

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.1736 of 2019

Decided on: 22.08.2026

Vimla Kaushal

...Petitioner

Versus

State of Himachal Pradesh and others

...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

*Whether approved for reporting?*¹

For the petitioner:

Mr. Shekhar Badola and Ms. Srishti Ramesh, Advocates.

For the respondents:

Mr. Sumit Sharma, Deputy Advocate General.

Jiya Lal Bhardwaj, Judge (Oral)

CMP-T No.331 of 2026

By way of present application, a prayer has been made by the petitioner to place on record the Recruitment and Promotion Rules for the post of Nursing Orderly, Class-III (Non-Gazetted) in the Department of Health & Family Welfare, Himachal Pradesh, the Recruitment and Promotion Rules for the post of Clerk, Class-III (Non-Gazetted) in the Department of Health and Family Welfare, Himachal Pradesh, judgment dated 30.04.2010, passed by this Court in CWP(T) No.4960 of 2008 (OA No.403 of 1998), titled, ***Sh.***

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

Birbal and another vs. State of H.P. and another and connected matter; and order dated 09.11.2011 passed by respondent No.2, whereby promotions have been made to the post of Nursing Orderly on regular basis.

2. Keeping in view the prayer made in the application coupled with the fact that the petitioner has only prayed to place on record the Recruitment and Promotion Rules, judgment and order referred to above, the application is allowed and the documents annexed with the same are ordered to be taken on record. The application is accordingly disposed of.

CWPOA No.1736 of 2019

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

- “i) *That the respondents may very kindly be directed consider the category of Ward Helper (Peon) possessing the Middle Pass qualification for promotion to any of the Class-III posts, namely, Nursing Orderly, Operation Theatre Assistant, Laboratory, Clerk etc. in the interest of justice.*”

2. Shorn of unnecessary details, the key facts of the case are that the petitioner was appointed as Ward Helper (Peon) in the respondents-Department on 27.02.1992, who joined her services on 05.03.1992. Later on she was confirmed on 28.02.1995. It has been averred that she has

passed Middle Standard examination in the year 1999. As per the Recruitment and Promotion Rules for the post of Nursing Orderly, Class-III (Non-Gazetted) in the Department of Health and Family Welfare, Himachal Pradesh (in short 'R&P Rules'), there is a provision of promotion of Class-IV employees, who possess Middle and Matriculation qualification to Class-III posts, namely, Clerk, Operation Theatre Assistant, Nursing Orderly etc. against 10% quota meant for them. All the categories of Class-IV employee in the Health Department, namely Peon, Chowkidar and Ward Boy, who possess Middle and Matriculation qualifications, are considered for promotion to Class-III posts of Clerk, Operation Theatre Assistant, Laboratory Attendant, Nursing Orderly, but the category of the Sweeper has never been considered for promotion to Class-III post. Even the Middle Pass Ward Boys have been promoted to the post of Nursing Orderly in the respondents-Department, which is a Class-III post.

3. It has further been averred that the respondents-Department have ignored the category of Ward Helper (Peon) for considering them for promotion to Class-III post and persons junior to the petitioner as Ward Helper, Sweeper and working in other capacities in Class-IV have

been promoted to Class-III post. Sh. Jagdish Chand, son of Sh. Tulsi Ram, who was initially appointed on 16.02.1994 was promoted to Class-III post from District Hamirpur and similarly Sh. Kanshi Ram, Ward Boy who was working in District Hamirpur has been promoted as Nursing Orderly. Both of them are now posted at Shimla. Despite making request to the respondents-Department for promotion by the petitioner, her request was not entertained. She has not retained copies of the representations.

4. It has also been averred that the petitioner has more than 20 years of service with the respondents-Department and she is middle pass and fully eligible for promotion to the post of Nursing Orderly, Operation Theatre Assistant, Laboratory Attendant, Clerk etc. It is only the petitioner's category, who has been ignored for promotion without any reasonable cause or justification and as such she sought a direction to the respondents-Department to consider the category of petitioner possessing the Middle Pass qualification for promotion to any of the Class-III posts.

5. The respondents filed reply to the petition and in the preliminary submissions averred that the plea advanced by the petitioner for not considering Middle Pass Sweeper for promotion to Class-III post i.e. Nursing Orderly,

Operation Theatre Assistant, Clerk and Laboratory Attendant, is altogether wrong inasmuch as the promotion to each category including those Class-III categories as referred to by the petitioner is made strictly in accordance with the provisions of the R&P Rules of each respective category prevailing and in existence. The R&P Rules with regard to the categories of Operation Theatre Assistant, Laboratory Attendant and Clerk do provide minimum educational qualification as 10+2 with science, except Clerk for which the minimum educational qualification required is 10+2. The petitioner as per her own averment is Middle Pass and as such is not at all entitled to be considered for promotion to any of the above referred three categories. It has further been averred that in so far as the categories of Operation Theatre Assistant and Laboratory Attendant are concerned, the R&P Rules of both respective categories besides providing the minimum requisite educational qualification as 10+2 with Science, do further provide the method of recruitment as 100% by direct recruitment without carrying for any provision with regard to the recruitment by way of promotion. As per the R&P Rules of any category, the relaxation cannot be extended or modified to the choice, convenience and suitability of any

individual including the present petitioner. The claim advanced by the petitioner over and above the provisions of R&P Rules is bad in the eyes of law and as such the petition filed by her deserves to be dismissed.

6. So far as the plea raised by the petitioner that the junior persons were promoted, has specifically been denied. It has further been averred that a final inter-se seniority list of Class-IV/Sweeper/Mali/Dhobi etc. has been issued by the respondents-Department, on the basis of which, promotions to the posts of Nursing Orderly are being made in the respondents-Department. It has further been submitted that in the recent DPC for promotion to the post of Nursing Orderly, the names of eligible persons have been considered, who were the appointees of the period prior to the appointment of the petitioner and were quite senior to her after completion of codal formalities including the verification of the certificates of their educational qualification. It has also been averred that the plea taken by the petitioner with regard to the promotion of one Sh. Jagdish Chand is concerned, he along with two other Sweepers were ordered to be promoted to the post of Nursing Orderly, after the orders of this Court. This Court has factually directed to consider them for promotion as

Clerk against 10% quota as per their seniority on the basis of their having passed the matriculation examination, but since in the meanwhile the R&P Rules to the post of Clerk were amended after passing of the orders by this Court, they as per further option tendered by them were promoted to the post of Nursing Orderly by the respondents-Department. It has further been averred that the averment made by the petitioner that those persons being junior to her is not sustainable inasmuch as they belong to the separate category of Sweepers, whereas the petitioner was appointed and working in a separate category as Ward Helper (Peon). The name of the petitioner can only be considered for her promotion to the post of Nursing Orderly strictly in accordance with R&P Rules that too subject to her seniority, turn, inclusion of her name in the inter-se seniority and completion of all other requisite codal formalities including the verification of the certificate of her educational qualification and as such prayed for dismissal of the petition.

7. The petitioner did not file any rejoinder to controvert the averments made in the reply. However, she had filed a Miscellaneous Application No.73 of 2017 to place on record the documents i.e. representation dated

27.08.2014, whereby a request was made for her promotion to the post of Class-III, i.e. Nursing Orderly, Operation Theatre Assistant or Clerk and copy of office order dated 11.11.2016 passed by respondent No.2, whereby she was promoted to the post of Nursing Orderly on regular basis along with other employees. The said application was allowed by the Himachal Pradesh Administrative Tribunal where the petition was initially instituted vide order dated 16.03.2017 and the documents were permitted to be taken on record. After abolition of the Tribunal, the petition has now been registered as present petition.

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

9. The plea taken by the petitioner that the category of Sweeper has never been considered for promotion to any Class-III post, is totally contrary to record. As per the reply filed by the respondents-Department, the Sweepers also form part of Class-IV category and they are equally considered for promotion after drawing an inter-se seniority list in respect of Class-IV/Sweepers/Mali/Dhobi/Ward Helper etc. The petitioner has not rebutted the said submission and thus, it is wrong to allege by her that the category of Sweeper is not considered for promotion to any

Class-III posts. Even otherwise, if there was no promotional channel prescribed to the post of Sweeper, the petitioner who was otherwise appointed as Ward Helper (Peon) could not have laid challenge to the same.

10. Another plea taken by the petitioner that the junior persons to her were promoted is also falsified from the reply filed by the respondents, wherein it has specifically been averred that the persons, who were considered for promotion to the post of Nursing Orderly in the recent Departmental Promotion Committee (in short 'DPC'), were appointed prior to her and they were senior. The petitioner did not even controvert the said plea raised in the reply, since no rejoinder has been filed by her. Not only this, the petitioner has not placed on record even the seniority list from which it can be gathered that the persons who were promoted, as stated in the petition and the names of which have been mentioned above, were actually junior to her. Therefore, the said contention raised by petitioner is also without any substance and the same is rejected.

11. As per the R&P Rules for the post of Nursing Orderly, Class-III (Non-Gazetted) in the Department of Health and Family Welfare, Himachal Pradesh, notified on 24.10.1997, the post of Nursing Orderly is to be filled up

100% by promotion. As per Rule 11, the post of Nursing Orderly is to be filled up from amongst the orderlies/attendants/Class-IV officials, who are matric pass and also possess 5 years regular service or regular combined with continuous adhoc (rendered up to 31.03.1991) service. Admittedly in the case of the petitioner, she was not having the qualification of matriculation. However, after filing the writ petition, she has been promoted on the recommendation of the DPC along with other employees to the post of Nursing Orderly vide office order dated 11.11.2016 (page 18 of the paper book) on regular basis in the pay scale of Rs.5910-20200+1900 Grade Pay. Therefore, the relief prayed by her has been granted to her during the pendency of the petition to which she had prayed for in the writ petition.

12. Learned counsel for the petitioner has vehemently argued that though the petitioner has now been promoted to the post of Nursing Orderly, but she may be promoted from the date when her juniors were promoted. Firstly, the petitioner did not amend the relief after promotion to the post of Nursing Orderly and secondly, she has not placed on record any document which can suggest that juniors to her were promoted earlier to her. The Court

cannot pass any direction to the respondents-Department to grant the petitioner any relief, which has not been prayed for and the relief prayed for has already been granted to her, when she has been promoted to the post of Nursing Orderly during the pendency of the petition and, thus, nothing remains to be adjudicated in the petition.

13. Consequently, in view of the observations made above, once the petitioner has already been promoted to the post of Nursing Orderly which is Class-III post, the relief claimed has been granted to her and nothing remains to be adjudicated in the present petition and the same is closed. No order as to costs. Pending applications, if any, also stand disposed of.

22nd August, 2026

(Anurag)

**(Jiya Lal Bhardwaj)
Judge**