

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.488 of 2019
Decided on: 06.10.2026

Rajesh Kumar and another

...Petitioners

Versus

State of Himachal Pradesh and others

...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

*Whether approved for reporting?*¹

For the petitioners:

Ms. Sunita Sharma, Senior Advocate
with Ms. Harshita Dogra, Advocate.

For the respondents:

Mr. Amandeep Sharma, Additional
Advocate General, for respondents
No.1 & 2-State.

Respondent No.3 ex-parte.

Jiya Lal Bhardwaj, Judge (Oral)

The petitioners by way of present petition have
prayed for the following substantive reliefs:-

- "A) *That respondents No.1 and 2 may be directed to consider the case the applicants for promotion to the post of Senior Assistant with all consequential benefits from the date of their eligibility.*
- B) *That respondents No.1 and 2 may be directed not fill the post like Senior Assistants and other higher posts by way of deputation or on the secondment basis from the other department.*

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

- C) *That the impugned order as contained in Annexure A-11 may very kindly be quashed and set aside thereby directing respondents No.1 and 2 to promote the applicants to the posts of Senior Assistants from the date when they become eligible, in the interest of justice, equity and fair play."*

2. The facts as emerged from the pleadings are that petitioner No.1 was appointed as Clerk, vide office order dated 05.04.1997 (Annexure A-1) and petitioner No.2 was appointed to the post of Peon on 14.09.1987. Later on, petitioner No.2 was promoted to the post of Clerk on the recommendations of the Departmental Promotion Committee (in short DPC) in its meeting held on 09.09.1997, as per office order dated 09.09.1997 (Annexure A-2). Thereafter, petitioner No.1 was promoted to the post of Junior Assistant as per office order June, 2004 (Annexure A-4) w.e.f. 05.07.2002 in the pay scale of Rs.4400-7000/- and petitioner No.2 was promoted vide office order dated 14.09.2004 (Annexure A-5), w.e.f. 09.09.2002 in the pay scale of Rs.4400-7000/-. Respondent No.2 had taken a decision on 20.09.2005 that the Recruitment and Promotion Rules (in short 'R&P Rules') of Rural Development Department may be made applicable to the staff, who are working in District Rural Development Agency (in short

‘DRDA’), for the purpose of their staffing patterns as well as for promotion and in case an employee who is to be promoted on a post, which does not exist in the Rural Development Department, in that case, the R&P Rules of the corresponding category will be followed. As per the R&P Rules, placed on record by the petitioners for the post of Senior Assistant, Class III (Non-Gazetted), in the office of Deputy Commissioners, issued by the Government of Himachal Pradesh, as per Notification dated 18.08.1999, the post of Senior Assistant is to be filled up 100% by promotion from amongst the Junior Assistants of the District concern with 5 years combined regular service or regular combined with continuous adhoc (rendered up to 31.03.1998) service in the grade. Since petitioner No.1 was promoted to the post of Junior Assistant w.e.f. 05.07.2002, he made a representation dated 07.07.2007 (Annexure A-8), to respondent No.2 requesting therein for his promotion on the vacant post of Senior Assistant, specifically mentioning that there are four sanctioned posts of Senior Assistants in DRDA, against which, two posts of Senior Assistants have been filled up by hiring incumbents on secondment basis from Rural Development Department and two posts of Senior

Assistants are still lying vacant and since he was borne employee of DRDA and the agency follows the R&P Rules of the Rural Development Department, where the promotion to the post of Senior Assistant is made on completion of 10 years' service as Clerk or 5 years' service as Junior Assistant and he being senior most employee and qualifies the requisite service length and educational qualification, be considered for promotion to the post of Senior Assistant. Similarly, petitioner No.2 after completion of 5 years' service as Junior Assistant made a representation dated 11.09.2007 (Annexure A-9) for his promotion to the vacant post of Senior Assistant since he was appointed to the post of Junior Assistant w.e.f. 09.09.2007.

3. Petitioner No.1 again made a representation on 01.10.2007 (Annexure A-10), but instead of considering the request made by the petitioners, respondent No.3 who was working as Senior Assistant in DRDA Sirmour, was transferred to DRDA Solan, against the vacant post of Senior Assistant on secondment basis in public interest with immediate effect.

4. The petitioners feeling aggrieved by the transfer of respondent No.3 and her posting on secondment basis in

DRDA Solan, have preferred the present petition *inter alia* on the grounds that once the petitioners were eligible for promotion to the post of Senior Assistant, bringing a person against the post of Senior Assistant on secondment basis from the office of DRDA Sirmour, is illegal, arbitrary, discriminatory, unjustified, unconstitutional and violative of Articles 14 and 16 of the Constitution of India. It has further been averred that the petitioners had become the permanent employees of DRDA and were promoted to the post of Junior Assistant in the year 2004 w.e.f. 2002 as per the R&P Rules and as such they were legitimately expecting that they will be promoted to the post of Senior Assistant, but denying them the benefit of promotion is illegal. It has also been averred that respondent No.1 should have evolved its own methodology for making appointments by way of promotion, instead of permitting the employees being posted outside, like respondent No.3. In case the petitioners were not available and were not eligible to be promoted, the DRDA could explore the method of recruiting the persons on deputation/secondment basis. Even a decision was taken by the governing body for extension of benefit of promotion to the employees already working with DRDA, but not having

granted such benefit to the petitioners is blatantly illegal. The office order dated 13.03.2008, whereby respondent No.3 has been transferred and taken on secondment basis is harsh, oppressive and as such prayed for direction to the respondents-State to promote the petitioners to the post of Senior Assistant with all consequential benefits from the date of their eligibility, besides quashing the office order dated 13.03.2008 (Annexure A-11).

5. Respondents No. 1 and 2 filed reply to the petition and in preliminary submissions averred that the claim of the petitioners is unreasonable, unjust and without any legal basis and as such the petition is not maintainable and deserves dismissal. It has further been averred that the erstwhile Himachal Pradesh Administrative Tribunal (in short 'the Tribunal') has no jurisdiction to entertain the present original application (the present petition was initially instituted before the Tribunal) as the petitioners are neither employees of the State Government nor the employees of the Corporation, Board owned by the State Government. The petitioners are working under an agency, which is a registered society under the Societies Registration Act, 1860 and as such deserves to be dismissed.

6. On merits, it has been averred that it is wrong to state that the action of the respondents is illegal, arbitrary, discriminatory, unjust and against the R&P Rules. It has further been averred that as per the service regulations for the DRDA staff framed by the Government of Himachal Pradesh, vide Notification dated 01.01.2007, all the posts in DRDAs in Himachal Pradesh are to be filled on secondment basis from the Rural Development Department and other Departments of Government of Himachal Pradesh. It has also been submitted that respondent No.3 has been transferred to respondent No.2 on secondment basis, who is the employee of Rural Development Department. She has joined in the office of respondent No.2 as Senior Assistant after transfer on secondment basis and no promotion order has been issued in this regard. As per earlier instructions of Government of Himachal Pradesh with regard to strengthening of DRDA Administration dated 08.12.1999, it has been provided that there will be no permanent staff of DRDA and existing staff in DRDA will continue to work at same post and pay scale till the norms for their merger in the line Departments are formed. Since the petitioners are working under an agency, which is a registered society, the

petition deserves to be dismissed. So far as the R&P Rules annexed by the petitioners with the petition are concerned, it has been averred that the R&P Rules are not applicable to the staff of District Rural Development Agency, since the same pertains to the Deputy Commissioner's office under the Revenue Department of Himachal Pradesh. It has not been denied that respondent No.2 in its meeting held on 20.09.2005 had adopted the resolution that R&P Rules of Rural Development Department will be made applicable to the employees of District Rural Development Agency who are presently working for staff pattern and promotion. Even the subsequent decision taken by respondent No.2, which has been placed on record as Annexure A-12 dated 25.03.2006 has not been denied, whereby a decision was taken that the employees of the DRDA will be granted all the benefits including promotion.

7. The petitioners filed rejoinder to the reply and controverted the averments made therein and also placed on record the communication dated 11.05.2007 (Annexure A-13) issued by Ministry of Rural Development Department of Rural Development Government of India.

8. I have heard the learned counsel for the parties

and also perused the record carefully.

9. Learned senior counsel representing the petitioners has vehemently argued that once respondent No.2 had adopted the resolution dated 20.09.2005 to the effect that R&P Rules of Rural Development Department will be made applicable to the employees of DRDA, the petitioners who were eligible as per the R&P Rules, which have been issued by the State Government for the post of Senior Assistant, Class-III (Non-Gazetted) in the office of Deputy Commissioner, under whom they are working, are requested to be considered for promotion to the post of Senior Assistant. The said submission deserves to be accepted for the reason that once respondent No.2 has not disputed the resolution dated 20.09.2005, whereby a decision was taken to make applicable the R&P Rules of Rural Development Department to the employees of DRDA, the petitioners who were initially appointed with DRDA and were promoted as evident from a perusal of office orders Annexures A-4 and A-5, they ought to have been considered for promotion to the post of Senior Assistant instead to bring respondent No.3, on secondment basis, who was also working in DRDA, but in Sirmour. It is not the case of the

respondents-State that the posts of Senior Assistants were not available with them.

10. Learned Additional Advocate General representing the respondents-State has vehemently argued that since the petitioners were not the employees of the State Government, therefore, the petition is not maintainable. However, the said contention cannot be accepted for the reason that the petitioners were working in DRDA, which was an agency created by the Government of Himachal Pradesh and the Deputy Commissioner is the Controlling Officer, who had issued the promotion orders of the petitioners from the post of Clerk to Junior Assistant, as evident from a perusal of Annexures A-4 and A-5. Since Deputy Commissioner is the appointing authority of the petitioners, who is an officer of the State Government and has deep and pervasive control over the functioning of the employees of the DRDA, respondent No.2 is other Authority, within the meaning of Article 12 of the Constitution of India. Furthermore, the Director, Rural Development Department, Himachal Pradesh had transferred respondent No.3 to DRDA Solan on secondment basis, which shows that DRDA has been in control of the State Government and it has

pervasive control over its functioning and its employees.

11. Learned Additional Advocate General further argued that since the petitioners were working in the society, this Court does not have the jurisdiction to entertain the petition. This argument also deserves to be rejected for the reason that the Deputy Commissioner is having deep and pervasive control over the functioning of DRDA and further the Director of DRDA had issued an office order dated 13.03.2008 when respondent No.3 was transferred and posted in DRDA Solan, against the vacant post of Senior Assistant on secondment basis and since the State Government is having pervasive control, the writ petition against DRDA is maintainable.

12. Learned Additional Advocate General also argued that since the State Government had taken the decision on 01.01.2007 that all posts in DRDA in Himachal Pradesh are to be filled on secondment basis from Rural Development Department and other Departments of Government of Himachal Pradesh, the petitioners cannot stake any claim for their promotion to the post of Senior Assistant. However, the said contention cannot be accepted for the reason that the petitioners, who were promoted to the post of Junior

Assistant in the year 2004 by granting them promotion from the year 2002, once having been eligible as per the R&P Rules issued by Government of Himachal Pradesh, as per Notification dated 18.08.1999 (Annexure A-7), which is pertaining to the post of Senior Assistant Class-III (Non-Gazetted) in the office of Deputy Commissioner and further the posts were lying vacant with DRDA, which is also crystal clear from the fact that respondent No.3 has been posted against the vacant post of Senior Assistant, the Notification dated 01.01.2007 cannot be attracted while denying the promotion to the petitioners. It offends Articles 14 and 16 of the Constitution of India. Had the DRDA not passed the resolution dated 20.09.2005, whereby a decision was taken that the R&P Rules of Rural Development Department will be applicable to the employees of the DRDA for staff pattern and further for their promotions, the petitioners could have been denied the relief. Once the said decision was taken and the petitioners were eligible and the posts of Senior Assistant were available, there was no occasion to bring respondent No.3 on secondment basis on the post of Senior Assistant. After passing the resolution dated 20.09.2005, another resolution was passed on 25.03.2006 (Annexure A-

12), whereby a conscious decision was taken to grant all the benefits to the employees of DRDA including promotion. Thus, the action on the part of the respondents-State in not considering the petitioners for promotion to the post of Senior Assistant and bringing respondent No.3 on secondment basis on the post of Senior assistant, is illegal, arbitrary and discriminatory which also offends Articles 14 and 16 of the Constitution of India.

13. The respondents-State while filing the reply to the petition has neither disputed the eligibility of the petitioners to the post of Senior Assistant, nor the availabilities of posts. No doubt, it has been averred in reply that the R&P Rules placed on record pertains to the Deputy Commissioner's office under the Revenue Department of Himachal Pradesh, but the respondents-State has not disputed the fact that the criteria stipulated in the said R&P Rules, is not the same in the R&P Rules of Rural Development Department or there is some other different criteria under the R&P Rules. The respondents-State has not placed on record the R&P Rules of the Rural Development Department and thus, the petitioners, who were eligible to be promoted to the post of Senior Assistant as per the R&P Rules placed on record and

further the posts were lying vacant, they were to be considered for promotion to the post of Senior Assistant. The respondents-State has not even disputed the fact that the representations made by the petitioners were received by them and in such circumstances, the action on the part of respondents-State in not considering the petitioners for promotion to the post of Senior Assistant, is arbitrary, illegal and discriminatory, more especially when it was decided to grant all benefits to the employees of DRDA including promotion.

14. It is settled law by now in catena of judgments that an employee has a right to be considered for promotion and once the petitioners working with DRDA were eligible for promotion to the post of Senior Assistant, denying them promotion, is infraction of Articles 14 and 16 of the Constitution of India and, therefore, this Court is of the considered view that petitioners are to be promoted to the post of Senior Assistant from the date when they had become eligible and when the posts were lying vacant, with all consequential benefits. This Court is not quashing the appointment of respondent No.3, since she was transferred and posted as Senior Assistant in DRDA Solan, on

secondment basis.

15. Consequently, the present petition is allowed and respondents No.1 and 2 are directed to promote the petitioners to the post of Senior Assistant from the date of their attaining eligibility and when the posts had fallen vacant, with all consequential benefits, such as seniority, increments, promotion and other service benefits. Respondents No.1 and 2 are further directed to complete the entire exercise within three months from today.

16. The petition is accordingly disposed of. No order as to costs. Pending miscellaneous application(s), if any, also stand disposed of.

06th October, 2026

(Anurag)

**(Jiya Lal Bhardwaj)
Judge**