

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.5024 of 2023
Reserved on 12.08.2026
Decided on: 29.09.2026
Uploaded on: 29.09.2026

Rama Thakur ...Petitioner

Versus

State of H.P. and others ...Respondents

Coram
Hon’ble Mr.Justice Jiya Lal Bhardwaj, Judge.
Whether approved for reporting?¹

For the petitioner:	Mr. Shrawan Dogra, Senior Advocate with Mr. Tejasvi Dogra, Advocate.
For the respondents:	Mr. Amandeep Sharma, Additional Advocate General for respondents No.1 & 2-State.
	Mr. Aman Sood, Advocate for respondent No.3.
	Mr. K.D. Shreedhar, Senior Advocate with Ms. Sneh Bhimta, Advocate for respondent No.4.
	Mr. Shiv Dyal, Senior Assistant, Health-B Section, H.P. Secretariat, Shimla-2 is also present alongwith the record.

Jiya Lal Bhardwaj, Judge

The petitioner by way of present petition has approached this Court seeking following substantive reliefs:-

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

- "i. That the "Note" appended to the Final Inter-se Seniority List of Professors, IGMC, Shimla as circulated vide Office Memorandum dated 03.05.2023 (Annexure P-23), may be quashed and set aside;*
- ii. That the respondent authorities may be directed to assign seniority to the petitioner immediately below the name of Proforma Respondent No. 5 at Sr. No. 48A in the Final Seniority List of Professors in IGMC, dated 03.05.2023 (Annexure P-23);*
- iii. That the Office Order dated 15.05.2023 (Annexure P-25) naming Unit In-charges may also be quashed and set aside, and appropriate directions may be issued to correct the said office order on the basis of corrected seniority list as prayed for in relief No. ii above;"*

2. Shorn of unnecessary details, the key facts of the case are that the petitioner completed her Post Graduation Degree in Obstetrics and Gynecology (in short 'OBG') from Post Graduate Institute of Medical Education and Research (PGIMER) Chandigarh as a sponsored candidate of the respondent-State from January, 1999 to December, 2001. Thereafter, she did Registrarship in the said specialty from June, 2002 to May, 2006 from Dr. Rajinder Prasad Government Medical College Kangra at Tanda, (in short Dr.RPGMC') Kangra, as an in-service candidate.

3. It has been averred that initially, there was only one Medical College in Himachal Pradesh i.e., Indira Gandhi Medical College Shimla (in short 'IGMC') Shimla. The recruitment to teaching cadre in IGMC, Shimla was governed by the Recruitment and Promotion Rules (in short 'R&P Rules') framed vide Notification

dated 19.01.1974 published in Rajpatra, Himachal Pradesh on 02.02.1974. As per these Rules, the Himachal Pradesh Health Services Cadre consisted of two wings namely 'General Wing' and the 'Teaching Wing'. The recruitment to teaching posts in the IGMC, Shimla was also governed by these Rules. The aforesaid R&P Rules notified on 19.01.1974 were repealed qua teaching wing/teaching cadre of the H.P. Health Services Cadre vide Notification dated 28.04.1995 and were called as the H.P. Medical Education Service Rules, 1995. The R&P Rules notified on 28.04.1995 were thereafter repealed and the HP Medical Education Service Rules, 1999 were framed.

4. In 1996-1997, the Government of Himachal Pradesh took steps to establish Dr. RPGMC Kangra at Tanda. However, the teaching posts in the newly established college continued to be governed by the statutory Rules framed in 1995/1999 as the posts created in Dr. RPGMC Kangra at Tanda were also borne on the cadre governed by the aforesaid statutory R&P Rules.

5. The State Government vide Notification dated 07.06.2008, decided to bifurcate the Himachal Pradesh Medical Education Services Cadre by creating separate teaching cadres for the then two Government Medical Colleges in the State i.e., IGMC Shimla and Dr. RPGMC Tanda. The said decision was in the nature

of an Executive/Administrative decision as no Notification under proviso to Article 309 of the Constitution of India was issued in order to amend the R&P Rules and to bifurcate the common cadre of HP Medical Education.

6. The petitioner, in pursuance to the advertisement No. 3/2009 published in March, 2009 whereby three posts of Assistant Professors in the Department of OBG were to be filled up had applied for the post. As per the advertisement, one post was to be filled up in IGMC Shimla which was reserved for OBC category and two open category posts were to be filled up in Dr. RPGMC Tanda. The petitioner applied and was selected for the appointment to the post of Assistant Professor under General category on the recommendations of the Himachal Pradesh Public Service Commission (in short 'HPPSC'). It is also relevant to mention that for the three posts advertised through the aforesaid advertisement for the Department of OBG, two candidates i.e. Dr. Ashok Verma and the petitioner were recommended for appointment. The petitioner as well as other candidate recommended for appointment were from General category.

7. It has also been averred that since no one had applied and selected under OBC category, thus the petitioner, who was appointed in Dr. RPGMC Tanda, requested respondent No.1 to

appoint her against the vacant post in IGMC Shimla. It has further been averred that since the petitioner was having less merit than Dr. Ashok Verma, her candidature can only be considered if Dr. Ashok Verma gives his option to be appointed at Dr. RPGMC Tanda. Dr. Ashok Verma gave his option to be posted as Assistant Professor (OBG) at Dr. RPGMC Tanda, and thereafter, the petitioner was asked to give her option for being posted as Assistant Professor (OBG) in IGMC Shimla, which she gave and was posted as Assistant Professor (OBG) in IGMC Shimla, vide Notification dated 30.07.2009 (Annexure P-5). However, in partial modification of Notification dated 30.07.2007 earlier issued, another Notification dated 30.07.2009 (Annexure P-7) was issued and the petitioner was posted in the cadre of Dr. RPGMC Tanda.

8. It has further been averred that the petitioner immediately after issuance of Notification dated 30.07.2009 (Annexure P-7) made a representation stating therein that advertising the posts college wise was against the statutory Rules and the cabinet decision and she had opted for her posting in IGMC Shimla, which was rightly accepted and she was initially posted in IGMC Shimla. Keeping in view her request, she was again posted as Assistant Professor (OBG) in IGMC Shimla vide Notification dated

24.04.2010 (Annexure P-8), on secondment basis for one year or till the post is filled up, whichever was earlier.

9. It has also been averred that respondent No.1 had written to Himachal Pradesh Public Service Commission about the absorption of two Assistant Professors, including the petitioner from Dr. RPGMC Tanda to IGMC Shimla. However, while the matter regarding allocating the petitioner to IGMC Shimla/absorption, at IGMC Shimla was under consideration, the petitioner filed CWP No.3770 of 2011, challenging the impugned action of the respondent-Department to allegedly repatriate her from IGMC Shimla to Dr. RPGMC Tanda. After reconstitution of the erstwhile H.P. State Administrative Tribunal in the year 2015, the writ petition preferred by the petitioner was transferred to the Tribunal, which was registered as T.A No.4083 of 2015. However, after the abolition of the Tribunal, again in the year 2019, the case was transferred to this Court and was re-registered as CWPOA No.3497 of 2019.

10. It has further been averred that during the pendency of the petition, the respondent-Department placed memo dated 06.08.2019 (Annexure P-13), for consideration before the Cabinet. Under item No.76, paragraph 13 of the memo, it was proposed that one supernumerary post of Assistant Professor each in the Departments of Medicine and OBG at IGMC Shimla be created to

include/adjust Dr. Sanjay Mahajan and the petitioner, so that they can be compensated for the injustice done to them. It was also proposed that according to the Rules, when they will become eligible for the next post of Professor, they will be promoted, only in the event when the Doctor occupying the lower rank than them will be promoted so that no injustice is done to him. In that case, the post of Associate Professor, which would have been created for Dr. Sanjay Mahajan and the petitioner would automatically be considered as upgraded.

11. The Cabinet, in its meeting held on 08.08.2019, considered the item No.76 of the memo containing the proposal for consideration, the same was approved and conveyed to the Government through letter dated 13.08.2019. The Cabinet had further approved to create two supernumerary posts of Assistant Professors in the concerned Departments from the date of joining of Dr. Sanjay Mahajan and the petitioner and same posts were to stand upgraded as Associate Professors on the promotion of the concerned Doctors. After the approval granted by the Cabinet, the Departmental Promotion Committee (in short 'DPC') was constituted on 25.09.2019 and in furtherance of the decision approved by the Cabinet, the DPC recommended the petitioner and Dr. Sanjay Mahajan for promotion to the post of Associate Professor in their

respective Departments, as per minutes of the meeting dated 25.09.2019 (Annexure P-16). Thereafter, the petitioner was promoted to the post of Associate Professor in the cadre of IGMC vide Notification dated 21.10.2019. It has further been averred that the Notification dated 21.10.2019 was not issued as per the recommendations of the DPC. The petitioner ought to have been promoted from the specially created supernumerary post of Assistant Professor-OBG in IGMC Shimla cadre to the specially created supernumerary post of Associate Professor-OBG with effect from the date on which her junior i.e. proforma respondent No.5 was promoted. The petitioner filed application bearing CMP-T No.1533 of 2020 in the pending CWPOA No.3497 of 2019 for withdrawal of the petition, since the respondent-Department had assured to settle the issue involved in the writ petition amicably and consider her inclusion in IGMC Shimla cadre as Assistant Professor from the initial date of her appointment in the Department of Medical Education.

12. It has also been averred that the petitioner was promoted to the post of Professor as per Notification dated 17.01.2020 (Annexure P-18/2). The petition preferred by the petitioner was disposed of on 07.07.2020 (Annexure P-19) specifically observing therein that the respondent-Department had

agreed to settle the issue in the writ petition amicably and to consider absorption of the petitioner in IGMC Shimla cadre as Assistant Professor from the date of her initial appointment in the Department of Medical Education, H.P. against supernumerary post to adjust her and to consider her for promotion in accordance with the R&P Rules. Observing above, when nothing survives to be adjudicated, she was permitted to withdraw the writ petition.

13. After withdrawal of the writ petition, for the first time, a tentative *inter se* seniority list of Professors of H.P. Medical Education Department (Teaching Wing) posted in Government Medical Colleges or Institutions of the State as on 15.08.2022 was circulated vide office memorandum dated 26.08.2022 (Annexure P-21). In the said list, respondents No.3 to 5, all of whom were junior to the petitioner on account of having been appointed after her, i.e., after 11.09.2009, were placed at Serial Nos.49, 112 and 48 respectively, whereas the petitioner was placed at Serial No.87 in the said tentative seniority list.

14. The petitioner feeling aggrieved by the erroneous tentative seniority list dated 26.08.2022 submitted a representation dated 03.05.2023 (Annexure P-22) to respondent-authority and narrated the entire background of her case and requested to rectify the error committed at its end and place her above respondents

No.3 and 4. However, to the sheer surprise of the petitioner, instead of correcting the mistake as pointed out by her, her name was altogether removed from the final seniority list of Professors of H.P. Medical Education Department (Teaching Wing) posted in Government Medical Colleges or Institutions of the State as on 15.08.2022 vide office memorandum dated 03.05.2023 (Annexure P-23). At the bottom of the impugned final seniority list, a note was added which states that the seniority of the petitioner cannot be fixed till the permanent faculties of the Department of OBG, IGMSC Shimla cadre are promoted as Professor(s), who were appointed before absorption of the petitioner in OBG, IGMSC Shimla. However, if there is any objection by the petitioner, she can submit a representation to the Government.

15. The petitioner submitted a representation dated 09.05.2023 (Annexure P-24) and strongly objected to exclusion of her name from the final *inter se* seniority list. It was averred by her that the final *inter se* seniority list had been prepared at an unprecedented speed following her representation dated 03.05.2023, which was received before the final list was issued later the same day. The final seniority list was erroneous as it contains names of several supernumerary Professors. Once the Cabinet had approved creation of supernumerary post of Assistant Professor in

OBG Department at IGMC Shimla and that it was also approved that the petitioner would be considered to be included in the IGMC cadre from the date of her initial appointment as Assistant Professor i.e. 11.07.2009 and the promotion of the petitioner to the posts of Associate Professor and Professor was deemed to have been promoted on the same date as her junior i.e. proforma respondent No.5 was promoted, she ought to have been placed above respondents No.3 to 5. There were only two Doctors in OBG Department in IGMC Shimla senior to her, namely Dr. Bishan Dass and Dr. Kushla Pathania. The petitioner is entitled to be placed at Serial No.48-A, immediately below the name of proforma respondent No.5, in the tentative as well as final seniority list of Professors in IGMC Shimla. The Head of the Department of OBG Department of Kamla Nehru Hospital IGMC Shimla has issued an office order dated 15.05.2023 (Annexure P-25), naming new Unit Incharges of OBG Department w.e.f. 15.05.2023. While the Incharges of Unit Nos.1 and 2 are senior to the petitioner, the Incharges of Unit Nos.3 and 4 are respondents No.3 and 4, who are junior to her and respondent No.5 since has retired.

16. The petitioner feeling aggrieved by the final seniority list issued by respondent-Department as well as the office order dated 15.05.2023, has approached this Court, *inter alia*, on the grounds

that the respondent-Department had placed the memorandum dated 06.08.2019 (Annexure P-13) for consideration before the Cabinet and the Cabinet had approved creation of supernumerary post each of Associate Professor in the Departments of Medicine and OBG at IGMC Shimla, only to accommodate the petitioner and Dr. Sanjay Mahajan. Thereafter, in sequel to the said decision, the petitioner was promoted to the post of Associate Professor and then Professor in line with the Cabinet decision, but her promotions were not actually given effect to from the date as contemplated by the decision of the Cabinet, thereby she was entitled to the deemed date of promotion, which was given to her immediate junior Doctor, the action on the part of the respondent-Department is bad in law. It has further been averred that Dr. Rajiv Sood, proforma respondent No.5, was junior to the petitioner as he had joined the OBG Department of IGMC Shimla on 03.11.2010, whereas the petitioner had joined on 11.09.2009, and therefore, whatever date of promotion was given to proforma respondent No.5, the same date was to be given to the petitioner as well with the only rider that proforma respondent No.5 was promoted as Professor before the petitioner as per Cabinet decision dated 08.08.2019 to avoid injustice to him. However, the respondents-Department while issuing the final seniority list has removed the name of the petitioner

from the list and thereafter, as per office order dated 15.05.2023 (Annexure P-25) whereby respondents No.3 and 4, who were junior to the petitioner, have been named Unit Incharges, is illegal, arbitrary, unjust and violative of Articles 14 and 16 of the Constitution of India, and as such deserves to be quashed and set aside. It has further been averred that the promotion and seniority are incidents of service and determine the future perks, privileges, benefits of an employee right up to his superannuation. However, in the case of the petitioner, she has not been correctly placed in the seniority list, which has marred her future prospects when the respondent-Department has made Unit Incharge/Head of Department, etc., who were junior to the petitioner, and as such prayed for quashing the aforesaid orders, thereby directing the respondents to assign seniority to the petitioner immediately below the name of the proforma respondent.

17. Respondents No.1 and 2 filed reply to the petition and raised preliminary submissions that the present petition is not maintainable in the eyes of law and as such deserves to be dismissed outrightly. The petitioner had submitted a representation on 03.05.2023 and on the same day final *inter se* seniority list of Professors had already been issued after examining all the objections/suggestions received from various Professors in

consultation with Advisory Departments i.e. Department of Personnel and Law Department. It has also been averred that the respondent-Department had issued tentative inter-se seniority list of Professors on 26.08.2022 and had sought objections/suggestions from the Professors of all the Government Medical Colleges of the State. After receipt of various objections/suggestions, the respondent-Department had issued the final inter-se seniority list of Professors on 03.05.2023. One of the representationists i.e. Dr. Meenakshi Kandoria, Professor, Department of OBG, IGMC Shimla cadre had submitted a representation against the seniority of the petitioner fixed in the *inter se* seniority list of Professors issued on 26.08.2022. In her representation, she had submitted that the petitioner belongs to Dr. RPGMC Tanda cadre and has been adjusted at IGMC Shimla against supernumerary post of Professor. She should have been mentioned in the cadre of Dr. RPGMC Tanda (supernumerary post at IGMC Shimla). Being on supernumerary post, the petitioner cannot claim seniority in the regular cadre of IGMC, Shimla and instead should be shown in the regular cadre of Dr. RPGMC Tanda. Listing the petitioner in the regular cadre and seniority of IGMC Shimla will harm her and will frustrate all her legitimate rights accruable on account of her seniority in the cadre of IGMC Shimla. She had also placed on record the copy of

bifurcation Notification dated 07.06.2008. After examining the representation of Dr. Meenakshi Kandoria, the Department of Personnel in the matter had advised that the general principles of determining the seniority and clarifications issued by the H.P. Government as contained in Chapter 13 of the Hand Book on Personnel Matters be followed.

18. Further, the method of recruitment on transfer has been renamed as absorption and transfer on deputation as deputationist. The relative seniority of person appointed by absorption to a Central Service from the subordinate offices of the Central Government or other Departments of the Central or a State Government, is determined in accordance with the order of their selection for such absorption. Where the relevant recruitment Rules provide for deputationist/absorption, his/her seniority in the grade in which he/she is absorbed is normally to be counted from the date of absorption and instructions dated 06.08.2021 refer to incumbents who are initially on deputation (now secondment). In case of a person, who was transferred and absorbed directly without being deputed i.e., where the recruitment rules provide for recruitment through absorption, his/her seniority shall be counted from the date from which he/she has been holding the post on deputation, or the date from which he/she has been appointed on a regular basis to

the same or equivalent grade in his/her parent department, whichever is earlier. Further, a supernumerary post, as per the broad principles, is normally created to accommodate the lien of an officer who, in the opinion of the authority competent to create such a post, is entitled to hold a lien against a regular permanent post. He/she cannot have his/her lien against such a post. It is a shadow post i.e. no duties are attached to such post and leads to an excess of the working strength. It is a post created till the officer is absorbed in a regular permanent post and it should not be created for an indefinite period as otherwise permanent posts are, but should normally be created for a fixed period sufficient for the purpose. The Department of Personnel had advised to examine and decide the instant matter in view of the Hand Book on Personnel Matters, prevailing Rules/instructions in an impartial and sagacious/judicious manner at its own level, being administrative one, with the approval of the competent authority.

19. The Law Department in the instant matter had advised that a tentative *inter se* seniority list of Professors working in Medical Education Department has been issued by the respondent-Department on 26.08.2022 for inviting objections from the faculty members of concerned Medical College/institution. Accordingly, the representation made by Dr. Meenakshi Kandoria, Professor in

Department of OBG, IGMC Shimla, wherein she had objected that the seniority of the petitioner, who has been wrongly shown at Serial No.87 in IGMC Shimla cadre, whereas she has been shown at Serial No.112. As per the R&P Rules for the post of Associate Professor, it is required to be filled up 100% by way of promotion and there is no provision to fill up the post by deputation/absorption. It has further been averred that the Hon'ble Supreme Court in Civil Appeal No.4325 of 2006, titled, ***Arun Kumar versus Union of India***, has categorically held that if there is no such rule providing for third source of recruitment, the Governor cannot relax a non-existing rule. Thus, the appointment of the petitioner was in violation of the R&P Rules. The Law Department had subscribed the view of the Department of Personnel and opined that a person appointed in violation of Rules cannot be assigned seniority above the person appointed in accordance with the Rules. Therefore, on the basis of the advice of the Advisory Departments, i.e. Department of Personnel and Department of Law, the respondent-Department had issued the final *inter se* seniority of Professors on 03.05.2023, wherein the seniority of the petitioner in the cadre of IGMC Shimla has not been mentioned. It has further been averred that the petitioner has not approached this Court with clean hands and suppressed the material facts from this Court just

to have undue gain with ulterior motive and thus, prayed for dismissal of the writ petition.

20. Respondent No.3 filed separate reply and raised preliminary objections that the petitioner did not challenge the validity of the advertisement and she participated in the selection process knowing fully well that she had applied for the post which was meant for Dr. RPGMC Tanda. The petitioner joined at Dr. RPGMC Tanda and continued to remain there till her services were placed on secondment basis from Dr. RPGMC Tanda to IGMC Shimla. Once the petitioner accepted the said arrangement under the advertisement and got selected under such arrangement for General category post at Dr. RPGMC Tanda, she is estopped in law as also on facts to rake up the issue. The petitioner had earlier filed CWPOA No.3497 of 2019 though assailing the said arrangement, but later withdrew the same and thus, she is estopped to rake up the issue again. Further, the petition is not maintainable due to the acts of omission and commission on the part of the petitioner. Respondent No.1 vide Notification dated 05.01.2018 had already promoted her as Professor (OBG) in the cadre of IGMC Shimla and pursuant to the said Notification, she had joined along with Dr. Rajeev Sood as Professor of OBG, IGMC Shimla and thus, it is clear that prior to putting up of the note to the Cabinet dated 06.08.2019,

she had already been promoted as Professor on 05.01.2018. Till this time, the petitioner was on the rolls and cadre of Dr. RPGMC Tanda. Respondent No.3 for all intents and purposes is senior in all respect to the petitioner and the petitioner in no case, can steal march over her nor any adjustment over and above her be allowed and thus, the writ petition against her is not maintainable.

21. Respondent No.4 filed separate reply to the petition and raised preliminary submissions that the petition is not maintainable in the present form and deserves to be dismissed. It is further averred that the petitioner has suppressed material facts from this Court and has wrongly claimed the benefit of seniority based on paragraph 13 of the Memorandum for consideration dated 06.08.2019 presented before the Cabinet and later approved by the Cabinet on 13.08.2019. The said paragraph 13, in essence and as per the representation dated 02.05.2011 of the petitioner herself, was only meant to sympathetically adjust her at IGMC Shimla, OBG Department by creating a supernumerary post of Assistant Professor and to provide promotional avenues to her from such supernumerary post of Assistant Professor to supernumerary post of Associate Professor and further to supernumerary post of Professor at IGMC Shimla by way of upgradation. It was not for the purpose of granting seniority to the petitioner in regular IGMC Shimla cadre

as it was a supernumerary post, i.e., ex-cadre post created till superannuation of the petitioner, and hence she cannot claim seniority in IGMC Shimla. It has further been averred that the Government took a decision through Notification dated 07.06.2008 to bifurcate the common teaching cadre for IGMC Shimla and Dr. RPGMC Tanda and created separate teaching cadres for both institutions. Further, as per Notification dated 09.07.2008, the existing Medical Education Services Rules of 1999 would be applicable for the purpose of promotion/recruitment of faculty members in IGMC Shimla and Dr. RPGMC Tanda as per the cadre strength sanctioned for the said institutions. It was specifically provided that only the existing teaching faculty was given an option to either choose IGMC cadre or Dr. RPGMC Tanda cadre, whereas the new appointments to be made through promotion or direct recruitment after the cadre separation Notifications were not to be given any option. Consequently, as a result of said bifurcation of cadre, the advertisement was issued by the HPPSC, whereby the vacancies sought to be filled up by way of direct recruitment were understandably advertised college-wise in various disciplines of Departments as per the requisitions sent by the Departments to HPPSC. Accordingly, in the Department of OBG, out of three vacancies, two General category seats were earmarked for Dr.

RPGMC Tanda and one OBC seat was earmarked for IGMC Shimla. The petitioner, being a General category candidate, applied against the general category post of OBG Department of Dr. RPGMC Tanda cadre as per the advertisement. The petitioner never challenged the advertisement and consciously applied against General category post in Dr. RPGMC, Tanda cadre in OBG Department as per the advertisement issued. The petitioner was consequently recommended for appointment against the General category post in OBG, Dr. RPGMC, Tanda cadre by the HPPSC. The petitioner was not eligible for any option to choose cadre as she was being appointed after the cadre separation Notification, yet she submitted her so called options, whereby the reason for opting IGMC Shimla was that since the post of OBG in IGMC Shimla lying vacant and owing to the selection of her husband as Assistant Professor in IGMC (Radiology Department), consequent to the same advertisement. Therefore, it was not in the public interest, but based on these two grounds, she was earlier issued the appointment letter for joining at IGMC Shimla, OBG Department, vide Notification dated 30.07.2009. However, since the only post of OBG in IGMC Shimla was reserved for OBC category, the Department quickly corrected its mistake and rightly issued appointment order dated 30.07.2009, whereby she was

appointed to Dr. RPGMC Tanda cadre, OBG Department, where the petitioner had already applied and got selected.

22. It has further been averred that the circumstances which led to the issuance of the Memorandum for Consideration dated 06.08.2019, especially the official noting and the petitioner's own conduct would show that she had failed to make out a case for seniority and is estopped by her own action. The petitioner, despite her appointment for Tanda cadre, did not join at Tanda and kept on requesting the Department for her adjustment in IGMC Shimla and also tried through political influence for her adjustment. The petitioner was posted at IGMC Shimla on her appointment only on humanitarian grounds, since her husband was appointed in IGMC Shimla and since no one was recommended for selection against the OBC post in OBG, IGMC Shimla. However, the Department, on receiving representations from various quarters as against the adjustment of the petitioner against a reserved post, rectified its mistake and rightly issued the modified appointment orders. The claim of the petitioner for adjustment at IGMC Shimla was rejected, knowingly considering the fact that she was appointed against General category post in Tanda cadre and selected for the said post. The case of the petitioner was rejected by respondent No.1 vide Note 89–93 dated 17.08.2009 that adjusting the petitioner at IGMC

Shimla would be illegal since the post of IGMC Shimla was for reserved category only, and if the petitioner is adjusted against such post, the same would not be tenable as various unreserved as well as reserved category eligible candidates may challenge such an action. Thereafter, the petitioner was ordered to be posted as per her selection and recommendations of the HPPSC at Dr. RPGMC Tanda. Consequently, she joined at DR. RPGMC Tanda on 11.09.2009 without any reservation or objection and did not challenge either the advertisement or the order of appointment at Tanda dated 30.07.2009. Thereafter, the petitioner was temporarily placed at IGMC Shimla vide order dated 24.04.2010 on secondment basis for a period of one year or till the posts were filled, whichever was earlier. In the meantime, the petitioner consistently requested for her adjustment at IGMC Shimla cadre, which was again rejected. However, the Special Secretary (Health) to the Government of H.P. opined that the matter of adjustment of the petitioner against IGMC Shimla cadre may be placed before the Cabinet after obtaining the advice of the Law Department. Consequently, the matter was sent to the Law Department, in which it was opined on 22.11.2010 that the petitioner's case may be considered sympathetically for absorption in IGMC Shimla against available vacancy/expected resultant vacancy by seeking relaxation of Rules through approval of

the Cabinet and approval of HPPSC. As per the opinion of the Law Department, it was advised that the power to relax could only be exercised after having taken the approval of HPPSC, and accordingly, the approval was sought from HPPSC for relaxation of the Rules. However, HPPSC did not approve the proposal of respondent No.1 regarding permanent absorption of the petitioner in IGMC Shimla cadre. However, the petitioner again made a representation to consider her case for absorption at IGMC Shimla based on sympathetic consideration and also undertook that the decision of the Government regarding fixation of her seniority in IGMC Shimla would be acceptable to her. Thereafter, the petitioner was repatriated to her parent cadre i.e. Dr. RPGMC Tanda vide order dated 05.05.2011, which decision was challenged by the petitioner by way of CWP No.3770 of 2011 and also laid a belated claim to her appointment order dated 30.07.2009, whereby she was posted at Dr. RPGMC Tanda. This Court had passed the interim order dated 18.04.2012, whereby the repatriation was stayed and the petitioner continued to work at IGMC Shimla for many years though belonging to Dr. RPGMC Tanda cadre.

23. It has also been averred that the petitioner on one hand had tried to exert influence on the Department for acceding her demand for permanent absorption in IGMC Shimla cadre on the

basis of pending litigation between her and the Department, and on the other hand, vide representation dated 20.07.2018 requested respondent No.1 to grant her seniority in her parent cadre of Dr. RPGMC Tanda. The petitioner requested for considering her for promotion to the post of Associate Professor by correcting the seniority list of Assistant Professors of Dr. RPGMC Tanda and by placing her correctly in the said seniority list. This clearly implies that the petitioner was also aware that her seniority could only be determined in her parent cadre of Dr. RPGMC Tanda and not in IGMC Shimla cadre. The petitioner has wrongly relied on paragraph 13 of the Memorandum for consideration dated 06.08.2019, which was subsequently approved by the Cabinet on 30.08.2019, in order to claim seniority in the cadre of IGMC Shimla. It is pertinent to point out that para 13 of the memo and approval of the Cabinet clearly provided that a supernumerary post of Assistant Professor was created in IGMC Shimla in order to adjust her against such supernumerary post, which was basically an *ad hoc* post and ex-cadre post. The petitioner belonged to parent cadre of Dr. RPGMC Tanda, though working on deputation in IGMC Shimla on the basis of Court orders. It has further been averred that the petitioner would be promoted to the next post of Professor only when she would be eligible for the same as per the R&P Rules and only on the

condition that the Doctor junior to her has been promoted, so that no injustice is meted out to such in-cadre IGMC Shimla senior Doctors. All these clauses of memo were basically incorporated to provide timely promotion to the petitioner to the supernumerary post of Associate Professor and Professor in IGMC Shimla, OBG Department after her adjustment without specifying or uttering anything about seniority. Furthermore, the incorporation of such a condition that she would be promoted after her junior itself indicates that the Department did not confer the benefit of seniority on the petitioner in IGMC Shimla cadre, but only adjustment in IGMC Shimla, OBG Department on supernumerary cadre (ex-cadre post) subject to timely promotion only up to the level of Professor and after her retirement from the supernumerary post of Professor, the said post would be deemed to have ended, meaning thereby, it was not a regular post created in IGMC Shimla cadre, but just a supernumerary post which was upgraded only till the level of Professor on the promotion of petitioner as a measure personal to her. There is no benefit of seniority conferred through the Cabinet decision and further the creation of supernumerary post was only to adjust the petitioner in IGMC Shimla, OBG Department, without absorbing her on regular basis, as a measure personal to her and to provide promotional avenue up till the level of Professor only. The

Finance Department through its decision rejected the proposal of the Department not once, but twice vide decision dated 29.03.2019, and thereafter vide decision dated 20.05.2019, by stating that there was no justification in creation of proposed supernumerary post. Despite the fact that the Finance Department did not approve the proposal, the Department placed the Memorandum for consideration before the Cabinet, which was later approved, but does not in any manner confer the benefit of seniority on the petitioner in IGMC Shimla cadre from her initial date of appointment i.e. 30.07.2009.

24. It has further been averred that the petitioner was promoted to the supernumerary post of Associate Professor on regular basis w.e.f. 21.10.2019 and the petitioner joined the said post without any objection regarding her seniority not being fixed from the date of her immediate junior, as has been now claimed in the present petition belatedly. Immediately thereafter, the DPC for promotion of the petitioner to the supernumerary post of Professor was convened on 30.12.2019 and she was recommended to be promoted to the supernumerary post of Professor in IGMC Shimla, OBG Department. At this stage, respondent No.4 was also eligible for being considered for promotion against the post of Professor, being the senior-most Associate Professor in IGMC Shimla, OBG Department with regular teaching experience of seven years and ten

months as Assistant Professor and Associate Professor. However, due to no regular in-cadre post of Professor being available at the time in IGMC Shimla, OBG Department, she could not be considered for the same. The petitioner, on the other hand, got the benefit of consideration to the supernumerary post of Professor at that time. As a result of the petitioner being promoted against the supernumerary post of Associate Professor and thereafter recommended for further promotion to the post of Professor, she moved an application in CWP No.3370 of 2011 for withdrawal of the same. Vide Notification dated 17.01.2020, the petitioner was promoted to the supernumerary post of Professor w.e.f. 17.01.2020, and she joined as such on 18.01.2020 without any objection regarding her seniority not being fixed from the date of her immediate junior, as has been now claimed in the present petition belatedly. Keeping in view the above averments, a prayer has been made for dismissal of the writ petition.

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

26. Learned senior counsel representing the petitioner vehemently argued that in the tentative seniority list, the petitioner was shown at Serial No.87, which was also wrong in view of the fact that proforma respondent No.5, who was junior to her was at Serial

No.48 and when she preferred the objections to correct her seniority position as per office Memorandum prepared for the Cabinet, which clearly provided that as and when person immediate junior to her is promoted to the next higher post, she will be promoted to the same post, but instead of considering her representation, respondent No.1 has issued the office Memorandum dated 03.05.2023, whereby the name of the petitioner was even deleted from the final seniority list and further a note was appended that she cannot be fixed in the seniority list till the permanent faculties of Department of OBG, IGMC Shimla cadre are promoted as Professors, which action is totally illegal, arbitrary and unjust. Once the Cabinet had approved to create two supernumerary posts of Assistant Professors in the Departments of Medicine and OBG in IGMC Shimla, there was no question of not figuring the petitioner in the final seniority list. To avoid any dispute of seniority as well as promotion, the Cabinet had created the supernumerary posts and further it was also observed that when a junior person is promoted to the higher post, the post held by the petitioner shall also be upgraded, and in sequel to the said orders, the DPC was convened and the petitioner was firstly promoted to the post of Associate Professor and thereafter to the post of Professor. The Notification dated 17.01.2020, whereby the petitioner was promoted to the post of Professor (Annexure P-18/2)

clearly reveals that the post held by the petitioner was upgraded and once the post of petitioner was upgraded to the post of Professor as on 17.01.2020, as a sequel of which, she joined her duties on 18.01.2020, omission of her name in the final seniority list issued on 03.05.2023 and further showing respondents No.3 and 4 in the seniority list, is totally illegal, arbitrary and discriminatory. He further argued that respondents No.3 and 4 have not challenged the approval of the Cabinet and thus, action on the part of respondent No.1 in not showing the name of the petitioner in the seniority list and further appending a note that the seniority of the petitioner cannot be fixed till permanent faculties of the Department of OBG, IGMC Shimla cadre are promoted as Professor(s), who have been appointed before absorption of the petitioner in OBG, IGMC Shimla, is illegal, arbitrary and discriminatory and as such be quashed and set aside.

27. On the other hand, learned counsel for the respondents-State, learned counsel representing respondent No.3 as well as the learned senior counsel representing respondent No.4 supported the decision, whereby the seniority of the petitioner has to be fixed only after the permanent faculties of Department of OBG, IGMC Shimla cadre are promoted as Professor(s). Learned senior counsel for respondent No.4 placed reliance upon the judgments

passed by the Hon'ble Supreme Court in Civil Appeal Nos. 3221-3228 of 2026, titled, **Indian Maritime University & Anr. vs. G. Kulachiyappan etc.**, Civil Appeal No. 5776 of 2025 (arising out of SLP (Civil) No. 24512 of 2023), titled, **Sri Saikat Saha vs. The State of Tripura & Ors.**, Civil Review No.14 of 2019, titled, **Chander Singh vs. Satya Parkash & Ors.**, passed by this Court and WP(C) No.6721 of 2011, titled, **WG. CDR. A.K. Aggarwal (Retd.) vs. UOI and Anr.**, passed by Delhi High Court, to contend that after creation of the supernumerary post, the person has to be placed at the bottom of the seniority list and in the present case, since the petitioner has been adjusted in IGMC Shimla by creating a supernumerary post, no illegality can be found with the order of not issuing the final seniority list by respondent No.1, wherein she has not been shown till the permanent faculties of Department of OBG, IGMC Shimla Cadre are promoted as Professors.

28. I have given my thoughtful consideration to the judgments cited at Bar. In the judgment passed by the Supreme Court in **G. Kulachiyappan's** case (supra), the High Court had given accommodation to the petitioners by creating the supernumerary posts and on the suggestion of the learned Additional Solicitor General, the petitioners were offered appointments, but they were not held entitled to claim seniority. But

in the present case, the Cabinet had approved item No.76 of the Memo dated 06.08.2019 on 08.08.2019, which was conveyed vide letter dated 13.08.2019. It is apt to reproduce item No.76, paragraph No.13 of the Memo dated 06.08.2019, which reads as under:-

"According to the rules, when they will become eligible for the next post of Professor, they will be promoted only in the event when the doctor occupying the lower rank than them will be promoted so that no injustice is done to him. In that case, the post of Associate Professor which would have been created for Dr. Sanjay Mahajan and Dr. Rama Thakur would automatically be considered as upgraded."

29. A perusal of the aforesaid memorandum clearly reveals that as per the Rules, the petitioner and Dr. Sanjay Mahajan will be promoted to the next post of Professor, when they become eligible, only in the event when the doctor occupying the lower rank than them will be promoted, so that no injustice is done to them. Further, the post of Associate Professor, which would have been created for Dr. Sanjay Mahajan and the petitioner, would automatically be considered as upgraded. The aforementioned Memorandum was placed before the Cabinet in its meeting held on 08.08.2019, which had considered the same as per item No.76 of the memo containing the above reproduced point for consideration and approved the same. The proposal so approved reads as under:-

"Approved.

30. From the approval, it is clear that two supernumerary posts of Assistant Professors were approved from the date of joining and the posts shall stand upgraded as Associate Professor on their promotions.

31. The approval was conveyed to the Government through letter dated 13.08.2019. The aforesaid approval granted by the Cabinet has not been challenged by the respondents and, thus, the petitioner after her promotion to the post of Professor, when her junior, who was also promoted as Professor, is entitled to seniority immediately after her junior if not earlier and thus, the impugned note appended in the seniority list (Annexure P-3) that the seniority of the petitioner cannot be fixed till the permanent faculties of Department of OBG, IGMC Shimla cadre are promoted as Professors, who have been appointed before absorption of the petitioner, is illegal and untenable in law.

32. The respondents-State after approval granted by the Cabinet, constituted a DPC and on the recommendations of DPC, the petitioner was promoted to the post of Associate Professor, vide Notification dated 25.09.2019, which was not questioned by respondents No.3 and 4 and thereafter, the DPC was convened for promotion to the post of Professor on 30.12.2019, and as per the

recommendations of the DPC, the petitioner was promoted to the post of Professor as per Notification dated 17.01.2020. Neither the decision of the Cabinet, nor the orders of promotion of the petitioner initially to the post of Associate Professor and thereafter to the post of Professor have been challenged by respondents No.3 and 4 and, therefore, in such circumstances, the action on the part of respondent No.1 not to assign seniority to the petitioner immediately below proforma respondent, who figures at Serial No.48 of the final seniority list, though she ought to have been placed above him, but keeping in view the fact that the petitioner has not claimed any relief qua him is illegal, arbitrary, and unconstitutional and as such, the final seniority list is quashed and set aside with a further direction to the respondents to assign seniority to the petitioner at Serial No.48-A as per the seniority position, which was existing as on 03.05.2023.

33. Learned counsel representing respondent No.3 vehemently argued that as per Notification dated 05.01.2018 (Annexure R-3/B), respondent No.3 was promoted to the post of Professor, IGMC Shimla, whereas the petitioner was promoted to the said post vide Notification dated 17.01.2020 (Annexure R-3/C) and as such, the petitioner cannot be shown above her in the seniority list. No doubt, it is true that respondent No.3 was promoted earlier

to the petitioner to the post of Professor, however, keeping in view the approval granted by the Cabinet, the petitioner was entitled to seniority, when a supernumerary post of Assistant professor in OBG, IGMC Shimla was created. Since the decision of the Cabinet has not been challenged by the private respondents, the seniority of the petitioner cannot be questioned. Even the petitioner was promoted to the post of Professor after respondent No.3, her interests cannot be marred in view of the fact that the petitioner was promoted to the post of Professor, when her immediate junior, who is proforma respondent No.5, was promoted to the said post. Therefore, the action on the part of respondent No.1 not to assign the seniority to the petitioner is patently illegal, arbitrary, unconstitutional and, as such, is quashed and set aside.

34. Learned senior counsel representing respondent No.4 placed reliance on the judgment in **Sri. Saikat Saha's** case (supra) and contended that the seniority cannot be assigned to the petitioner. However, the said judgment is not attracted to the facts of the present case for the reason that in the said judgment, the learned counsel had submitted that he would not claim seniority, whereas in the present case, the petitioner is claiming her seniority in view of the decision of the Cabinet, wherein it was provided that when the petitioner become eligible for promotion to the next post

of Professor, she will be promoted only in the event the Doctor occupying the lower rank than her will be promoted, so that no injustice is done to him. The petitioner is not claiming her seniority above proforma respondent, who was her junior, but she has to be assigned seniority below him.

35. Learned senior counsel for respondent No.4 had also placed reliance on the judgment in **Satya Prakash's** case (supra) and contended that the petitioner cannot be assigned seniority. In the said judgment, it was held that the supernumerary posts shall be created to accommodate the applicant without affecting the rights of other employees. In the present case, the rights of the private respondents have not been affected for the reason that the supernumerary post of Assistant Professor was created from the initial date of appointment of the petitioner and as per decision of the Cabinet after promotion of the petitioner to the post of Associate Professor, the post of Assistant Professor held by her will be upgraded to the post of Associate professor and thereafter after her promotion to the post of Professor, the post of Associate Professor will be upgraded and since the petitioner did not consume the posts already existed either while promoting to the post of Associate Professor or to the post of Professor, she is entitled to the seniority immediately below proforma respondent, who was her junior and

thus, the decision of respondent No.1-State in not assigning her seniority till the permanent faculties of Department of OBG, IGMC Shimla cadre are promoted is illegal, arbitrary and discriminatory.

36. Learned senior counsel for respondent No.4 placed reliance on other judgments, as mentioned above, which are not attracted to the facts of the present case. He also vehemently argued that the case of the petitioner was earlier rejected by the competent authorities and once her case was rejected, there was no question to consider her claim by the Cabinet. However, the said contention cannot be accepted, in view of the fact that respondent No.4 has not laid challenge to the said decision. Once the Cabinet had taken the decision by creating supernumerary post of Assistant Professor to meet out the injustice to the petitioner, which post was to be upgraded firstly to the post of Associate Professor and thereafter, to the post of Professor on her promotions without affecting the regular cadres of the Associate Professors and Professors in IGMC Shimla, it is not justified to not assign her seniority immediately below proforma respondent, who was junior to her in the cadres of Assistant Professor. Therefore, once the private respondents have not challenged the decision of the Cabinet and also the subsequent Notifications, whereby the petitioner has been promoted initially to the post of Associate Professor and thereafter

to Professor, specifically mentioning that the post held by her as Assistant Professor, firstly to the post of Associate Professor, has been upgraded and thereafter to the post of Professor has been upgraded, which has not caused any injustice to the private respondents, she is entitled to seniority in the cadre of IGMC Shimla. The private respondents were right in objecting the claim of the petitioner, had she been adjusted in IGMC Shimla cadre without creating the supernumerary post. Once the supernumerary posts have been created, the action on the part of respondent No.1 in not assigning her seniority till the permanent faculty of Department of OBG, IGMC Shimla, cadre is promoted as Professor, is totally illegal, arbitrary and discriminatory and as such, the impugned decision and note is quashed and set aside along with the impugned order with a further direction to respondent No.1-State to assign seniority to the petitioner below proforma respondent, as per the decision of the Cabinet.

37. The plea taken by the learned counsel for the respondents that the supernumerary post is a shadow post and the petitioner cannot be assigned seniority, cannot be accepted in view of the decision of the Cabinet when it had created the supernumerary post of Assistant Professor to accommodate the petitioner in the cadre of IGMC Shimla. Another plea taken by the

learned counsel for the respondents that once the petitioner had requested to grant her seniority in her parent cadre of Dr. RPGMC Tanda, she cannot claim her seniority in the cadre of IGMCM Shimla. However, the said contention has no relevance in view of the decision of the Cabinet, whereby the petitioner was adjusted in the cadre of IGMCM Shimla by creating a supernumerary post of Assistant Professor from her initial date of appointment. As already observed above, had the petitioner been adjusted in the cadre of IGMCM Shimla without creating the supernumerary post, the respondents could have questioned the claim of the petitioner to assign her seniority in the cadre of IGMCM Shimla.

38. The plea taken by the learned counsel for the respondents that the petitioner had accepted her appointment in IGMCM Shimla without assigning her seniority is also without any substance. As already observed above, once the petitioner has been absorbed in the cadre of IGMCM Shimla from the date of initial appointment as Assistant Professor, she is entitled to seniority immediately below proforma respondent.

39. Resultantly, the present petition is allowed. The final *inter se* seniority list of Professors, IGMCM Shimla, as circulated vide Office Memorandum dated 03.05.2023 (Annexure P-23) and the office order dated 15.05.2023 (Annexure P-25), naming unit

Incharge are also quashed and set aside and respondents No.1 and 2 are directed to assign seniority to the petitioner immediately below the name of proforma respondent No.5 at Serial No.48-A in the final seniority list of Professors in IGMC Shimla dated 03.05.2023. Further, the respondents are directed to name the unit Incharges as per the seniority list and the position to be assigned to the petitioner. Needful shall be done by the respondents within two months from the date of receipt of copy of the order.

40. The writ petition is disposed of in the aforesaid terms. No order as to costs. Pending application(s), if any, also stand disposed of.

29th September, 2026
(naveen)

(Jiya Lal Bhardwaj)
Judge