

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.3074 of 2019
Decided on: 20.08.2026

Pankaj Thakur

...Petitioner

Versus

The State of H.P. and others

...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

*Whether approved for reporting?*¹ Yes

For the petitioner:

Mr. Kul Bhushan Khajuria and Mr. P. K. Verma, Advocates

For the respondents:

Mr. Sumit Sharma, Deputy Advocate General, for respondents No.1 & 2.

Mr. Rajender Singh Thakur, Advocate, for respondents No.3 & 4.

Jiya Lal Bhardwaj, Judge (Oral)

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

- “(a) *That the present original application may kindly be allowed and the respondents No. 1 and 2, may kindly be directed not to promote the private respondents to the post of Assistant Director (Fisheries), as they do not fulfill the requisite*

qualification for the post in question.

- (b) That in case during the pendency, of the present original application before this Hon'ble Tribunal, in case the respondent department promotes the private respondents to the post of Assistant Director, then in that event, the respondents No. 1 and 2 may kindly be directed to place such orders on record and thereafter, the same may kindly be quashed and set aside.*
- (c) That respondent No.1 may kindly be directed to decide the representation of the applicant before promotion being made to the post of Assistant Director (Fisheries)."*

2. Shorn of unnecessary details, the key facts of the case are that the petitioner was appointed as Fisheries Officer in the year 2006. As per the Recruitment and Promotion Rules (in short 'R&P Rules') notified on 06.05.2016 for the post of Assistant Director of Fisheries, Class-II (Gazetted) in the Department of Fisheries, Himachal Pradesh, 67% posts are to be filled up by promotion and 33% by direct recruitment (annexed as Annexure-A as Annexure A-1). As per Rule 11 of the R&P Rules, the post of Assistant Director of Fisheries, is to be filled up from amongst the Senior Fisheries Officers, possessing recognized educational qualification of B.Sc. in Zoology or Fisheries Science or one year Diploma/Certificate course in Administration Management & Development of Inland

Fisheries from Central Institute of Fisheries Education, Mumbai or its equivalent with five years regular service or regular combined with continuous adhoc service rendered, if any, in the grade. It has been averred that respondents No.3 & 4, were not possessing the requisite qualification, since they do possess the certificate course in Inland Fisheries Operatives from Regional Training Centre from Inland Fisheries Operatives, Agra, which was only of nine months duration/training, whereas, as per the R&P Rules, one year Diploma/certificate course is the essential qualification. It has further been averred that the action on the part of respondents-Department to consider the candidatures of respondents No.3 and 4 to the post of Assistant Director of Fisheries is wrong, illegal, arbitrary and discriminatory inasmuch as once they were already granted one time relaxation, when they were promoted to the post of Fisheries Officers, they cannot be promoted again in relaxation of the R&P Rules. It has also been averred that respondents No.3 and 4 were not eligible for promotion to the post of Assistant Director of Fisheries due to lack of educational qualifications and as suchs they could not have been considered and the petitioner, who was fully qualified

for promotion to the post of Assistant Director of Fisheries, ought to have been considered and thus, sought direction to the respondents-Department to promote him to the post of Assistant Director of Fisheries.

3. The respondents-Department filed reply to the petition and did not dispute the factum of prescribing the qualification in the R&P Rules. However, it has been averred that the nomenclature of certificate course on fisheries undergone by respondents No.3 and 4 is totally different than the requirement of Rule 11 of the R&P Rules for the post of Assistant Director of Fisheries. Respondents No.3 and 4 had undergone a nine months certificate course in Inland Fisheries Operative from Agra (UP) and sought three months relaxation in the course to equal their course to the requirement of Rule. A proposal regarding relaxation of three months training course in favour of respondents No.3 and 4 was initiated in the month of December, 2018 and was taken up with the advisory Department at State Government level, when none of the officials were eligible for promotion as per R&P Rules. The Department of Personnel, Government of HP, had observed that the Central Institute of Fisheries Education, Mumbai, has issued

certificate in favour of respondents No.3 and 4 after having successfully completed their certificate courses in Inland Fisheries Operating and also advised to take up the matter with the Himachal Pradesh Public Service Commission (in short 'HPPSC') on the proposal of relaxation. The HPPSC considered the proposal and accorded its approval to relax the essential qualification of remaining three months training course in favour of respondents No.3 and 4 against one available and one anticipated vacancy. In the meantime, the petitioner became eligible for consideration for promotion to the post of Assistant Director of Fisheries on 27.05.2019. As per the provisions contained in Rule 18 of the R&P Rules, the State Government is competent to grant relaxation in respect of any of the provisions of these Rules with respect to any class or category of person(s) or post(s) where it is necessary or expedient in consultation with the HPPSC. It has further been averred that there was no provision of 1 year certificate course in eligibility criteria for promotion, which has only been prescribed in the year 2016 and prior to that there was no such course provided for promotion. The above provision in the Rules had debarred respondents No.3 and 4 from promotional opportunities in

the fag end of their service carrier. It has further been averred that the representation made by the petitioner was decided by respondent No.1 on 23.07.2019 (Annexure R-I).

4. Respondents No.3 and 4 filed their short reply to the petition and averred that no cause of action is accrued to the petitioner to file and maintain the present petition. It has further been averred that the process was started for filling up the vacant post of Assistant Director of Fisheries on 22.09.2018. Thereafter on 11.12.2018 another communication was sent with regard to 1 year diploma/certificate of respondents No.3 & 4. On 18.02.2019, Under Secretary (Fisheries) to the Government of Himachal Pradesh had sent a letter to Secretary of HPPSC regarding filling up of 1 post of Assistant Director of Fisheries, Class-II (Gazetted) by promotion from amongst senior most Fisheries Officer, to consider the proposal for granting relaxation of remaining three months training course against the provisions of R&P Rules for the post of Assistant Director of Fisheries in favour of respondents No.3 & 4, who had done nine months training in the year 1983-1984. It has also been averred that vide communication dated 05.04.2019, the proposal regarding relaxation in the

provision relating to educational qualification prescribed for promotion in the R&P Rules for the post of Assistant Director of Fisheries in favour of respondents No.3 & 4 having been approved was conveyed to consider them for promotion to the posts of Assistant Director of Fisheries, Class-II (Gazetted) against one available and one anticipated vacancy. In view of the relaxation in educational qualifications in favour of respondents No.3 & 4, the Departmental Promotion Committee (in short 'DPC') considered their candidature and thereafter they have been promoted to the post of Assistant Director of Fisheries, Class-II (Gazetted) in the month of September, 2019 and now they have retired from service on 31.03.2021.

5. The petitioner did not file rejoinder to controvert the facts in replies.

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

7. Learned counsel representing the petitioner has vehemently argued that since respondents No. 3 and 4 were not eligible for promotion to the post of Assistant Director of Fisheries, their claim has wrongly been considered for promotion. Further, once the petitioner was eligible, he

ought to have been considered for the post of Assistant Director of Fisheries. However, the said contention cannot be accepted for more than one reason. Firstly, as per the R&P Rules for the post of Assistant Director of Fisheries, there is a power vested in the State Government to relax the R&P Rules. The relevant provision contained in the R&P Rules reads as under:-

"18. Power to relax. Where the State Government is of the opinion that it is necessary or expedient to do so it may, by order, for reasons, to be recorded in writing and in consultation with the HP PSC, relax any of the provisions of these Rules with respect to any Class or Category of person(s) or post(s)."

As per this Rule, where the State Government is of the opinion that it is necessary or expedient to do so, it may by order for reasons to be recorded in writing and in consultation with the HPPSC, relax any of the provisions of the Rules. In the case of respondents No.3 and 4, they were not possessing the requisite educational qualification for the post of Assistant Director of Fisheries, but at the same time before considering their claim, the State Government had

processed their case and only after approval granted by the HPPSC regarding relaxation of their qualification, the DPC was convened and thereafter these respondents have been promoted to the post of Assistant Director of Fisheries. Not only this, even when their case was processed, the petitioner was not eligible to be considered for appointment to the post of Assistant Director of Fisheries. As per reply filed by respondents-Department, the petitioner became eligible for promotion to the post of Assistant Director of Fisheries on 27.05.2019. The State Government had already processed the case of respondents No.3 & 4 regarding relaxation of their educational qualification as prescribed in the R&P Rules qua one vacant post of Assistant Director of Fisheries on 18.02.2019 (Annexure R-I) and thereafter the competent authority had accepted the proposal regarding relaxation in the R&P Rules on 05.04.2019. As on 05.04.2019 the petitioner was not eligible when the relaxation was granted in favour of respondents No.3 and 4 and thus, he had no cause of action.

8. Learned counsel representing the petitioner has relied upon the judgment passed by the Hon'ble Supreme Court in Civil Appeal No.5942 of 2023, titled, ***Himakshi vs.***

Rahul Verma & Ors., 2026 INSC 391, and contended that since respondents No.3 & 4 were not possessing the educational qualification, the action on the part of respondents-Department to promote them to the posts of Assistant Director of Fisheries, is wrong. However, if the aforementioned judgment is read in its entirety, it has been held that before relaxing the Rules, the reasons have to be assigned by the competent authority. In the present case, before taking up the matter with the HPPSC, the Administrative Department had noticed that both respondents No.3 & 4 had completed about 30 to 32 years of service in the Department and further the training at the time of obtaining the certificate was nine months only in the institute where from respondents No.3 & 4 had obtained the same. Thereafter, the matter regarding relaxation of remaining three months training course against the provision of R&P Rules was referred to the Department of Personnel. The Department of Personnel had advised to take up the matter with the HPPSC on the proposal of relaxation and only after the proposal having been accepted by the HPPSC, the DPC was convened, which considered the candidature of respondents No.3 & 4. Only after the

recommendations made by the DPC, respondents No.3 & 4 were promoted to the post of Assistant Director of Fisheries. Therefore, the above judgment is not attracted to the facts of the present case.

9. It is apt to note at this juncture that when respondents No.3 and 4 had acquired the qualification of diploma of nine months, it was only of nine months duration which was subsequently increased to one year. Not only this, even prior to the amendment in the Rules as per Notification dated 06.05.2016, there was no provision of having the essential qualification of one year diploma/certificate course in Administration Management and Development of Inland Fisheries from Central Institute of Fisheries Education, Mumbai, or its equivalent with five years regular service or regular combined with continuous adhoc service rendered. The petitioner has not disputed this fact as no rejoinder has been filed to the replies filed by the respondents. Had there been no provision in the R&P Rules for granting the relaxation in the R&P Rules for making promotion, the petitioner could have agitated his claim. However, once there is a provision in the R&P Rules to relax the Rules, no illegality has been committed by the

respondents-Department while making promotions of respondents No.3 and 4.

10. Learned counsel for the respondents-Department has placed reliance upon the judgment passed by a three-Judge Bench of the Hon'ble Supreme Court in **K.K. Khosla and another vs. State of Haryana and others**, (1990) 2 SCC 199. In the aforementioned judgment, the Hon'ble Supreme Court has considered that once the State Government had the power to grant relaxation, no illegal infirmity can be said to have been committed by the respondents, while giving the relaxation. In this case even the earlier decision by a three Judge Bench of the Hon'ble Supreme Court in **J.C. Yadav and others vs. State of Haryana and others**, (1990) 2 SCC 189, was also considered. Relevant para of the judgment in **K.K. Khosla's** case (supra) is reproduced hereunder:-

"5. On a careful scrutiny of the Rules and the material on record we do not find any merit in the submission made on behalf of the appellants. No doubt respondent 3 had not rendered five years' service as an Assistant Executive Engineer but the State Government had granted relaxation to respondent 3 by reducing the period of service under clause (a) to Rule 9(3) in exercise of its power under the proviso to the said rule. This relaxation was granted as respondent 3 was the only officer in the department who was a direct recruit to Class I

service. The State Government had power to grant relaxation under the second proviso to Rule 9(3); therefore we find no legal infirmity in the respondent's promotion. In addition to that Rule 22 further confers power on the State Government to grant relaxation with regard to the operation of the rule. The government's order granting relaxation in favour of respondent 3 is sustainable under Rule 22 also. The scope of State Government's power to relax operation of Rules has been discussed by us in J.C. Yadav v. State of Haryana decided today. On the application of those principles we find no illegality in the order of the government granting relaxation to respondent 3, in respect of operation of Rule 9(3) (a)."

11. In the present case too, before making promotion of respondents No.3 and 4, the proper procedure was followed and only after the proposal having been accepted by the HPPSC, the DPC was convened and only thereafter candidatures of respondents No.3 & 4 were considered for promotion to the post of Assistant Director of Fisheries. Hence, no illegality has been committed by the respondents-Department while making promotion of respondents No.3 & 4 to the post of Assistant Director of Fisheries and there is no merit in the petition.

12. Consequently, I do not find any merit in the present petition and the same is accordingly dismissed. However, there shall be no order as to costs. Pending

applications, if any, also stand disposed of.

20th August, 2026

(Anurag)

**(Jiya Lal Bhardwaj)
Judge**