

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA
CWPOA No.2926 of 2019
Decided on: 29th September, 2026

Dipna Devi

...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. Ganesh Barowalia, Advocate.

For the respondents: Mr. Balvinder Singh Ballu, Deputy
Advocate General.

Jiya Lal Bhardwaj, Judge (Oral)

By way of present petition, the petitioner has
prayed for the following substantive reliefs:-

*"i) That the impugned rejection contained in
Annexure P-5 may kindly be quashed and set-aside.*

*ii) That the respondents may kindly be directed to
promote the petitioner against the post of clerk from the
date when the promotion was forego by one Shri Balbir
Singh with all consequential benefits within time bound
period."*

2. Shorn of unnecessary details, the key facts of the
case are that the petitioner was appointed as Class-IV
employee with the respondent-Department in the year 1999.

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

In the year 2008, the respondent-Department had collected the necessary particulars for making promotion of Class-IV employees to the post of Clerk, against enhancement of promotion quota from 10% to 15%. A panel of Class-IV eligible employees, who were working on regular basis with the respondent-Department was drawn on the basis of seniority and the names of the eligible persons, which were recommended by the DPC on 30.08.2008 was prepared and as per letter dated 02.09.2008 (Annexure P-2) issued by respondent No.2, the Superintending Engineer(s) IPH Circle Una/Reckongpeo/Shimla-9 etc. were directed to offer appointment to the persons mentioned in the letter.

3. It has been averred that out of the panel prepared for making promotion and further as per letter dated 02.09.2008, one of the person at Sr. No.1, namely Balbir Singh, Peon, did not join on the post of Clerk and the petitioner after coming to know about the said fact, made a representation dated 10.09.2012 (Annexure P-3) to promote her as Clerk. She made another representation in which it was

stated that she has no objection regarding the promotion of Rama Nand, but due to his promotion, she has been deprived of her valuable right of promotion.

4. It has also been averred in the petition that the judgment in case of Rama Nand was passed on 30.11.2010 and the plea taken by the respondent-Department, while rejecting the claim of the petitioner, as per order dated 10.10.2012, is that he has been promoted against the vacancy caused due to forfeiture of promotion of Sh. Balbir Singh, as Clerk, by placing him at the seniority below Sh. Balbir Singh, Peon, at Sr. No.1 of order dated 02.09.2008 and under the DPC held on 30.08.2008 and as such, there remained no vacant post, against which the petitioner could be considered for her promotion as Clerk. It has further been averred that the said reason is not sustainable in the eyes of law and as such deserves to be quashed and set aside. The petitioner has been ignored by the respondents for promotion, which action is unreasonable, arbitrary, discriminatory, illegal and against the provisions of Articles 14 and 16 of the

Constitution of India. The respondent-Department has not considered the case of the petitioner and thus sought a direction to the respondents to promote her against the post of Clerk from the date, when the promotion was foregone by one Sh. Balbir Singh with all consequential benefits.

5. The respondent-Department filed reply to the petition and averred that the DPC was convened to fill up 11 number of posts of Clerk from the feeder category of Class-IV, which was held under the Chairmanship of S.E. (Works) on 30.08.2008 amongst the 26 eligible persons. The DPC had approved 11 number of workers to be promoted to the post of Clerk, since the appointing authority for Class-III Clerk is Superintending Engineer and, therefore, respondent No.2, vide letter dated 02.09.2008, had authorized all the concerned Superintending Engineers to issue promotion order of the Clerks. As per the seniority list, the petitioner was at Sr. No.12, whereas only 11 persons were promoted and as such, there was no question of depriving her of her claim for promotion. However, it has been stated that since the DPC did not

prepare any panel as on forgoing the promotion by one Sh. Balbir Singh in the month of September 2008, no further promotion could be made. Even as per the Rules, if a panel is prepared, it is valid only for a period of one year, whereas the petitioner had represented after more than four years. The case of the petitioner was considered and it was found that there are 20 posts in excess of promotion quota from amongst the Class-IV (10%) under the R&P Rules. At present, there is a cadre strength of 587, out of which 10% from promotion quota amongst the Class-IV employees works out to 59 posts, whereas at present there are 79 posts already filled up from amongst the Class-IV employees, which has resulted into one-time relaxation granted by the Government from 10% to 15% in the year 2003, vide letter dated 07.11.2003 and 23.06.2005. Therefore, since there was excess quota from Class-IV employees, the case of the petitioner did not find merit.

6. It has further been averred that Sh. Rama Nand had challenged the promotion during the year 2001 in O.A.

No.1352 of 2001, which remained pending and was transferred to this Court and registered as CWP(T) No.7782 of 2008 after abolition of the Himachal Pradesh Administrative Tribunal and came to be decided on 30.11.2010, which has resulted into the promotion of Sh. Rama Nand, admittedly senior to the petitioner, as such, there is no comparison with the petitioner and Sh. Rama Nand. He was promoted on the direction of this Court and as such prayed for dismissal of the petition.

7. The petitioner filed rejoinder to the reply and controverted the averments made therein.

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

9. Learned counsel representing the petitioner has vehemently argued that since she is a Class-IV employee, the delay may not come in her way in seeking promotion to the post of Clerk. He further argued that since the petitioner was at Sr. No.12 in the seniority list and the DPC had recommended 11 persons for promotion to the post of Clerk,

out of which, one person at Sr. No.1 had not joined to the post as Clerk, the petitioner, who was at Sr. No.12, ought to have been offered the appointment and non-preparing of the panel cannot deprive the petitioner of her right for promotion to the post of Clerk.

10. So far as the first contention raised by the learned counsel for the petitioner that the delay should not come in the way of the petitioner being a Class IV employee, cannot be accepted, for the reason that the promotions to the post of Clerk were made on 02.09.2008 and the petitioner for the first time, had raked up the issue while making representation on 10.09.2012. Nothing has been stated in the petition that why she did not approach the Court in the year 2008, when the promotions were made and the person at Sr. No.1 did not join to the post as such. Since neither any explanation has been furnished in the representation made by the petitioner on 10.09.2012 nor in the writ petition, the Court cannot come to the rescue of the petitioner and the delay cannot be brushed aside.

11. The second contention raised by the learned counsel representing the petitioner is that the respondents ought to have prepared the panel to meet out the exigency, in case one of the persons, who was recommended for promotion did not join. Even the said contention cannot be accepted for the reason that even if the said panel was prepared, it would have been valid only for one year. Since the petitioner did not rake up the issue within one year from the date of the promotion and even if Balbir Singh, Peon, did not join, the petitioner should have agitated the matter within one year from the date of issuing the promotion order and not after four years. Therefore, the said contention raised by the petitioner is also not tenable and the same is rejected.

12. One of the employees, namely Rama Nand, who has been promoted to the post of Clerk is admittedly senior to the petitioner. No doubt, this Court while allowing the petition had not given the direction that he may be promoted against the vacancy of 2008, but once the respondents after the direction given by this Court, has considered his claim

against the vacancy, which had occurred on account of non-joining of Balbir Singh, Class-IV employee, no illegality has been committed by the respondent-Department in promoting Rama Nand to the said post. The petitioner could have staked her claim for promotion to the said vacancy, in case, the said employee namely Rama Nand, was junior to her. Admittedly, he was senior to the petitioner and, therefore, the petitioner at this stage, cannot be granted any relief, especially when she did not come to the Court within a reasonable time after the vacancy had occurred after non-joining the post of Clerk by Balbir Singh.

13. Consequently, I do not find any merit in the present petition and the same is accordingly dismissed. No order as to costs. Pending miscellaneous application(s), if any, also stand disposed of.

29th September, 2026

(ankit)

**(Jiya Lal Bhardwaj)
Judge**