



IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA

CWP No. 3646/2024
Decided on: 14.10.2025

ChamanPetitioner

Versus

State of H.P. & Ors.Respondents.

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Coram

Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting?¹ Yes.

**For the petitioner: Mr. Rajender Singh,
Advocate.**

**For the respondents: Mr. Y.P.S. Dhaulta, Additional
Advocate General, for respondents
No.1 to 3.**

**Mr. Rohit, Dy. Controller (F&A),
Food Civil Supplies Department,
present in person.**

Jyotsna Rewal Dua , J

Petitioner feels aggrieved against the office order dated 16.02.2024 issued by the respondents fixing his pay at par with that of his immediate senior/respondent No.4 w.e.f. 21.10.2018 and thereby also ordering recovery of excess payment made to the

¹ Whether reporters of the local papers may be allowed to see the judgment? yes

petitioner due to alleged wrong fixation of his pay, in equal monthly installments.

Heard learned counsel for the parties and considered the case file. I have also heard Mr. Rohit, Deputy Controller (Finance & Accounts) Department of Food & Civil Supplies, who has attended the hearing pursuant to the order passed in this case on 18.09.2025.

2. The case.

2(i) Petitioner was appointed as Clerk on contract basis on 14.09.2011. Respondent No.4, senior to the petitioner was appointed as Clerk on contract basis on 25.08.2011. Both were appointed in the pay scale of Rs. 5910+1900= 7810/-.

2(ii) On completion of five years of contractual service, petitioner was regularized as Clerk on 21.10.2016. Similarly, respondent No.4 was also regularized as Clerk of completion of five years on contract service.

2(iii) On completion of two years of service on the post of Clerk, petitioner and respondent No.4 were placed in pre-revised scale of Rs. 10300+3200=13500/-. Subsequently both of them were placed as Junior Assistants on 20.10.2021 in the pay-scale of Rs.11560/-+3600=15160/-.

2(iv) The Himachal Pradesh Civil Services (Revised Pay) Rules, 2022 (Revised Pay Rules 2022 in short) were notified on 03.01.2022. These rules came into force on and w.e.f. 01.01.2016.

Rule-6 thereof pertained to exercise of option by the government servant for coming over to the revised pay-scale. The option was to be exercised in the form appended with the rules within one month from the date of the notification of the rules.

Rule-6(4) stipulated that option once exercised, shall be final. The rule reads as under: -

6. *Exercise of option.* (1) *The Government employee shall exercise option in the Form appended to these rules so as to reach the authority specified in sub-rule (2), within a period of one month from the date of notification of these rules:*

Provided that:-

- (i) in the case of a Government employee, who on the date of notification of these rules, is out of India or on leave or on deputation or on foreign service or on active service, the option shall be exercised in the said Form so as to reach the said authority within a period of one month from the date of his taking the charge of his post under the State Government, if that date is later than the date specified in this sub-rule; and*
- (ii) where a Government employee is under suspension on the date of notification of these rules, the option shall be exercised within a period of one month from the date of his return to his duty, if that date is later than the date specified in this sub-rule.*

(2) The option in the Form shall be submitted by the Government employee to the Head of the Office.

(3) If the option is not received within the time specified in sub-rule (1), the Government employee shall be deemed to have opted/ elected to be governed by the revised pay structure with effect from first day of January, 2016. The Head of the Office shall determine his pay in the revised pay structure with reference to provisions of rule 7 of these

rules.

(4) *The option once exercised shall be final.*

Note 1. Persons, whose services were terminated on or after the first day of January, 2016 and who could not exercise their option within the specified period, on account of discharge on the expiry of the sanctioned posts, resignation, dismissal or discharge on disciplinary grounds, shall be entitled to the benefits under these rules, if otherwise admissible.

Note 2. Persons, who have died on or after the first day of January, 2016 and could not exercise the option within the specified period shall be deemed to have opted for the revised pay structure on and from the first day of January, 2016 or any subsequent date which is most beneficial to their dependents.

Note 3. Persons, who were on earned leave or any other leave on the first day of January, 2016, which entitled them to leave salary, shall be allowed the benefits admissible under these rules.

2(v) Respondents-State issued office letter/instructions on 10.02.2022 on the subject of "Implementation of Himachal Pradesh Civil Services (Revised Pay) Rules, 2022-Regarding enhancement of 15% to the employees." Para-2 thereof, provided that, if the increase in the revised pay of government employee appointed on or after 01.01.2016 fixed under the Revised Pay Rules, 2022 as on the date of joining the service or on the date of grant of higher pay band/grade pay (after completion of two years), as the case may be, is less than 15% over and above the formulation of existing basic pay plus notional Dearness Allowance calculated @113%, such government employee

shall be entitled to minimum increase of 15% over and above the formulation of existing basic pay plus notional dearness allowance calculated @113%. Para-2 of office letter/instructions dated 10.02.2022, runs as under: -

“2. The Governor, Himachal Pradesh, is further pleased to order that if the increase in the revised pay of government employee appointed on or after 01.01.2016 fixed under Himachal Pradesh Civil Services (Revised Pay) Rules, 2022, as on date of joining in service or on the date of grant of higher Pay Band/Grade Pay (after completion of two years), as the case may be, is less than 15% (fifteen percent) over and above the formulation of existing Basic Pay plus notional Dearness Allowance calculated @ 113% (one hundred thirteen percent), such Government employee shall be entitled to minimum increase of 15% (fifteen percent), over and above the formulation of existing Basic Pay plus notional Dearness Allowance calculated @113% (one hundred thirteen percent).”

Following para-3 of office letter/instructions dated 10.02.2022, further clarified that in cases, where government employee had already been placed in higher pay scale between 01.01.2016 & 03.01.2022, on account of promotion, the government employee shall have the option to switch over to the revised pay structure from the date of such 'promotion'.

“3. It is also clarified that in cases where a Government employee has already been placed in higher pay scale between 01.01.2016 and the date of the notification of HP Civil Services (Revised Pay) Rules, 2022, on account of promotion, the Government employee shall have the option to switch over to the revised pay structure from the date of such promotion.”

Para-4(II) of office letter/instructions dated 10.02.2022 provided certain riders qua making available 15% enhancement as under: -

“4(II) The above minimum 15% enhancements allowed in the Paras 2 & 3 above shall be subject to the following conditions: -

(a) Pay of the Government employee recruited on or after 01.01.2016 and up-to 02.01.2022 shall not, in any case, be more than his/her immediate senior government employee/employees in the cadre. Similarly, pay of the Government employee promoted on or after 01.01.2016 and upto 02.01.2022 shall not, in any case, be more than his/her immediate senior government employee/employees in the cadre. If this condition arises, then the pay of the junior employee will be fixed at the same level as the senior. In case of any wrong fixation of pay due to extending minimum 15% raise, the same shall entail recovery from the salary of the concerned Government employee on its detection at any stage.

(b) The pay of the Government employee fixed in accordance with the above Instructions shall not entitle the senior employee to get the benefit of his pay to be refixed under senior-junior pay fixation Instructions issued from time to time. The instructions issued earlier on the issue by the Government from time to time shall stand amended to this extent.”

In terms of para-4(II)(a) of the office letter/instructions dated 10.02.2022, pay of the Government employee promoted on or after 01.01.2016 and up to 02.01.2022, shall not, in any case be, more than his immediate senior in the cadre. In case, this condition arises, then the pay of the junior

employee would be fixed at the same level as that of the senior. In case of any wrong fixation of pay due to extending minimum 15% raise, the same shall entail recovery from the salary of the concerned Government employee on its detection at any stage.

Para-4(II)(b) provides that wherever the pay of government employee is fixed, in accordance with office letter/instructions dated 10.02.2022, senior employee would not be entitled to get the benefit of his pay to be refixed under senior-junior pay fixation instructions issued from time to time.

2(vi) Petitioner opted for pay fixation by factor of 15% in terms of office letter/instructions dated 10.02.2022. He exercised this option on 14.02.2022 from the date of his 'promotion' to the post of Junior Assistant on 20.10.2021. Relevant part of the option exercised by the petitioner reads as under: -

"Option No.3

May be exercised by those who promoted between 01-01-2016 to 03-01-2022)

(See Rule 8(V))

I Chaman was promoted to the post of Junior Assistant on 20-10-2021 hereby opt to fix my pay on promotion as under:-

- (i) that my pay may be fixed on higher post from the date of promotion; or*
- (ii) from the date of next increment in the lower post w.e.f.*

UNDERTAKING

I, hereby undertake that in the event of my pay having been fixed in a manner contrary to the provisions contained in Himachal Pradesh Civil Services (Revised Pay) rules 2022, as detected subsequently, any excess payment(s) made to me shall be refunded by me to the Government either in lump sum or by adjustment against future payment due to me.

Date: 14-02-2022

Place: Mandi

Sd/-"

Accordingly, petitioner's pay was fixed by giving him 15% enhancement at Rs. 37,700/- (Cell 10 Level 7) w.e.f. 21.10.2021 vide order dated 18.02.2022.

2(vii) Respondent No.4, admitted senior to the petitioner, also exercised his option in terms of (Revised Pay) Rules, 2022 as also the office letter/instructions dated 10.02.2022 opting for 15% enhancement w.e.f. 22.10.2018 i.e. the date when petitioner and respondent No.4 both had completed two years of regular service as Clerk and were placed in pre-revised pay scale Rs.10300+3200=13500/-. Pay of respondent No.4 was fixed at Rs. 33300/- (Cell-18 Level-3) w.e.f. 22.10.2018 vide order dated 09.03.2022.

Petitioner as well respondent No.4 were promoted as Senior Assistants on 30.11.2023.

2(viii) Respondent No.4 preferred a representation to the respondents-State that even though he was senior to the petitioner and had exercised his option in the best possible manner for his benefit in terms of Revised Pay Rules, 2022 and office letter/instructions dated 10.02.2022, yet his pay had been fixed at lower level than the pay of the petitioner.

The aforesaid representation was examined by the competent authority. Vide office order dated 16.02.2024, the competent authority concluded that it was the petitioner, who had

been given benefit of higher pay contrary to the applicable rules/instructions. Accordingly, pay of the petitioner was ordered to be brought down at par with that of his immediate senior i.e. respondent No.4 with further direction to recover excess payment from the petitioner for the period in question.

Feeling aggrieved against the office order dated 16.02.2024, the petitioner has preferred this writ petition.

3. Submissions

3(i) Learned counsel for the petitioner has mainly contended that para-4(II) of the office letter/instructions dated 10.02.2022 (extracted above) is not in consonance with law. In case, pay of the petitioner became higher consequent upon the option so exercised by him for coming over to the revised pay scale, the same could not have been reduced, rather the pay of his senior-respondent No.4 ought to have been stepped up. It was also submitted that Rule 9 of the Revised Pay Rules, 2022 itself comes to the rescue of the petitioner and provides that where a senior government employee promoted to a higher post before 01.01.2016, draws less pay in the revised pay structure than his junior, who is promoted to the higher post on or after 01.01.2016, the pay of the senior government employee would be stepped up in the revised pay structure to an amount equal to the pay as fixed for his junior in that higher post.

Rule-9 of the Revised Pay Rules, 2022 as pressed into service by learned counsel for the petitioner, reads as under: -

9. *Stepping up of pay under these rules* The anomaly in pay arisen due to revision of pay under these rules shall be regulated as under;

(1) Cases where stepping up will be admissible subject to provisions of sub-rule (ii) of this rule:

(i) Where in the fixation of pay under these rule, a Government employee, who in the existing pay structure, was drawing immediately before the first day of January, 2016, equal or more pay than another Government employee junior to him in the same cadre, gets his pay fixed in the revised pay structure in a Cell lower than that of such junior, his pay shall be stepped up to the same Cell in the revised pay structure as that of the junior.

(ii) In case, where a senior Government employee promoted to a higher post before the first day of January, 2016, draws less pay in the revised pay structure than his junior, who is promoted to a higher post on or after the first day of January, 2016, the pay of the senior Government employee, shall be stepped up in the revised pay structure to an amount equal to the pay, as fixed for his junior in that higher post. The stepping up shall be done with effect from the date of promotion of the junior Government employee subject to fulfillment of the following conditions, namely:-

(a) the junior and the senior Government employees should belong to the same cadre and the posts in which they have been promoted should also be identical in the same cadre;

(b) the existing Pay Structure and Pay Matrix Level of the lower and higher posts in which

they are entitled to draw pay should be identical;

(c) the senior Government employee at the time of promotion to higher level should have been drawing equal or more pay than his junior;

(d) the anomaly in pay should be directly as a result of application of the provisions of these rules:

Provided that the benefit of stepping up of pay can be allowed to the senior second time, if the anomaly has arisen with reference to the pay of the same junior in respect of whom the pay of the senior was stepped up first time:

Provided further that the senior Government employee shall be entitled to earn next increment on the same date as that of his junior with respect to whom he had got step up in his pay.

(2) Cases, where stepping up of pay will not be admissible:

(i) If difference in pay is due to exercise of option for pay fixation on revision by a different factor.

(ii) If difference in pay is due to the application of the instructions issued by the Government with regard to implementation of Assured Career Progression Scheme.

(iii) If the senior Government employee exercises an option to get his promotion/ pay fixation, postponed.

(iv) If in the lower post, the junior Government employee was drawing more pay in the existing scale/pay structure than his senior by virtue of any advance increment(s) granted to him or due to any inflation in pay other than by way of normal pay fixation.

(v) The increment of senior employee should not stopped/withheld due to otherwise.”

3(ii) Mr. Rohit, Deputy Controller (Finance & Accounts), who attended the hearing of the case pursuant to the order dated 18.09.2025 passed in this writ petition, clarified the position with respect to the relevant rules and office instructions. The Official clarified that in fact, the option exercised by the petitioner pursuant the Revised Pay Rules, 2022 read with office letter/instructions dated 10.02.2022 was in-correct & contrary to office letter/instructions dated 10.02.2022. The petitioner had exercised the option for coming over to the revised pay scale from the date of his "so called promotion" to the post of Junior Assistant i.e. w.e.f. 20.10.2021; Both the petitioner as well respondent No.4 were serving as Clerk; They had simply been placed as Junior Assistant on 20.10.2021. It is only 'placement' that is provided as Junior Assistant, therefore, option exercised by respondent No.4 for switching over to the revised pay rules on completion of two years of regular service as Clerk w.e.f. 22.10.2018 was the correct option. The petitioner, on the other hand, had drawn higher pay due to the incorrect option exercised by him, which had been erroneously acted upon by the respondents thereby fixing his pay on 18.02.2022 by placing him at Cell-10 Level-7 i.e. Rs. 37,700/- w.e.f. 21.10.2021. This pay fixation under office order dated 18.02.2022 was incorrect. Respondent No.4 had exercised his option correctly

for coming over to the revised pay scale on completion of two years of regular service as Clerk w.e.f. 22.10.2018, accordingly, his pay was correctly fixed under office order dated 09.03.2022. After examining the issue, the competent authority ordered for correction in the pay anomaly between petitioner and respondent No.4 by ordering petitioner's pay to be brought at par with that of his immediate senior i.e. respondent No.4. Such correction was permissible in view of para-4(II) of office letter/instructions dated 10.02.2022.

Learned Additional Advocate General on the strength of reply filed by the respondents justified the impugned order.

4. Consideration

Having heard learned counsel on both sides and also interacting with Mr. Rohit, Deputy Controller (Finance & Accounts), I am of the considered view that no error in the impugned order can be said to have been committed by the respondents while fixing petitioner's pay at par with that of respondent No.4. This is for the following reasons: -

4(i) Admittedly, petitioner had exercised his option to switch over to Revised Pay Scale-2022 in terms of the Revised Pay Rules, 2022 notified on 03.01.2022, read with office letter/instructions dated 10.02.2022. The office instructions dated 10.02.2022 were issued to extend the benefit of 15% enhancement to those

employees, who were appointed on or after 01.01.2016 and in whose cases the increase in the revised pay, as on date of joining the service or on the date of grant of higher pay band/grade (after completion of two years) as the case may be, was less than 15% over and above the formulation of existing basic pay plus notional dearness allowance calculated @113%. Such employees were held entitled to a minimum increase of 15% over and above the formulation of existing basic pay plus notional dearness allowance calculated @113%.

Increase in petitioner and respondent No.4's revised pay under the Revised Pay Scales 2022 was less than 15% over and above the formulation of their existing basic pay plus notional dearness allowance, they, therefore, were entitled to the 15% enhancement as provided under para of office letter/instructions dated 10.02.2022. However, para-3 of the said office letter/instructions clearly stipulated that in order to avail the benefit of 15% increase, a government employee would have the option to switch over to the revised pay structure from the date of 'promotion'.

The petitioner had exercised the option for coming over to the revised pay scale from the date of his placement as Junior Assistant w.e.f. 20.10.2021 by describing the same as 'promotion', whereas respondent No.4 had exercised his option under the same

office instructions correctly on after completion of two years of regular service as Clerk. Admittedly, a Clerk is 'placed' as Junior Assistant and not 'promoted' as such. This error, having come to the notice of the competent authority upon being pointed out by respondent No.4, has justly been ordered to be rectified.

4(ii) Correction in the wrongly fixed revised pay-scale, inadvertently released to the petitioner, even otherwise is permissible under Clause-4 of the office letter/instructions dated 10.02.2022. Para-4 of the said letter/instructions provides that the pay of a government employee recruited on or after 01.01.2016 and up to 02.01.2022 shall not be more than his immediate senior in the cadre; Further pay of a government employee promoted on or after 01.01.2016 and up to 02.01.2022 shall not in any case exceed that of his immediate senior; In case, the pay of junior employee becomes higher than that of his immediate senior by virtue of the implementation of office instructions dated 10.02.2022, it is the pay of the junior employee, which shall be brought down at the same level as that of his immediate senior. The office instructions dated 10.02.2022 also stipulate that the Senior/Junior pay fixation instructions issued earlier would not be applicable in such eventuality. Petitioner's case is primarily based upon office letter/instructions dated 10.02.2022. Petitioner had exercised the option to avail 15% enhancement provided by 10.02.2022 office

letter/instructions. Clause 4(II) of these office instructions clearly stipulates that there cannot be any situation, where as a consequence of exercise of option under the said instructions, a junior can draw higher pay than that of his immediate senior. If he does, his pay would be refixed and brought down to the level of his immediate senior. The office instructions are not even under challenge in this writ petition but naturally as the petitioner has availed 15% enhancement under these very instructions. Rule-9 of the Revised Pay Rules, 2022 has no applicability to the facts of the present case.

5. In view of above, the respondents have justifiably issued the impugned order refixing and bringing down petitioner's pay at par with that of his immediate senior i.e. respondent No.4. However, having held so, the recovery of excess payment made to the petitioner on account of previous incorrect fixation of his pay cannot be countenanced. The excess payment was made to the petitioner not on account of any fault on his part, but due to an error committed by the respondents re-fixing petitioner's pay incorrectly by acting upon incorrect option furnished by him at the relevant time, and thereby releasing higher pay to the petitioner than his immediate senior respondent No.4.

Accordingly, respondents' action in issuing impugned office order dated 16.02.2025 (Annexure P-14) is affirmed to the

extent it brings down & fixes petitioner's pay at par with that of immediate senior i.e. respondent No.4, however, remaining part of Annexure P-14 ordering recovery of excess payment made to the petitioner due to wrong fixation of his pay is quashed and set aside.

The writ petition to stand disposed of in above terms.
Pending miscellaneous application(s), if any, also to stand disposed of.

**Jyotsna Rewal Dua
Judge**

14th October, 2025_(rohit)

High Court of J&K