

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.6606 of 2024
Date of Decision: 17.08.2026.

Anil Kumar

...Petitioner

Versus

State of Himachal Pradesh & another

...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge.

Whether approved for reporting?¹

For the petitioner	: Mr. Sunil Mohan Goel, Senior Advocate with Mr. Abhinav Mohan Goel, Advocate,
For the respondents	: Mr. Vishav Deep Sharma, Additional Advocate General, for respondent No.1-State. Mr. Aman Sood, Advocate, for respondent No.2.

Jiya Lal Bhardwaj, Judge (Oral)

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

“A) That this Hon'ble Court may be pleased to issue a writ of certiorari quashing the impugned letter dated 8.8.2023 (Annexure P-13) issued by respondent No. 1, whereby the request made by the respondent No. 2 HP Judicial Academy, Ghandal, Shimla for creation of the post of Supervisory Driver has been rejected.

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

B) That this Hon'ble Court may be pleased to issue writ of mandamus directing the respondent No. 1 to create post of Supervisory Driver in the respondent No. 2 HP Judicial Academy, Ghandal, Shimla as resolved by the Board of Governors of HP Judicial Academy in its meeting dated 5.5.2022 in which the Hon'ble Chief Justice of Himachal Pradesh is the Patron-in-Chief, similarly as has been done by the respondent State in the office of Principal Secretary Lokayukta whereby one post of Driver has been upgraded to the post of Supervisor (Staff Car) Class-III (non-Gazetted) vide letter dated 26.7.2014.

C) That this Hon'ble Court may be pleased to issue writ of mandamus directing the respondent No. 1 to frame a scheme for providing promotional avenues to the category of petitioner especially in view of the definitive law laid down by the Hon'ble Supreme Court of India in Satyanarayana & Ors. Vs. S. Purushotham & Ors., (2008) 5 SCC 416 to remove stagnation and avoid frustration amongst the employees."

2. The brief facts of the case are that the petitioner was appointed to the post of Driver on contract basis as per appointment letter dated 26.11.2005 (Annexure P-1) issued by respondent No.2 and in sequel to the said appointment order, he joined his duties. Thereafter, as per the recommendations of the Screening Committee, services of the petitioner along with other employees, who were appointed on contract basis were regularized as per office order dated 19.10.2012 (Annexure P-2).

3. It is apt to note that the Board of Governors of respondent No.2 in its meeting held on 05th May, 2022 (Annexure R-2/A) had considered the matter regarding creation of one post of

Supervisory Driver and it was resolved that the matter may be taken up with the State Government for creation of one post of Supervisory Driver in the pay scale of Rs.25600-81200. After resolving to create the post of Supervisory Driver, respondent No.2 vide letter dated 26.05.2022 (Annexure P-3) had written to the respondent-State for creating the post of Supervisory Driver. In response to the said communication, the respondent-State had asked respondent No.2 to provide the information as detailed in the communication dated 07.06.2022 (Annexure P-4) and respondent No.2 in response to the letter, provided the desired information vide communication dated 08.07.2022 (Annexure P-5). Thereafter, as per communication dated 18.08.2022 (Annexure P-6), the respondent-State had requested to provide the copy of Recruitment and Promotion Rules for the post of Driver as well as Supervisory Driver, so that the further action may be taken in the matter at the earliest.

4. Respondent No.2 replied to the said communication vide letter dated 24.12.2022 (Annexure P-7) and conveyed that the Department of Personnel of H.P. has conveyed their “No objection” to adopt common R&P Rules notified by Department of Home for recruitment in respect of ten categories in the establishment of respondent No.2 with proposed amendments as desired by the Hon’ble Board of Governors of the Academy in its meetings held on

05.05.2022 and thus, the common Rules will apply for the post of Driver, whereas , R&P Rules for the post of Supervisory Driver have not been notified by the Department of Personnel of H.P.. As such, respondent No.2 proposed to adopt the R&P Rules for the post of Supervisory Driver as notified by this Court. It was again requested to create one post of Supervisory Driver, in the establishment of respondent No.2 in the pay scale of Rs.25600-81200 and after creation, the same would be filled up as per the R&P Rules for the post of Supervisory Driver notified by this Court.

5. It is apposite to mention that the pay scale of the Supervisory Driver in the establishment of this Court as per Notification dated 03.12.2006 was Rs.5910-20200+2400 Grade Pay +1800 Secretariat Pay. Further, as per the Recruitment and Promotion Rules for the Himachal Pradesh High Court Officers and Members of the Staff (Recruitment, Conditions of Service, Conduct & Appeal) Rules, 2015, the post of Supervisory Driver is to be filled up by promotion from amongst the Drivers working in the Registry of this Court on the basis of seniority-cum-suitability. Despite collecting the information by the respondent-State, the claim regarding creation of post of Supervisory Driver was rejected vide communication dated 08.08.2023 (Annexure P-13) stating that the proposal has been examined and could not be considered.

6. The petitioner feeling aggrieved by the said rejection of the claim of creation of the post of Supervisory Driver has approached this Court *inter alia* on the ground that he is serving with respondent No.2 from the year 2006 continuously and total cadre strength of the respondent No.2 is seven and he being the senior most Driver with respondent No.2 is stagnating on one post for the last more than 18 years and keeping in view the request made by him, the Board of Governors of respondent No.2 had resolved that matter regarding creation of one post of Supervisory Driver in the pay scale of Rs.25600+81200 may be taken up with the State Government. However, the respondent-State without assigning any reason has rejected the claim, despite the fact that respondent No.2 had provided the desired information as asked by them, and as such, the decision taken by the respondent-State may be quashed and set aside.

7. It has also been averred in the petition that the respondent-State earlier had accepted the proposal of the Principal Secretary, Lokayukta, Himachal Pradesh to upgrade one post of Driver to that of Supervisory (Staff Car) Class-III (Gazetted), whereby the reason assigned by the office of Lokayukta Himachal Pradesh was that there are six sanctioned posts of Drivers in the office of Lokayukta Himachal Pradesh. However, in the case of the petitioner,

though the Board of Governors comprising Hon'ble the Chief Justice being Patron-in-Chief of Academy (respondent No.2) and senior most Judges of this Court in its minutes of meeting held on 05th May 2022 had resolved that the matter regarding creation of one post of Supervisory Driver may be taken up with the State Government but no reason has been assigned by the respondent-State while rejecting the proposal to create the post of Supervisory Driver. The action on the part of the respondent-State without assigning any reason is arbitrary and discriminatory and, therefore, deserves to be quashed and set aside. It has also been averred that the petitioner is working on the post of Driver for the last more than 18 years and that too, without any promotional avenues.

8. It has also been averred that though the Hon'ble Supreme Court has held that the Courts cannot direct for framing a particular set of recruitment Rules, since the same falls within the realm of the policy matter, but the Court can give direction to the State to frame scheme to provide promotional avenue to those categories, who have been deprived of promotional avenues and thus, sought direction either to upgrade one post of Driver to the post of Supervisory Driver or to provide promotional avenue to the category of the petitioner.

9. Respondent No.1 filed reply to the petition and averred that there is neither any legal nor any fundamental right of the petitioner has been infringed in any manner by the respondent-State and hence, the petition is liable to be dismissed. The petitioner in his petition and representations has mentioned that one post of Supervisory Driver has been created in Lokayukta and on the same analogy one post of Supervisory Driver may be created in respondent No.2. It has been admitted that respondent No.2 had sent the proposal for creation of one post of Supervisory Driver in pay scale of Rs.25600-81200/-. But, on inquiry, it was found that no post of Supervisory Driver was created in the establishment of Lokayukta. Only one post of Driver was upgraded to the post of Supervisory Driver Class-III Non-Gazetted in the pay Band of Rs.5910-20200+2400 grade pay in the Department of Lokayukta, vide Home Department's letter No. Home (Vig) B (10-1/2014 dated 26.07.2014). It has further been averred that the petitioner has not approached this Court with clean hands and intentionally withheld the material facts from this Court. The principles of judicial review do not permit the Courts to examine the policy choice of the Rule making authority. Even the creation and/or sanction of the post is also the sole prerogative of the Government and the High Court in exercise of power vested in it under Article 226 of the Constitution of

India cannot issue mandamus and/or direct to create and sanction the posts as held in **Union of India v. Ilmo Devi, 2021 SCC Online SC 899**, decided on 07.10.2021 and thus, prayed for dismissal of the present petition.

10. Respondent No.2 filed reply and did not dispute the facts as mentioned by the petitioner. It has been averred that respondent No.2 had taken up the matter with respondent No.1 for creation of one post of Supervisory Driver, so that the maintenance and other repair works of the vehicles of the Academy are looked after by the Supervisory Driver and the queries/information sought by the State Government stood addressed and as such prayed that petition be decided accordingly.

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

12. At the very outset, it is apposite to note that it is not within the realm of this Court to give direction to the respondent-State to create the post. Nonetheless, this Court keeping in view the peculiar facts and circumstances of the case, coupled with the fact that the Board of Governors of respondent No.2 in its meeting held on 05.05.2022, whose Patron-in-Chief is Hon'ble the Chief Justice of this Court had resolved that the matter may be taken up with the State Government for creation of one post of Supervisory Driver and

thereafter all the information as desired were provided to the respondent-State, rejection of the claim to create the post without assigning any reason by the respondent-State is totally wrong and illegal, especially when the post of Supervisory Drivers are available in the Lokayukta and this Court. This Court is constrained to give direction to the respondent-State to create post of Supervisory Driver, especially when the decision taken by it is having no rationale and no reasons have been assigned. This Court can also not ignore one of the most vital fact that there are no promotional avenues to the category of the petitioner coupled with the fact that there are posts available in two establishments i.e. Lokayukta and this Court.

13. In the present case, after the Board of Governors in its minutes of meetings held on 05.05.2022 had resolved to take up the matter with the State Government for creation of the post of Supervisory Driver, respondent No.2 being the appointing authority where the petitioner is working had taken up the matter with the respondent-State as per the minutes of meeting of the Board of Governors and the respondent-State was provided the information as required by it as evident from the facts mentioned in the preceding paras of the petition and despite that, the request has been rejected without assigning any reason. The order under

challenge is terse. The respondent-State as per the communication dated 18.08.2022 had requested to respondent No.2 to provide the copy of Recruitment and Promotion Rules for the post of Driver as well as of Supervisory Driver in the Department, so that the further action may be taken in the matter at the earliest. Respondent No.2 in pursuance of the said communication had provided the information and stated that the Department of Personnel of H.P. has conveyed their No Objection vide letter dated 22.09.2022 to adopt Common R&P Rules notified by the Department of Home for recruitment in respect of ten categories including Driver in the establishment of H.P. Judicial Academy with proposed amendments as desired by the Hon'ble Board of Governors of the Academy in the meeting held on 05.05.2022 and thus, common Rules will apply to the post of Driver, whereas R & P Rules for the post of Supervisory Driver have not been notified by the Department of Personnel of H.P. As such, the Academy has proposed to adopt the R & P Rules for the post of Supervisory Driver as notified by this Court. Once, the said information was received by the respondent-State, which also provide the provisions for making promotion to the post of Supervisory Driver from amongst the Drivers working in respondent No.2, there was no occasion to reject the claim of the petitioner as per communication dated 08.08.2023 (Annexure P-13).

It is apt to reproduce the decision conveyed by the respondent-State, which is as under:-

“Home-B(B)1-4/2022
Department of Home
Government of Himachal Pradesh

From

The Secretary (Home) to the
Government of Himachal Pradesh

To

The Director,
H.P. Judicial Academy,
Ghandal, Shimla-14
Dated, Shimla-2, 08th August, 2023

Subject:- Regarding creation of one post of Supervisory
Driver in the pay Scale of Rs. 25600-81200.

Sir,

I am directed to refer to your letter No. HPJA/Creation/2022-1895 dated 22.6.2023 on the subject cited above and to say that proposal has been examined and could not be considered. This is for your kind information please.

Yours faithfully,

sd/-

(Dinesh Kumar Gupta)
Under Secretary (Home) to the
Government of Himachal Pradesh
Ph-No.2622407”

14. A perusal of the aforesaid decision does not convey any reason that why the claim for creation of post of Supervisory Driver has been rejected. As already noticed above, it is not within the realm of the Court to create the post,

rather it is the function of the executive or the State Government, but at the same time, the Court cannot ignore the fact that once the desired information as sought by the respondent-State was provided, it was expected of the respondent-State to convey the reasons that why the proposal regarding creation of one post of Supervisory Driver, as desired by the Board of Governors, has not been found. It is settled law that the executive has to examine various factors while creating the post such as economic factor, need of creation of the post and viability of the post, but once these materials are not germane from a perusal of the decision or the material now placed on record by the respondent-State, it is a fit case to give direction to the respondent-State to create the post of Supervisory Driver. This Court is drawing the strength from the judgment of the Hon'ble Supreme Court in ***Nihal Singh versus State of Punjab***, (2013) 14 SCC 65, to give such direction. In this case, the Hon'ble Court had given directions to regularize the services of the appellants who were working with the State of Punjab since long by creating necessary posts. The same very stand as taken in the present case was taken that the Court can not compel to create the

posts and absorb the appellants. However, the said plea was negated. The relevant paras of the judgment read as under:-

35. Therefore, it is clear that the existence of the need for creation of the posts is a relevant factor reference to which the executive government is required to take rational decision based on relevant consideration. In our opinion, when the facts such as the ones obtaining in the instant case demonstrate that there is need for the creation of posts, the failure of the executive government to apply its mind and take a decision to create posts or stop extracting work from persons such as the appellants herein for decades together itself would be arbitrary action (inaction) on the part of the State.

36. The other factor which the State is required to keep in mind while creating or abolishing posts is the financial implications involved in such a decision. The creation of posts necessarily means additional financial burden on the exchequer of the State. Depending upon the priorities of the State, the allocation of the finances is no doubt exclusively within the domain of the Legislature. However in the instant case creation of new posts would not create any additional financial burden to the State as the various banks at whose disposal the services of each of the appellants is made available have agreed to bear the burden. If absorbing the appellants into the services of the State and providing benefits at par with the police officers of similar rank employed by the State results in further financial commitment it is always open for the State to demand the banks to meet such additional burden. Apparently no such demand has ever been made by the State. The result is – the various banks which avail the services of these appellants enjoy the supply of cheap labour over a period of decades. It is also pertinent to notice that these banks are public sector banks. We are of the opinion that neither the Government of Punjab nor these public sector banks can continue such a practice consistent with their obligation to function in accordance with the Constitution.

Umadevi's judgment cannot become a licence for exploitation by the State and its instrumentalities.

15. The another aspect of the matter, which is required to be looked into is also of paramount consideration regarding promotion. The petitioner admittedly has been discharging the duties of Driver pursuant to his appointment vide letter dated 26.11.2005. He is the senior most Driver and the total cadre strength of the Drivers in respondent No.2 is seven. Respondent No.2 had taken the decision to adopt the R & P Rules as framed by this Court for promotion to the post of Supervisory Driver and since there are no promotional avenues for the post of Driver, this Court is of the considered view that at least one channel of promotion must be provided to the category of the petitioner in view of the law laid down by the Hon'ble Supreme Court in **O.Z .Hussain vs Union of India**, 1990, Supp SCC 688. In this judgment, it has been laid down that there must be a provision for promotion for the reason that it increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Promotion is thus in a normal incidence of service. It has also been held that the promotion cannot be claimed as a matter of right, but the person, who is in the zone of

consideration has a right for consideration. The relevant para of the said judgment is reproduced hereunder:-

“7. This Court, has no more than one occasion, pointed out that provision for promotion increase efficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Promotion is thus a normal incidence of service. There too is no justification why while similarly placed officers in other ministries would have the benefit of promotion, the non-medical ‘A’ Group scientists in the establishment of Director General of Health Services would be deprived of such advantage. In a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representations of the Council and its members and provide promotional avenue for this category of officers. It is, therefore, necessary that on the model of rules framed by the Ministry of Science and Technology with such alterations as may be necessary, appropriate rules should be framed within four months from now providing promotional avenue for the ‘A’ category scientists in the non-medical wing of the Directorate.”

16. From the above judgment, it is crystal clear that the employee, who has joined the service, must have at least more than one promotion channel and in the present case, there are no promotional avenues to the category of the petitioner. Further, once the Board of Governors had resolved to create the post of Supervisory Driver and instead of taking call in the matter itself had requested the respondent-State to create the same, the action on the part of the respondent-

State to reject the claim that too without assigning any reason is unsustainable in law.

17. Learned Senior Counsel representing the petitioner has also placed reliance upon a judgment of the Hon'ble Supreme Court in **Food Corporation of India and others vs Parashotam Dass Bansal and Others**, (2008) 5 SCC 100 as well as the judgment in **Satyanarayana & Ors Vs. S Purushotham & Ors.**, (2008) 5 SCC 416, wherein, the same principles have been laid down as laid down in **O.Z .Hussain** case (supra) and thus, the relevant paras of the judgments are not quoted.

18. Thus, keeping in view the law laid down in the above pronouncements of the Hon'ble Supreme Court coupled with the fact that when the Board of Governors of respondent No.2, comprising its Patron-in-Chief i.e. the Hon'ble Chief Justice and puisne Judges of this Court alongwith two senior most bureaucrats i.e. Additional Chief Secretary (Finance) to the Government of Himachal Pradesh as well as Principal Secretary (Education) to the Government of Himachal Pradesh had participated in the meeting held on 05.05.2022, the State Government was bound to adhere to the proposal for creation of the post of Supervisory Driver,

especially when there is one post in existence in this Court and one post of Driver was upgraded to the Supervisory Driver in Lokayukta, as candidly admitted by the respondent-State while filing reply to the present petition.

19. Learned Additional Advocate General has vehemently argued that so far as the creation of the post is concerned, it is a policy decision and the Court cannot give direction to create the post. He has placed reliance upon the judgments of the Hon'ble Supreme Court in **Divisional Manager Aravali Golf Club vs Chander Hass**, (2008), 1 SCC 683 and in **Union of India and others vs Ilmo Devi & another**, (2021) 20 SCC 290 and Civil Appeal No. 1951 of 2022, titled, **The State of Gujarat and and others vs R.J. Pathan and others**.

20. As already observed above, no doubt, it is not within the realm of this Court to give direction to create a post, but at the same time once the State has not divulged any reason while rejecting the claim of the petitioner pursued through respondent No.2, this Court cannot be a mute spectator to affirm such decisions especially when Hon'ble the Chief Justice of this Court being Patron-in-Chief of respondent No.2 and others Senior Judges of this Court had

resolved in its meeting convened on 05.05.2022 that the matter regarding creation of one post of Supervisory Driver be taken up with the State Government rather than creating the same. As already observed above, in the meeting held on 05.05.2022 two senior most Officers of the State Government were also present in the meeting. After taking the said decision, respondent No.2 had requested the respondent-State to create the post and the respondent-State as per the facts mentioned in detail herein above had sought the information from respondent No.2 which was duly given but despite that the proposal to create the post as per the minutes of the meeting held on 05.05.2022, has been rejected without assigning any cogent reason.

21. It is settled law that the reasons are the hallmark of decision. However, a perusal of the order as reproduced herein above does not reveal any reason. Hence, keeping in view the peculiar facts and circumstances of the present case, this Court is of the considered opinion that the decision taken by the respondent-State is palpably wrong and dehors the decision taken by the Board of Governors on 05.05.2022. Respondent No.1-State cannot by pass the decision taken by the Board of Governors especially when the posts of

Supervisory Drivers are already existing in the establishment of this Court as well as one post of Driver in Lokayukta has been upgraded to the post of Supervisory Driver.

22. This Court instead of giving direction to the respondent-State to create the post could have asked them to reconsider the matter, but keeping in view the fact that despite information as sought by them, nothing positive has been done, this Court is left with no option, but to give a direction to the respondent-State to create the post.

23. Consequently, the present petition is allowed and the impugned decision dated 08.08.2023 (Annexure P-13) is quashed and set aside and the respondent-State is directed to create one post of Supervisory Driver in respondent No.2 within a period of three months from today to provide promotion avenues to the category of the petitioner. No order as to costs. Pending miscellaneous application (s), if any, also stand disposed of.

(Jiya Lal Bhardwaj)
Judge

August, 17, 2026

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