

IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

CWPOA No.1647 of 2020

Decided on: 30.12.2025

Pardeep Kumar

...Petitioner

Versus

State of HP & Another

...Respondents

Coram:

Hon'ble Mr. Justice Ranjan Sharma, Judge

¹*Whether approved for reporting?. Yes.*

For the petitioner: Mr Prantap Sharma,
Advocate.

For the respondents: Mr. Sumit Sharma,
Deputy Advocate General.

Ranjan Sharma, Judge

Petitioner, Pardeep Kumar had filed an Original Application, OA No 893 of 2017 before Himachal Pradesh State Administrative Tribunal and upon its abolition, the matter upon transfer, has come up before this Court as *CWPOA No 1647 of 2020*, seeking the following relief(s):

“(i). The respondent department may kindly be directed to promote the applicant as Pump Operator with effect from 15.03.2012, the date when said Sh. Lekh Raj was promoted as Pump Operator, with all consequential benefits.”

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

FACTUAL MATRIX:

2. Case as set-up by Learned Counsel is that petitioner was engaged as a Beldar on daily wage basis on 01.01.1987 and his services were regularized as Beldar on 01.01.1997 [*Annexure A-1*]. It is the case of petitioner that one Shri Lekh Raj was promoted as Pump Operator by the State Authorities on 15.03.2012 [*Annexure A-2*], whereas, the petitioner despite being eligible for promotion to post of Pump Operator was neither considered nor promoted as a Pump Operator by the State Authorities. It is further averred that 26 other incumbents have been promoted as Pump Operators on 15.02.2017 [*Annexure A-3*], by State Authorities but despite eligibility and entitlement, petitioner was neither considered nor promoted as Pump Operator by the State Authorities.

In this backdrop, the petitioner has filed instant petition raising a claim for directing the State Authorities to promote the petitioner as Pump Operator w.e.f. 15.03.2012, the date from which Shri Lekh Raj i.e. private respondent was promoted

with all consequential benefits.

STAND OF STATE AUTHORITIES IN REPLY-AFFIDAVIT:

3. Pursuant to the issuance of notice on 30.03.2017, the State Authorities have filed the Reply-Affidavit dated 30.07.2018 of Superintending Engineer, IPH Circle, Una.

3(i). Perusal of the Reply-Affidavit admits that the petitioner is working as Beldar on regular basis w.e.f. 01.01.1997 in Respondent-Department. Reply-Affidavit indicates that promotion to post of Pump Operator are governed by Recruitment and Promotion Rules dated 31.08.1996[Annexure R-I] from amongst the Helpers/Pump Attendants who possess 8 years of regular work charge service including 5 years experience of working with Pump Motors and Electrical Accessories.

3(ii). Reply-Affidavit indicates that so far as incumbents who were promoted as Pump Operators are concerned, they had undergone the training as Pump Operator-Helper and pursuant to the said training they were promoted to the said post. It is averred that Annexure A-4 is not a

Seniority List. It is averred that post of Pump Operator is Class-III Circle Level post, to be filled from feeder categories who are eligible as per statutory Rules Annexure R-I and since the petitioner being a Beldars, does not falls in the feeder category, therefore, he and is not eligible. It is averred that the petitioner cannot have any grievance if eligible feeder category employees were promoted to the posts of Pump Operator by the respondents. In this backdrop, a prayer is made for dismissing the writ petition.

REBUTTAL BY PETITIONER:

4. Petitioner has filed a rejoinder stating that respondents have adopted a pick and choose method by not sponsoring petitioner for training which was one of the pre-requisites so as to enable him to gain experience and eligibility for promotion. In this backdrop, petitioner has denied the averments contained in reply and reiterated his claim for promotion as Pump Operator from due date.

5. Heard, Mr. Prantap Sharma, Learned

Counsel for the petitioner and Mr. Sumit Sharma, Learned Deputy Advocate General for Respondents and have gone through the material available on record.

ANALYSIS:

6. Taking into account the entirety of the facts and circumstances and the material on record, this Court is of the considered view, that the claim of the petitioner for promotion to the post of Pump Operator, is *not tenable, for following reasons:*

6(i). Perusal of Recruitment and Promotion Rules dated 31.08.1996 [*Annexure R-I* with Reply-Affidavit} indicates that the promotional post of Pump Operator is to be filled up from amongst the Work Charge Helpers/Pump Attendants who possess 8 years regular work charge service, which shall include 5 years experience of working with Pump Operators and Electrical Accessories. Rule 11 of the Rules prescribing the eligibility for promotion to the post of Pump Operator Class-III, reads, as under:-

11.In case of recruitment by promotion, deputation, transfer/grades from which promotion/ deputation/ appointments /transfer is to be made.	By promotion from amongst the work charged Helpers/Pump Attendant who passes 8 years regular service as work charged which shall include 5 years Experience of working with Pump Motors and Electrical Accessories.
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Based on the express mandate of Rule 11 of the Recruitment and Promotion Rules, the petitioner being a Beldar and was not in the Feeder Category for the promotional post of Pump Operator and therefore, the petitioner has neither any locus nor any right to be considered for promotion to the post of Pump Operator and thus the claim of the petitioner for consideration and for promotion dehors the Statutory Rules is untenable.

6(ii). Negating the claim of a Revenue Assistant for promotion to post of Town Planning Inspector when, category of Revenue Assistant was not a feeder category as per Recruitment and Promotion Rules, but was to be filled up from the feeder category of Town Planning Assistant Draughtsman, in terms of the mandate of the Hon'ble Supreme

Court in the case of **Commissioner of Municipal Administration and Another versus M.C. Sheela Evanjalin and Others, (2020) 19 SCC 317**, in the following terms:

“11.The respondent on the basis of the order passed by the High Court **sought appointment to the post of Town Planning Inspector** for the reason that she has Diploma in Civil Engineering with first class on August 6, 2014. On April 27, 2017, Commissionerate of Municipal Administration, Chennai rejected the claim of the respondent on the ground that the post of Town Planning Inspector is governed by Tamil Nadu Municipal Town Planning Service Rules, 1970 and that the method of appointment for the post of Town Planning Inspector is either by direct recruitment or by promotion from the post of Town Planning Assistant Draughtsman. **The post of Revenue Assistant is governed by Tamil Nadu Municipal General Service Rules 1970. Therefore, she is not holding a feeder category post for appointment to the post of Town Planning Inspector, and thus not eligible for appointment to the post of Town Planning Inspector.**

14. The fact remains that the Commissioner

Kuzhithurai Municipality has appointed the respondent as Revenue Assistant way back in 2006. However, the greed of the respondent for further promotion or appointment to the higher post did not end. **She wanted to be appointed as Town Planning Officer again on the strength of her qualification of Diploma in Civil Engineering.** As per the facts on record, the post of Town Planning Inspector is governed by the Tamil Nadu Municipal Town Planning Service Rules, 1970 and that such post can be filled up either by way of promotion or by direct recruitment. **The respondent is not in the feeder cadre for appointment to the post of Town Planning Inspector. In the absence of her being in feeder cadre, the High Court committed illegality in directing the consideration for appointment of the respondent to the post of Town Planning Inspector.** It may be noticed that Town Planning Officer Grade II is a promotional post from amongst Town Planning Inspectors, who has worked in regular capacity for a period of ten years as per the Rules.”

6(iii). Perusal of Rule 11 of Recruitment and Promotion Rules on 1996 [*Annexure R-I*] negates

the claim of the petitioner. The aforesaid Rule indicates that the promotion to the post of Pump Operator is to be made from Regular Work Charge Helpers/Pump Attendants who possess requisite service and possess requisite experience of working with Pump Motors and Electrical Accessories. Since the petitioner was neither a Regular Work Charged Helper nor a Regular Work Charged Pump Attendant; but was in fact a Beldar which was not a feeder category for promotion, therefore, unless and until category of Beldar was included as Feeder Category in the Rules, till then the petitioner being ineligible has no right of consideration and/or for promotion de hors the Statutory Rules and the mandate of law in the case of **M.C. Sheela Evanjalin** (supra).

7. Claim of the petitioner for promotion to the post of Pump Operator despite being ineligible and *de hors* the Statutory Rules shall lead to perpetuate illegality, in view of the mandate of the Hon'ble Supreme Court in **Pramod Kumar**

versus U.P. Secondary Services Commission, 2008 (7) SCC 153, in the following terms:

“18. If the **essential educational qualification for recruitment to a post is not satisfied, ordinarily the same cannot be condoned. Such an act cannot be ratified.** As appointment which is contrary to the statute/statutory rules would be void in law. An illegality cannot be regularized, particularly, when the statute in no unmistakable term says so. Only an irregularity can be. [See *Secy. State of Karnataka v. Umadevi, National Fertilizers Ltd. v. Somvir Singh and Post Mater General, Kolkata v. Tutu Das (Dutta).*”

8. Learned Counsel for petitioner submits that even though, the petitioner was a Beldar but the State Authorities have sponsored work charged Helpers/Pump Attendant(s) for training of Pump Motors and Electrical Accessories so as to enable them to gain experience for being considered for promotion as Pump Operator under State Authorities, then, non-sponsorship of the petitioner for said training was just to oust him for promotion.

The above contention of the petitioner cannot come to the aid of the petitioner for the reason; firstly, the petitioner has not set up a case in writ petition that others Beldars were sent for two months departmental training whereas he was left out; and secondly, the new case has been set up in rejoinder that the petitioner was not sent for the two months departmental training and setting up a new plea altogether cannot be permitted in view of the mandate of the Hon'ble Supreme Court in **Noorul Hassan versus Nahakpam Indrajit Singh and Others (2024) 9 SCC 353** and thirdly, even if the petitioner was not sent for training or was ignored yet the petitioner was bound to assert a claim within a reasonable time, which was not done; and fourthly, even on a query Learned Counsel for the petitioner informs that these persons were sent for departmental training between 2004 to 2007 but once the petitioner remained inactive and slept over his rights/ remedies then, the petitioner cannot be permitted

to rake up this new pleas-issues raised in Rejoinder filed in October, 2018 after a delay of more than 10 years; and fifthly, nothing has been placed on record that Rule 11 of Pump Operator of 1996 [*Annexure R-I*] were relaxed or amended, so as to substitute the requirement of 05 years experience of working with Pump Motors and Electrical Accessories with 2 months departmental training; and sixthly, substituting the requirement of 5 years experience prescribed in Statutory Rules with 2 months departmental training cannot confer any right on petitioner to claim eligibility and consideration for promotion as Pump Operator *dehors* Rule 11 of Rules of 1996; and seventhly, nothing has been placed on record that the petitioner possesses 2 months departmental training or even possesses 5 years experience of working with Pump Operator and Electrical Accessories; and eighthly, even if the junior Beldars, namely Rakesh, Jagdev and Jitender were sent for training and upon completion of training they were redesignated as Helper [Pump

Operators] and after gaining 5 years experience thereafter they were promoted as Pump Operators on 15.02.2017 [Annexure A-3] but once petitioner was Beldar and his category is not a recognized feeder category for promotion as Pump Operator as per Statutory Rules coupled with the fact that the petitioner does not possess 2 months departmental training and does not have 5 years experience thereafter and the petitioner was ineligible therefore, the petitioner has no valid and tenable claim for promotion as Pump Operator *dehors* the Statutory Rules; and lastly, the petitioner has no similarity with Lekh Raj, Mast Ram and Ram Pal who were Helpers and who were recognized as a feeder category for promotion to post of Pump Operator ,*whereas*, the petitioner was a Beldar, which was not recognized as feeder category for promotion as Pump Operator. Even, the non-impleadment of the juniors is fatal to the claim. In these circumstances, the claim and contention of Learned Counsel for petitioner is misconceived and the same is accordingly is

turned down/declined.

9. No other point was argued/raised.

DIRECTIONS:

10. In view of above discussion and for the reasons recorded hereinabove, instant petition is ***dismissed***, in following terms:

(i). Claim of the petitioner for promotion as Pump Operator cannot be accepted de hors the Recruitment and Promotion Rules dated 31.08.1996 [Annexure R-I].

(ii). Parties to bear respective costs.

In aforesaid terms, the instant petition and all pending miscellaneous application(s), if any, shall stand disposed of.

(Ranjan Sharma)
Judge

December 30, 2025
[Shivender]