

In the High Court of Himachal Pradesh, Shimla.

Review Petition No.47 of 2020

Civil Procedure Code, 1908 Order 47 Rule 1—Review petition— Superannuation—Transfer of services of the college staff to the state government under notification—The petitioner, who had been superannuated, prior to the college's takeover—Held—That, the petitioner, although superannuated before the takeover, must be treated as a government employee for the purpose of receiving retiral benefits due to the judicial order that rectified his retirement date to 9th November 2005—State Government is liable to pay the petitioner his retiral benefits, as if he had been on the state rolls at the time of the college's takeover—Review petition allowed. (Para 14)  
Parties represented by:

For the Petitioner: Mr. Rajnish Maniktala, Sr. Advocate with Ms.Bhushree Jain, Advocate.

For the Respondents: Mr. Varun Chandel, Additional Advocate General.

Vivek Singh Thakur, J:- This petition has been preferred by the petitioner for reviewing the judgment dated 7th January, 2020 passed by the Division Bench of this High Court in LPA No. 244 of 2010 titled State of HP vs. Udham Singh Chaudhary vide which judgment of learned Single Judge dated 12th June, 2010 passed in CWP(T) No. 8686 of 2008 titled Udham Singh Chaudhary vs. State of HP has been set aside.

2 Respondent No.5 is the Maharaja Sansar Chand Memorial College, Thural, District Kangra (in short 'MSCM College') earlier being run as a private college by its Managing Committee but subsequently same was taken over vide Notification No. EDN-A-Kha(16)-2/2005(Thural), dated 9th November, 2005 issued by the Department of Education, which reads as under:-

**"NOTIFICATION**

The Governor, Himachal Pradesh is pleased to order the taking over of Maharaja Sansar Chand Memorial (MSCM) College, Thural, Distt. Kangra with immediate effect.

Further, the terms and conditions regarding taking over the services of Personnel and the assets/liabilities etc. will be notified separately....."

3 Vide a separate Notification No.EDN-A-Kha(16)- 2/2005(Thural) dated 18th October, 2016 issued by the Department of Higher Education, services of teaching and non-teaching staff of Erstwhile MSCM College Thural were taken over in the following terms:-

**"NOTIFICATION**

The Governor, Himachal Pradesh is pleased to order the taking over of services of Teaching and Non-Teaching staff of Erstwhile MSCM Thural, Distt. Kangra w.e.f. 9.11.2005 i.e. the date of taking over of the college as per UGC guidelines, R&P Rules and terms and conditions of taking over of staff of private college notified vide Notification No.Chha(15)-3/86-Shiksha-Ka dated 25.8.94. The details of Teaching and Non-Teaching staff is at Annexure-1."

4 The relevant portion of the terms and conditions contained in Notification No. Cha.(15)3/86-Shiksha Ka-Shimla, dated 25th August, 1994, referred in Notification dated 18.10.2016, reads as under:-

**“NOTIFICATION**

The Governor of Himachal Pradesh is pleased to frame following terms and conditions for taking over privately amongst colleges in the Pradesh (affiliated) including teaching and non teaching staff:

(1)

(a) That privately managed colleges are permanently affiliated to the Himachal Pradesh University and are recognized by the Department of Education for grant in-aid. However, the State Govt may take over temporarily / provisionally affiliated Colleges by the H.P. Govt also and state shall also take appropriate steps for its permanent affiliation from the University to make it eligible for various U.G.C grants.

(b) The managing Committee of the colleges shall transfer the endowments funds at present pleaded to the concerned University, to the government Colleges Fund.

(2) The Managing Committee concerned shall transfer to the Govt all moveable and immoveable property (Building. Grounds, fields, Gardens and other landed property funds and all others assets attached with the college as standing in the name of the Management/officials of the management.

(3) The Departmental Inspection Committee appointed by the Government will ensure that staff, moveable and immovable property (including building and play grounds) are in accordance with their norms fixed by the Departments.

(4) The amalgamated fund and fees etc and other college funds shall be transferred to the Education Deptt are drawn on loan basis from the colleges funds will have to be recouped by the Managements before the college is taken over by the Government.

(5) The management will ensure that the existing staff has been paid their salaries and other dues in full before the college is taken over by the Government. The Managing Committee will terminate the services of the entire staff both the teaching and non-teaching on the roll of the college from the date of such take over. Arrears if, any due to the staff on the date of taking over will be the liability of the Managing Government will not share the liability.

(6) The Government shall not accept any liability for the period to the taking over of the college by them. All such liabilities to shall be cleared by the Managing Committee of the college concerned. ....”

5. A combined reading of aforesaid Notifications clearly indicates that all movable and immovable property of Erstwhile MSCM College including building, grounds, fields, garden and other landed property, funds and other assets attached with college as standing in the name of

Management/Officials of the Management stand transferred to the State of HP/Education Department w.e.f. date of taking over i.e. 9th November, 2005. Therefore, liabilities arising on or after 9th November, 2005 are to be borne by the State/Education Department as on 9th November, 2005 and thereafter, no assets remained with the Management or the Erstwhile Private College.

6. It is also an admitted fact that Management of the College was running only one Institution i.e. MSCM College Thural and after taking over of the College, the Managing Committee became functus officio qua assets of afore College which otherwise w.e.f. 9.11.2005 had vested in State of HP.

7. It is also a fact that on the date of issuance of Notifications dated 9th November, 2005 as well as 18th October, 2006 petitioner was not on the rolls of Erstwhile MSCM College as he was ordered to be superannuated w.e.f. 31st March, 2005.

8. While petitioner was appointed as Lecturer in History with Erstwhile MSCM College w.e.f. 1.9.1986, afore College was being run by private Management Committee. However, appointment of the petitioner was duly approved by the Vice Chancellor of the H.P. University under the relevant Act and Statute applicable to the appointment. He was superannuated on 31st March, 2005. Whereafter, he filed a petition for payment of unpaid salary, gratuity and leave encashment etc., which was allowed by learned Single Judge vide judgment dated 15th June, 2010 with direction to treat the superannuation date of petitioner as 9th November, 2005 upon attaining the age of 60 years and pay gratuity and leave encashment to the petitioner. Liability for payment of retiral benefits was fastened upon the State and Management in proportion of 95% and 5% respectively.

9. The arrears of salary were paid to the petitioner. However, State, by filing LPA No. 244 of 2010, laid challenge to the part of judgment whereby responsibility of payment of 95% of the arrears towards gratuity and leave encashment came to be fastened upon it.

10. Vide judgment dated 7th January, 2020 passed in LPA No.23 of 2009 titled State of HP vs. Jagdev Katoch and other connected matters including LPA No. 244 of 2010 titled State of HP vs. Udham Singh Chaudhary, the Division Bench of this High Court allowed the afore LPA in following terms:-

“8. Since, as, aforestated, the afore controversy, does, bear analogy, vis- a-vis, the therewith connected LPAs, and, writ petitions, (a) thereupon, vis- a-vis, all the superannuated employees, of, all the privately run

educational institutions, and, who, all receive the apposite grant-in-aid, from, the Government of Himachal Pradesh, and, pointedly, also vis-avis, those employees, who are likely, to, become superannuated therefrom, are, all likewise declared to not become entitled, to, apposite financial liability(ies) hence towards gratuity, and, leave encashment, becoming saddled, upon, the, Government, of, Himachal Pradesh, (i) and, rather all the financial liabilities, qua therewith, are, enjoined to become saddled, upon, all the privately run educational institutions concerned, or, if, the latter institutions, are, taken over, by, the, Government, of, Himachal Pradesh, yet, the superannuated employees therefrom, and, who become hence superannuated, prior to the

institution concerned, becoming taken over, by the State Government, are yet not, entitled, to, claim, the, release of, the, gratuity, and, leave encashment, from, the Government, of, Himachal Pradesh, rather financial liability(ies) qua therewith, are, to be borne, by, the apposite privately run institutions.”

11. In aforesaid decision, it was held by the Division Bench that employees, superannuated prior to taking over of privately Educational Institutions by the State, shall not be entitled to receive gratuity and leave encashment from the Government rather such liability, prior to taking over of the Institution by the State, is to be borne by the privately run Institutions/Managements.

12. With aforesaid observations, LPA of State was pronounced to be allowed, meaning thereby that State was absolved from its liability to pay the retiral benefits to the petitioner on the pretext that he stood superannuated before taking over of the Institution i.e. Erstwhile MSCM College.

13. From the material on record, it is apparent that the services of teaching and non-teaching staff of the College were taken over w.e.f. 9th November, 2005 and assets and liabilities of the College also stood transferred to the State Government from Management/College with the issuance of Notification dated 18th October, 2006, which came into force either from 12.00 midnight or after 10.00 am, with starting of the offices.

14. The petitioner though was retired on 31st March, 2005 but in view of the judicial pronouncement dated 15th June, 2010, which has attained finality, he is to be treated in service till 9th November, 2005, the date of his superannuation

determined by the judicial verdict and thus, he is to be treated in service till 5 PM or 12 O'clock midnight on 9th November, 2005.

15. It is not the case of anybody including the State that petitioner was not eligible and/or entitled for taking over of his services by the Government at the time of taking over of the College and services of other employees of the College.

16. It is true that name of petitioner does not find mention in the list of employees whose services were taken over by the State vide Notification dated 18th October, 2006 w.e.f. 9th November, 2005 but it was for the reason that he was retired wrongly by the Management on 31st March, 2005, which date was subsequently rectified by this Court as 9th November, 2005. Therefore, absence or exclusion of the name of petitioner in the list of employees, whose services were taken over, is inconsequential for adjudicating the claim of petitioner set out in present lis as after judgment dated 15th June, 2010, he has to be treated in service upto 9th November, 2005 and thus, for that reason, his name has to be deemed to be reflected/included in the list of employees whose services were taken over at 10 AM on 9th November, 2005.

17. We are of the considered view that there is no error of law or fact apparent in the judgment sought to be reviewed/recalled as such, same does not require recalling, except to the extent that the same is clarified and writ petitioner is held entitled to receive retiral benefits from the State, on account of his superannuation, after taking over of the College by the Government.

18. In view of aforesaid discussion, no modification in the ratio of judgment dated 7th January,

2020 passed in LPA No. 23 of 2009 is warranted. However, the declaration, that LPA No. 244 of 2010 stands allowed, is required to be recalled and modified with declaration that LPA No. 244 of 2010 preferred by State claiming that State was not responsible for payment of retiral payments to the petitioner stands dismissed. Ordered accordingly.

19. Accordingly, State is liable to pay the retiral benefits to the petitioner by considering him to be on the rolls of the College at the time of taking over services of employees i.e. on 9th November, 2005 and shall be treated to have superannuated as a Government employee. Hence, respondent-State is directed to pay all retiral and consequential benefits admissible on his retirement on 9th November, 2005 on or before 30th April, 2025, after which date petitioner shall also be entitled for interest @ 6% per annum on the admissible amount till final realization thereof.

In view of above, present petition is allowed and LPA No. 244 of 2010 stands disposed of in aforesaid terms.