

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.4291 of 2020
Reserved on: 18.08.2026
Decided on: 07.10.2026
Uploaded on: 07.10.2026

Kishori Lal

...Petitioner

Versus

State of Himachal Pradesh and others

...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

*Whether approved for reporting?*¹ Yes

For the petitioner: Mr. H.K. Paul, Advocate.

For the respondents: Mr. Amit Kumar Chaudhary,
Deputy Advocate General, for
respondents No.1 & 2-State.

Mr. Vijay Singh Thakur, Advocate,
for respondent No.3.

Mr. Bhim Raj Sharma, Advocate,
vice, Mr. Harish Sharma, Advocate,
for respondents No.4 to 8.

Jiya Lal Bhardwaj, Judge

The petitioner by way of present petition has
prayed for the following substantive reliefs:-

- “a) *The promotion of the Respondent No. 4 vide office
order dated 28-10-2017 (Annexure A-1) and the
promotion orders of the Respondents No. 5 to 8 to*

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

the posts of Marketing Assistants may kindly be quashed and set aside and the action of the Respondents 1 to 3 whereby the applicant has been ignored for promotion may kindly be quashed and set aside in the interest of justice;

- b) The Respondents No. 1 to 3, more particularly the Respondent No. 3 may kindly be directed to consider and promote the applicant from the present post of Junior Marketing Assistant to the post of Marketing Assistant from due date or from the date of the availability of the vacancy or atleast from the date since when the above named private Respondents have been promoted to the posts of Marketing Assistants and with all consequential benefits in the interest of justice;*
- c) The Respondent No. 3 may kindly be directed to grant the applicant the revised pay scale sanctioned for the post of Junior Marketing Assistants from due date with all consequential benefits and pay arrears with interest @ 18% per annum in the interest of justice;*
- d) The Respondent No. 3 may kindly be directed to consider and allow the benefit of Career Progression Scheme in favour of the applicant from due date as the applicant was not promoted to any higher post despite the fact that he has rendered more than 36 years of service on the same post of Junior Marketing Assistant;"*

2. The facts as emerged from the pleadings are that the petitioner was appointed as a Store Keeper by respondent No.3, which post was subsequently re-designated as Junior Marketing Assistant from 13.11.1981. The petitioner was senior to private respondents No.4 to 8 in the seniority list of Junior Marketing Assistants and Store

Keepers as on 30.06.2017 (Annexure A-2). The petitioner figures at serial No.1 and private respondents figure at serial No.2 to 6. Respondent No.4 was promoted to the post of Marketing Assistant, vide order dated 28.12.2017 (Annexure A-1). It has also been averred that respondents No.5 to 8 were also promoted to the post of Marketing Assistant.

3. It has further been averred that as per the Rules called as "the Himachal Pradesh State Cooperative Marketing and Consumers Federation Limited Employee Service Rules", the services of the petitioner were to be regulated. However, respondent No.3-Federation adopted pick and choose policy. Respondent No.4, who joined service as Store Keeper in respondent No.3- Federation on 03.11.1981, was shown to be confirmed with effect from 01.10.1988, was involved in the cases of misappropriation and was promoted to the post of Marketing Assistant. His promotion as Marketing Assistant during the currency of the penalty was challenged by Sh. Bhupinder Singh Deshta, Junior Marketing Assistant, whose name appears at serial No.6 in the seniority list as on 31.03.2008 and the learned District Judge, Shimla had quashed his promotion. However,

despite such judgment, he was promoted to the post of Area Manager and now stands retired, on attaining the age of superannuation. The petitioner having been appointed as Store Keeper w.e.f. 13.11.1981, confirmed on 01.10.1988 and being senior was superseded by respondents No.4 to 8 and further he was not granted the annual increments, which are otherwise allowed as a matter of course under the Fundamental Rules applicable to the employees working in respondent No.3-Federation. The petitioner had worked since 13.11.1981 and completed more than 36 years of service, but he has not got even a single promotion, inasmuch as he has also not been given the step up in his pay admissible under the Career Progression Scheme notified by the Government of Himachal Pradesh, adopted and made applicable to the employees working in respondent No.3-Federation. Despite many posts of Marketing Assistants lying vacant, the petitioner was not being promoted to the said post and feeling aggrieved by such action, he had made a representation dated 08.02.2015 to the Registrar Cooperative Societies, Himachal Pradesh, but he did not get any favorable response. Respondents No.7 and 8 are more than 2 years junior to the

petitioner and the petitioner has been discharging his duties faithfully and honestly, but respondent No.3 without any fairness towards him promoted junior persons. The petitioner had issued the legal notice to respondent No.3 through his advocate, but respondent No.3 did not care to respond the same.

4. It has also been averred that the respondents have not released the revised pay scale in favour of the petitioner, resulting in great recurring financial loss to him. It has further been averred that the action on the part of respondents No.2 and 3 is illegal, unfair, unjust and also violative of Articles 14 and 16 of the Constitution of India and as such sought the aforementioned reliefs.

5. Respondents No.1 and 2 filed reply to the petition and averred that the petitioner is mainly aggrieved by the impugned action of respondent No.3-Federation in not considering him for promotion to the post of Marketing Assistant. Respondent No.3-Federation is a registered cooperative society and its Board of Directors/Managing Committee is the employer and disciplinary authority in respect of its employees. The State Government or the replying respondents have no role to play in service matters

of the employees of the cooperative societies except granting approval of appointment and promotion on the basis of recommendations made by the Selecting Committee, as per provision contained in Rule 56 of the H.P. Cooperative Societies Rules, 1971. Respondent No.3-Federation follows its own service Rules, which have no nexus with the service rules applicable to the employees of the State Government and thus this Court has no jurisdiction to entertain the service matters pertaining to the employees of the cooperative societies. It has further been averred that respondent No.3-Federation is not a State or any other authority within the meaning of Article 12 of the Constitution of India and the same is also not authority within the meaning and for the purpose of Article 226 of the Constitution of India. As per the law laid down by the Hon'ble Supreme Court in **S.S. Rana vs. Registrar, Coop. Societies and another**, (2006) 11 SCC 634, this Court has no jurisdiction to entertain the present petition. The other rulings have also been mentioned. It has further been averred that mainly the case of the petitioner is against respondent No.3. It has further been averred that the representation made by the petitioner was forwarded to

respondent No.3 and he was asked to furnish detailed comments thereon. The petitioner had also made a representation to the Hon'ble Chief Minister, Himachal Pradesh. The Managing Director of the respondent No.3-Federation had apprised the replying respondents that the petitioner could not be considered for promotion due to his bad service record and doubtful integrity. The petitioner was charge-sheeted for misappropriation and embezzlements of funds of the respondent No.3-Federation for many times and major penalties were imposed upon him. Even the penalty of dismissal was imposed upon him on 15.05.1995, which was later on reduced to reduction to the minimum of the time scale in appeal by the Board of the respondent No.3-Federation and as such, prayed for dismissal of the petition.

6. Respondent No.3 filed separate reply to the petition and raised preliminary objection that the petitioner was denied promotion due to lack of the mandatory minimum qualification, which is 10+2 as per the revised Rules of the respondent No.3-Federation.

7. On merits, it was averred that at the time of making promotions of respondents No.4 to 8, they were having the requisite qualification of 10+2 or an equivalent,

rendering them eligible for promotion in compliance with the criteria stipulated by respondent No.3-Federation in the service Rules. It has been specifically denied that the action of the respondents is arbitrary, illegal or unjust. No cause of action exists in favour of the petitioner and further respondent No.3-Federation has not violated any fundamental rights. During the petitioner's employment with respondent No.3-Federation, he was subjected to various disciplinary proceedings, in particular, on 31.08.1988, he was served with a charge-sheet for allegations of misappropriation and embezzlement. The petitioner was under suspension from 14.07.1987 to 11.11.1990. However, upon completion of the disciplinary proceedings and on submission of the enquiry report dated 25.10.1994, it was determined that the petitioner was ultimately exonerated of the charges. It is apt to mention that the petitioner was also charge-sheeted, vide order dated 03.12.1993 on charges of misappropriation and embezzlement of funds. Upon completion of the disciplinary proceedings, he was found guilty of the charges and as a result, his services were terminated from 15.05.1995. However, in the appeal before the Board of Directors on

12.06.1996, challenging his dismissal order, the petitioner was reinstated in service with immediate effect, but this reinstatement was with imposition of penalty of reduction to the minimum scale of the time scale of Rs.1200-2100/-. The period from the date of dismissal from 15.05.1995 to 04.12.1996 has been treated as leave in kind and any recovery due will be adjusted accordingly. The petitioner was again charge-sheeted on 17.02.1998, vide memo No.9679 and placed under suspension, vide order dated 01.05.1998. However, vide order dated 28.08.1998, he was directed to be reinstated without prejudice to the ongoing disciplinary proceedings. Upon completion of the disciplinary proceedings, the petitioner was found guilty of the charges and penalty of stoppage of three increments with cumulative effect was imposed upon him vide order dated 18.09.1999. However, subsequently vide order dated 12.10.2001, the penalty initially imposed, which entailed the stoppage of three increments with cumulative effect, was reduced to one increment with cumulative effect. Additionally, on 18.09.2004, the petitioner was once again charge-sheeted, this time for the misappropriation of stocks of fertilizers that had been loaded without authorization and

transported from Bilaspur to Chandpur. However, on inquiry, the charges were not proved and he was exonerated of the charges, vide order dated 17.04.2006.

8. The petitioner was again issued with a show cause notice dated 29.07.2006 and thereafter charge-sheeted vide memo dated 04.09.2006 for misappropriation of funds amounting to Rs.24,700.30/-. After completion of the disciplinary proceedings, he was found guilty and the penalty of stoppage of one annual increment with cumulative effect for two years was imposed upon him, vide order dated 07.01.2008.

9. The petitioner was once again issued with a show cause notice on 13.10.2008 and in reply thereto, he had admitted his guilt and consequently vide order dated 31.03.2009, he was directed to deposit an amount of Rs. 42,840/-. The petitioner was again put under suspension vide order dated 11.09.2012, which order was subsequently modified.

10. It is further submitted that from the above facts, the petitioner's journey began in 1981, when he was initially appointed to the post of Salesman/Storekeeper in the pay scale of Rs.400-600/-. Subsequently, on 01.03.1989, he was

accorded with the benefit of the senior pay scale. In addition, the petitioner became eligible for the revised pay scale benefits commencing from 01.01.1996 and placed in the pay band of Rs. 4020-6200/-. The petitioner was further granted the revised pay scale commencing from 01.01.2006 in accordance with the order issued on 26.11.2009. After completion of the penalty period and based on the recommendation of the Departmental Promotion Committee (in short 'DPC'), he was subsequently promoted to the position of Junior Marketing Assistant. It has further been averred that since the petitioner did not possess the minimum qualification of at least 10+2, which is an essential recruitment qualification for the post of Marketing Assistant, he was not promoted to the said post.

11. The petitioner filed rejoinder to the reply filed by the respondents and refuted the averments made therein. The petitioner has not denied the factum of initiation of the proceedings against him as mentioned in the reply.

12. This Court, vide order dated 14.11.2024, had directed respondent No.3-Federation to place on record the Assured Career Progression Scheme, which has been placed on record.

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

14. Before advertng to the submissions made by the learned counsel for the petitioner, it would be relevant to mention here that the petitioner has not made even a murmur in the entire petition that he was ever been issued with the memoranda with respect to the misappropriation and embezzlements of funds of respondent No.3-Federation and further penalty was imposed upon him. The jurisdiction under Article 226 of the Constitution of India is extraordinary, equitable and discretionary. A prerogative remedy under Article 226 of the Constitution of India is not a matter of course. A Court of law is also a Court of equity. If there is suppression of material facts on the part of the petitioner or twisted facts have been placed before the Court, the writ Court may refuse to entertain the petition. The petitioner who approaches the writ Court must come with clean hands, put forth all the relevant facts without concealing or suppressing anything.

15. In the present case, the petitioner has not approached the Court with clean hands and has concealed the material facts, when he has not disclosed with respect

to the various memoranda issued to him, that too with respect to the misappropriation of funds of respondent No.3-Federation. Even on one occasion, he had admitted his guilt, when he was directed to deposit an amount of Rs. 42,840/- as per order dated 31.03.2009. However, the petitioner has not disclosed these facts and as such he is not entitled to any relief under Article 226 of the Constitution of India.

16. The Hon'ble Supreme Court in ***Prestige lights Ltd. vs. State Bank of India***, (2007) 8 SCC 449, has succinctly dealt with the issue and has held as under:-

“33. It is thus clear that though the appellant Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a court of law is also a court of equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter.

34. The object underlying the above principle has been succinctly stated by Scrutton, L.J., in R. v. Kensington Income Tax Commrs., in the following words:

"[I]t has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant

comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts - facts, not law. He must not misstate the law if he can help it - the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside, any action which it has taken on the faith of the imperfect statement."

(emphasis supplied)

35. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a writ court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, the court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible."

17. The aforesaid judgment has again been followed in ***K.D. Sharma vs. Steel Authority of India Limited and others***, (2008) 12 SCC 481 and the same view has been reiterated. The relevant paras are reproduced herein below:-

"34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of

the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.

35. *The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of R. V. Kensington Income Tax Commrs. in the following words: (KB p. 514).*

*"... it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts-it says facts, not law. He must not misstate the law if he can help it - the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement."
(emphasis supplied)*

36. *A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone*

and may refuse to enter into the merits of the case by stating, "We will not listen to your application because of what you have done." The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it."

18. The aforesaid view has again been reiterated in ***Kusha Duruka vs. State of Odisha***, (2024) 4 SCC 432. As already stated above, since the petitioner has not approached the Court with clean hands and has suppressed the material facts, he is not entitled to discretionary relief under Article 226 of the Constitution of India.

19. Even on merits, there is no case carved out by the petitioner to grant him promotion to the post of Marketing Assistant.

20. Learned counsel for the petitioner has vehemently argued that so far as the amendment in the Rules is concerned, it cannot come in the way of the petitioner, especially when at the time of appointment of the petitioner, there was no qualification of 10+2 for the purpose of making promotion to the post of Marketing Assistant. He placed reliance upon the judgment passed by the Hon'ble Supreme Court in ***Chairman, Railway Board and others vs. C.R. Rangadhamaiah and others***,

(1997) 6 SCC 623. However, if the said judgment is perused, the same is not attracted to the facts of the present case for the reason that in the said judgment the Court had held that the amendment in the Rules cannot take away the vested right of a person, who has been promoted to the said post. In the present case, the petitioner was not promoted to the post and, therefore, the judgment cited by the learned counsel is not attracted to the facts of the case.

21. A three-Judge Bench of the Hon'ble Supreme Court in ***State of Himachal Pradesh and others vs. Raj Kumar and others***, (2023) 3 SCC 773, has succinctly dealt with the issue and come to the conclusion that there is no universal application that the vacancies must be necessarily filled on the basis of law, which existed on the date, when they arose. Further the employee does not acquire any vested right for being considered for promotion in accordance with the repealed Rules in view of the policy decision taken by the Government. The petitioner has not denied the fact that he does not have the essential qualification of 10+2, as prescribed in the Recruitment and Promotion Rules for promotion to the post of Marketing Assistant and when the private respondents were promoted

to the post of Marketing Assistant, the vacancies have been filled up as per the amended rules. The relevant paras of the judgment is reproduced herein below:-

"82. A review of the fifteen cases that have distinguished Rangaiah would demonstrate that this Court has been consistently carving out exceptions to the broad proposition formulated in Rangaiah. The findings in these judgments, that have a direct bearing on the proposition formulated by Rangaiah are as under:-

"82.1. There is no rule of universal application that vacancies must be necessarily filled on the basis of the law which existed on the date when they arose, Rangaiah's case must be understood in the context of the rules involved therein.

82.2. It is now a settled proposition of law that a candidate has a right to be considered in the light of the existed rules, which implies the "rule in force" as on the date consideration takes place. The right to be considered for promotion occurs on the date of consideration of the eligible candidates.

82.3. The Government is entitled to take a conscious policy decision not to fill up the vacancies arising prior to the amendment of the rules. The employee does not acquire any vested right to being considered for promotion in accordance with the repealed rules in view of the policy decision taken by the Government. There is no obligation for the Government to make appointments as per the old rules in the event of restructuring of the cadre is intended for efficient working of the unit. The only requirement is that the policy decisions of the Government must be fair and reasonable and must be justified on the touchstone of Article 14.

82.4. The principle in Rangaiah need not be applied

merely because posts were created, as it is not obligatory for the appointing authority to fill up the posts immediately.

82.5. When there is no statutory duty cast upon the State to consider appointments to vacancies that existed prior to the amendment, the State cannot be directed to consider the cases."

83. The above-referred observations made in the fifteen decisions that have distinguished Rangaiah's case demonstrate that the wide principle enunciated therein is substantially watered-down. Almost all the decisions that distinguished Rangaiah hold that there is no rule of universal application to the effect that vacancies must necessarily be filled on the basis of law that existed on the date when they arose. This only implies that decision in Rangaiah is confined to the facts of that case.

84. The decision in Deepak Agarwal (supra) is a complete departure from the principle in Rangaiah, in as much as the Court has held that a candidate has a right to be considered in the light of the existing rule. That is the rule in force on the date the consideration takes place. This enunciation is followed in many subsequent decisions including that of Union of India v. Krishna Kumar (supra). In fact, in Krishna Kumar Court held that there is only a "right to be considered for promotion in accordance with rules which prevail on the date on which consideration for promotion takes place".

85. The consistent findings in these fifteen decisions that Rangaiah's case must be seen in the context of its own facts, coupled with the declarations therein that there is no rule of universal application to the effect that vacancies must necessarily be filled on the basis of rules which existed on the date which they arose, compels us to conclude that the decision in Rangaiah is impliedly overruled. However, as there

is no declaration of law to this effect, it continues to be cited as a precedent and this Court has been distinguishing it on some ground or the other, as we have indicated hereinabove. For clarity and certainty, it is, therefore, necessary for us to hold;

85.1. The statement in Y.V. Rangaiah v. J. Sreenivasa Rao that the vacancies which occurred prior to the amended Rules would be governed by the old rules and not by the amended Rules, does not reflect the correct proposition of law governing services under the Union and the States under part XIV of the Constitution. It is hereby overruled.

85.2. The rights and obligations of persons serving the Union and the States are to be sourced from the rules governing the services."

22. Learned counsel for the petitioner further vehemently argued that since the petitioner has not been granted any promotion, he is entitled to the benefit of ACPs. However, the said contention cannot be accepted in view of the fact that the petitioner was initially appointed to the position of Salesman/Storekeeper with the pay scale of Rs. 4600/-. Subsequently, he was accorded the benefit of senior pay scale on 01.03.1989 and thereafter he has been granted the revised pay scale benefits commencing from 01.01.1996. After completion of the penalty period and based on the recommendations of the DPC, he was subsequently promoted to the position of Junior Marketing Assistant, as per office order dated 25.04.2012 (page No.99)

with retrospective effect from 01.07.2010 and thus it is without any basis to say by him that he was not granted any benefits. Therefore, the said contention raised by the learned counsel for the petitioner, is without any basis.

23. Learned counsel for the petitioner further argued that the respondents ought to have followed the sealed cover procedure in view of the judgment of the Hon'ble Supreme Court in **Nirmal Chandra Bhattacharjee and others vs. Union of India and others**, 1991 Supp. (2) SCC 363, when the petitioner was being dealt with in departmental proceedings. However, the said contention could have been accepted only in case respondent No.3-Federation was contemplating to promote any person to the post of Marketing Assistant. The petitioner was awarded the pay scale of Rs. 5910-20,200 + 2,800 Grade Pay, as Junior Marketing Assistant along with other employees on the recommendation of DPC, vide office order dated 30.03.2012 (page No. 98) and once no person was considered for promotion to the post of Marketing Assistant, there was no need to follow the sealed cover procedure, as per the judgment cited above.

24. Consequently, the present petition is dismissed both on the grounds of not approaching the Court with clean hands as well as on merits. However, there shall be no order as to costs. Pending miscellaneous application(s), if any, also stand(s) disposed of.

07th October, 2026

(Anurag)

**(Jiya Lal Bhardwaj)
Judge**