infructuous, in view of the fact that the petitioner has been released the amount of salary, vide office order dated 31.01.2013 and further the petitioner has been granted the ACPs after completion of 9 years of service. However, the relief which can be considered to be granted to the petitioner is only with respect to benefit of new ACPS, "whether he is entitled to get the benefit of that scheme or not".

12. The respondents have denied the relief to the petitioner to extend the said benefit only on the plea that the petitioner had not opted for grant of the said benefit as per the instructions issued by the State Government. The respondents have not disputed the fact that the claim of the



salary of the petitioner was settled only on 31.01.2013 and dearness allowance arrears vide bill No. dated 08.05.2013, though the petition was instituted by him in the year 2010, when there was neither the instructions dated 09.08.2012 nor the subsequent instructions of the Finance Department dated 07.07.2014, 09.09.2014 and 03.11.2016. Once the salary of the petitioner was not settled and further, he was not paid the dearness allowance arrears, the benefit under the new ACPS could not have been extended to him. Further, the option which the petitioner had given in the Form of Undertaking dated 06.10.2012 (Annexure P-6) could not have been entered in the service book.

13. No doubt, the petitioner has been granted the benefit of the old ACPS, but once the new ACPS was more beneficial to the petitioner, the said benefit ought to have been extended to him. The respondents themselves were in dilemma whether the salary of the petitioner for the period



from 12.09.2006 to 20.12.2006 was to be released or not. The respondents had settled the salary only vide office order dated 31.01.2013. The respondents have not placed on record any document to show that the option was given to the petitioner to opt for new ACPS. Once the respondents had introduced the new ACPS, which was more beneficial to the employees, its benefits ought to have been extended without option. The petitioner could not have been denied the benefit of the new ACPS which was more beneficial to him, especially when as per the documents placed on record by him, the benefit of new ACPS was sought by him on 06.10.2012. As already mentioned above, the said Form of Undertaking may not have been recorded in the service book, but once the period regarding payment of the salary was not settled till 31.01.2013, there was no occasion even for the respondents to extend the benefit of the new ACPS to the petitioner.

14. No doubt, the petitioner has not claimed the



benefit of the new ACPS, but once the respondents have mentioned the said facts in their reply, this Court cannot relegate the petitioner to approach the authority for granting him the benefit, which was otherwise due to him as per the instructions issued by the respondents or to ask him to file separate writ petition for claiming this relief. Had the respondents not brought these facts to the notice of the Court, the Court could have only considered the claim as raised in the writ petition. Once, it had been brought to the notice of the Court that the petitioner has not been granted the benefit of new ACPS only for the reason that no option was given by him, this Court is of the considered view that the respondents ought to have sought option from him and even if no option was given, the benefits which were more beneficial ought to have been granted to him. In the present case, the petitioner had given the option as evident from the perusal of Annexure P-6 appended with the rejoinder,



wherein, even the stamp of the Principal of the School has been appended and thus, he cannot be denied the said benefit.

15. It is well settled that the Courts are meant to advance substantial justice between the parties and not to defeat the same on technicalities. Moreover, this Court, while exercising the extra-ordinary jurisdiction under Article 226 of the Constitution of India can impart substantial justice and in the present case, once the period of salary was not settled, which came to be settled only on 31.01.2013, whereas the petitioner had come to this Court in the year 2010, he is entitled to the relief of new ACPS, once the respondents have come forth with the plea that the petitioner had been denied the benefit only on account of the fact that he did not exercise the option. The parity demands that if other employees have been granted the benefit of new ACPS, similar treatment be given to the petitioner and the



respondent-State being model employer has to extend the same relief to its employees.

16. Consequently, the present petition is allowed and the respondents are directed to grant the benefit of new ACPS to the petitioner on the analogy to other employees, who had opted for the same. The respondents are directed to pay the benefits of the new ACPS to the petitioner within a period of three months from today and in case the benefits are not released, he shall be held entitled to interest on arrears @6% per annum from today till actual payment.

17. The petition is accordingly disposed of. Pending application(s), if any, shall also stand disposed of.

**12<sup>th</sup> May, 2026**

*(ankit)*

**( Jiya Lal Bhardwaj )  
Judge**