IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

CWP No.4603 of 2015.

Order reserved on:18.12.2015.

Date of Order: December 30, 2015

Chamel Singh S/o Late Garja Ram. ....Petitioner.

Vs:

State of H.P and others. ...Non-petitioners.

Coram:

The Hon'ble Mr.Justice P.S.Rana, Judge.

Whether approved for Reporting?[1]yes

For the petitioner:	Mr.Amit Singh Chandel, Advocate.
For Non-petitioner-1.	Mr.J.S.Rana, Asstt. Advocate General.
For non-petitioners No.2 to 4:	Mr.Mukul Sood, Advocate.
For non-petitioner-5	Mr.K.D.Sood, Sr. Advocate with Mr. Sanjeev Sood, Advocate.

P.S.Rana Judge.

ORDER: Present Civil Writ Petition is filed under Article 226 of the Constitution of India. It is pleaded that in the year

[1] **Whether reporters of Local Papers may be allowed to see the judgment?yes.**

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1979 HP Ex-servicemen Corporation Act was notified and on dated 11.5.1982 father of petitioner who was ex-serviceman expired. It is further pleaded that on dated 1.1.2003 truck No. HP 20C-3773 in the name of mother of petitioner was attached by non-petitioner Corporation as per HP Ex-servicemen Corporation Act 1979. It is further pleaded that on dated 6.1.2011 CWP No. 2402 of 2008 titled Baldev Singh Vs. HP Ex-servicemen Corporation and others was decided by Hon'ble Division Bench High Court of HP and thereafter on dated 24.1.2011 draft policy for allocation of transportation of work was framed and comments were sought from non-petitioner No.2 HP Ex-servicemen Corporation Hamirpur District Hamirpur through its Chairman-cum-Managing Director HP. It is further pleaded that thereafter on dated 5.2.2011 letter from the office of Secretary (SWD) was issued in compliance to directions issued by Hon'ble Division Bench High Court of HP in CWP No. 2402 of 2008 titled Baldev Singh Vs. HP Ex-servicemen Corporation and others and thereafter on dated 17.2.2011 show cause notice was issued to truck operators having more than two trucks to delist their trucks w.e.f. 1.4.2011 as per

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directions issued by Hon'ble Division Bench High Court of HP in CWP No. 2402 of 2008 titled Baldev Singh Vs. H.P. Ex-servicemen Corporation and others. It is further pleaded that on dated 18.6.2014 the mother of petitioner expired and thereafter on dated 16.1.2015 permission granted to transfer truck No. HP 20C-3773 in the name of legal heir i.e. petitioner. It is further pleaded that thereafter on dated 17.7.2015 permission granted in the name of petitioner was cancelled. Thereafter present civil writ petition filed by petitioner and sought relief that the regulations made for attachment of trucks with H.P Ex-servicemen Corporation Hamirpur District Hamirpur in 102 meeting of Board of Directors on dated 27.4.2011 Annexure P7 are in violation of HP Ex-servicemen Corporation Act 1979 as well as in violation of HP General Clauses Act 1968 and same be quashed and set aside. Additional relief also sought that order dated 17.7.2015 regarding delisting truck No. HP 20C-3773 of the petitioner w.e.f. 17.7.2015 be also quashed. Additional relief also sought with direction to HP Ex-servicemen Corporation Hamirpur to attach truck No. HP

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20C-3773 belonging to petitioner with non-petitioner No. 2 i.e. HP Ex-servicemen Corporation Hamirpur.

2. Per contra response filed on behalf of non-petitioner No.1 State of HP pleaded therein that in view of order of Hon'ble Division Bench High Court of HP in CWP No. 2402 of 2008 titled Baldev Singh Vs. HP Ex-servicemen Corporation and others directions were issued to HP Ex-servicemen Corporation to take immediate necessary action. It is further pleaded that HP Ex-servicemen Corporation was also directed to ensure that bye-laws and rules of Corporation are amended as per direction given by Division Bench High Court of HP in CWP No. 2402 of 2008 titled Baldev Singh Vs. HP Ex-servicemen Corporation and others. It is further pleaded that HP Ex-servicemen Corporation framed bye-laws and rules for HP Ex-servicemen Truck Operators as per direction of Hon'ble Division Bench High Court of HP issued in CWP No. 2402 of 2008. It is further pleaded that civil writ petition against non-petitioner No.1 be dismissed.

3. Per contra separate response filed on behalf of non-petitioner Nos. 2 to 4 pleaded therein that fundamental

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right of petitioner is not infringed and present writ petition is not maintainable. It is further pleaded that non-petitioners No. 2 to 4 have acted strictly in accordance with direction issued by Hon'ble Division Bench High Court of HP passed in CWP No. 2402 of 2008 titled Baldev Singh Vs. HP Ex-servicemen Corporation. It is further pleaded that as per direction of Hon'ble Division Bench High Court of HP issued in CWP No. 2402 of 2008 titled Baldev Singh Vs. HP Ex-servicemen Corporation and others firstly ex-serviceman would be entitled to ply truck and in case ex-serviceman died then his widow would be entitled to ply truck and if widow died then attachment of truck would be ceased to exist and slot would be given on the basis of seniority. It is further pleaded that major children have no legal right to attach truck with ex-servicemen Corporation as per directions of HP High Court given in CWP No. 2402 of 2008. It is further pleaded that order passed by Hon'ble Division Bench High Court of HP in CWP No. 2402 of 2008 titled Baldev Singh Vs. HP Ex-servicemen Corporation and others was assailed before Hon'ble Apex Court of India in SLP(Civil) CC 15914 of 2011 titled Y.K. Awasthi and others Vs. HP Ex-servicemen

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Corporation and others. Special Leave to Appeal (Civil) was dismissed by Hon'ble Apex Court of India on dated 10.10.2011 and order passed by Hon'ble Division Bench High Court of HP in CWP No. 2402 of 2008 titled Baldev Singh Vs. HP Ex-servicemen Corporation and others has attained the stage of finality. It is further pleaded that truck was attached in the name of widow of ex-serviceman on 1.1.2003. It is further pleaded that widow expired on 18.6.2014 and after her death right to ply truck in Ex-servicemen Corporation came to an end in view of directions given by Hon'ble High Court of HP in CWP No. 2402 of 2008. It is further pleaded that order of delisting truck by Ex-servicemen Corporation is strictly inconsonance with directions issued by Hon'ble Division Bench High Court of HP in CWP No. 2402 of 2008 titled Baldev Singh Vs. Ex-servicemen Corporation and others. It is further pleaded that there are number of ex-servicemen who have applied for attachment of trucks with Ex-servicemen Corporation and are waiting for attachment of their trucks with Corporation. It is further pleaded that if after the death of ex-serviceman and after death of widow of ex-serviceman if legal heirs of ex-

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serviceman are permitted to attach truck with Ex-servicemen Corporation in perpetuity then ex-servicemen who are in waiting for their turns for attachment of their trucks would not get their chance and the purpose of Corporation to give benefit to all ex-servicemen would be frustrated. It is further pleaded that order of Hon'ble Division Bench High Court of HP passed in CWP No. 2402 of 2008 has attained the stage of finality. Prayer for dismissal of civil writ petition sought.

4. Per contra separate response filed on behalf of non-petitioner No.5 pleaded therein that delisting of truck of ex-servicemen is internal matter of HP Ex-servicemen Corporation. It is further pleaded that non-petitioner No.5 only load the trucks recommended by Ex-servicemen Corporation. Prayer for dismissal of civil writ petition sought.

5. Court heard learned Advocate appearing on behalf of petitioner and learned Advocate appearing on behalf of non-petitioners and also perused entire record carefully

6. Following points arise for determination in present writ petition:

(1) Whether civil writ petition filed by petitioner is liable to be accepted as mentioned in memorandum of grounds of civil writ petition

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and in view of directions issued by Hon'ble Division Bench High Court of HP in CWP No. 2402 of 2008 decided on 6.1.2011 affirmed by Hon'ble Apex Court of India in SLP(Civil) CC No.15914 of 2011 titled Y.K.Awasthi Vs. HP Ex-servicemen Corporation and others decided on 10.10.2011?.

(2) Final order.

Findings upon Point No.1 with reasons.

7. Submission of learned Advocate appearing on behalf of petitioner that regulations made for attachment of trucks are in violation with HP Ex-servicemen Corporation Act 1979 is rejected being devoid of any force for the reasons hereinafter mentioned. It is held that Hon'ble Division Bench High Court of HP in CWP No. 2402 of 2008 titled Baldev Singh Vs. HP Ex-servicemen Corporation and others decided on 6.1.2011 issued fifteen directions to State of HP as well as HP Ex-servicemen Corporation to ensure that bye-laws, rules and regulations of the Corporation are amended as per directions issued by Hon'ble Division Bench High Court of HP in CWP No. 2402 of 2008 titled Baldev Singh Vs. HP Ex-servicemen Corporation and others. Hon'ble Division Bench High Court of HP further directed that directions would be

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complied latest by 28th February 2011 and directions No.9 and 10 are quoted in toto:

> 9. In case an ex-serviceman dies, his widow shall be entitled to inherit the right to have a truck attached till her life time.
>
> 10. In case there is no widow or the widow voluntarily gives up her right, the attachment can be transferred to one son/daughter of the ex-serviceman but in such eventuality, the right to ply the truck shall only be for a period of 5 years, the attachment shall cease to exist and the slot shall be given on the basis of seniority.

Hon'ble Division Bench High Court of HP in CWP No. 2402 of 2008 titled Baldev Singh Vs. HP Ex-servicemen Corporation held that after the death of widow the attachment of truck would be ceased to exist and the slot would be given on the basis of seniority. Hon'ble Division Bench High Court of HP has given right to ply truck to the widow of ex-serviceman and did not give right to major children of ex-serviceman to ply truck with Ex-servicemen Corporation.

8. Order passed by Hon'ble Division Bench High Court of HP in CWP No. 2402 of 2008 titled Baldev Singh Vs. HP Ex-servicemen Corporation and others was assailed in

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SLP(Civil) CC No.15914 of 2011 titled Y.K.Awasthi Vs. HP Ex-servicemen Corporation and others. Hon'ble Apex Court of India on dated 10.10.2011 affirmed the order of Hon'ble Division Bench High Court of HP. Hence it is held that order of Division Bench High Court of HP wherein directions were issued has attained the stage of finality.

9. Submission of learned Advocate appearing on behalf of petitioner that impugned order Annexure: P2 dated 17.7.2015 regarding delisting truck No. HP-20C-3773 of petitioner be quashed and set aside is also rejected being devoid of any force for the reasons hereinafter mentioned. Court has carefully perused the order of Chairman-cum-Managing Director HP Ex-servicemen Corporation dated 17.7.2015 Annexure:P2 placed on record. There is recital in the order that order was passed by Chairman-cum-Managing Director HP Ex-servicemen Corporation in compliance to directions issued by Hon'ble Division Bench High Court of HP in CWP No. 2402 of 2008 titled Baldev Singh Vs. HP Ex-servicemen Corporation and others dated 6.1.2011. It is well settled law that all authorities within State of HP are under legal obligation to comply directions of Hon'ble Division

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Bench High Court of HP unless the order of High Court of HP is not set aside by Hon'ble Apex Court of India in accordance with law. In the present case there is no evidence on record in order to prove that directions issued by Hon'ble Division Bench High Court of HP in CWP No.2402 of 2008 were set aside by any competent authority of law but on the contrary it is proved on record that directions issued by Hon'ble Division Bench High Court of HP in CWP No. 2402 of 2008 were affirmed by Hon'ble apex Court of India in SLP(Civil) CC No.15914 of 2011 titled Y.K Awasthi Vs. HP Ex-servicemen Corporation and others. It is held that Division Bench High Court of HP has directed HP Ex-servicemen Corporation to comply directions latest by 28.2.2011 and Corporation has no option except to accept directions issued by Division Bench High Court of HP in CWP No.2402 of 2008.

10. Submission of learned Advocate appearing on behalf of petitioner that direction be issued to non-petitioners to attach truck No HP 20C-3773 of petitioner with HP Ex-servicemen Corporation is also rejected being devoid of any force for the reasons hereinafter mentioned. Court is of the opinion that Hon'ble Division Bench High Court of HP

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in CWP No. 2402 of 2008 titled Baldev Singh Vs. HP Ex-servicemen Corporation and others has directed in positive manner that after the death of widow the attachment shall cease to exist and the slot shall be given on the basis of seniority. Hon'ble Division Bench High Court of HP in CWP No.2402 of 2008 titled Baldev Singh Vs. HP Ex-servicemen Corporation and others did not held that major children of ex-serviceman would be entitled to ply truck with HP Ex-servicemen Corporation. On the contrary in internal page-9 of order dated 6.1.2011 in the bottom of order Hon'ble Division Bench High Court of HP in CWP No. 2402 of 2008 titled Baldev Singh Vs. HP Ex-servicemen Corporation and others held that right of ex-serviceman to get his truck attached would be inherited only by his widow and not by his children unless the children are minor. Hon'ble Division Bench High Court of HP has given right of inheritance to widow and to his minor children only and did not give right of inheritance to major children of ex-serviceman in CWP No. 2402 of 2008. In view of above stated facts point No.1 is answered against petitioner.

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Point No.2 (Final order)

11. In view of findings on point No.1 civil writ petition No. 4603 of 2015 titled Chamel Singh Vs. State of HP and others is dismissed. No order as to costs. Civil writ petition disposed of. Pending appli cation(s) if any also disposed of.

(P.S.Rana),
Judge.

December 30, 2015(R)

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