

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA
CWPOA No.3166 of 2019

Decided on: 01st September, 2026

Rakesh

...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. Sandeep K. Pandey, Advocate.

For the respondents: Mr. Amandeep Sharma, Additional Advocate General, for respondents No.1 to 3-State.

Mr. Amit Himalvi, Advocate, for respondent No.4.

Mr. R.S. Chandel, Advocate, for respondent No.5.

Jiya Lal Bhardwaj, Judge *(Oral)*

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

"i) That the appointment of the respondent no.5 as Jal Rakshak/Water Guard under Gram Panchyat Sholi made on 23.9.2017 (A-7) may kindly be quashed and set aside.

ii) That the directions may kindly be issued to the respondents to appoint the applicant as Jal Rakshak being more meritorious being (Fitter) ITI holder for the post and also belongs to BPL family."

2. Shorn of unnecessary details, the key facts of the

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

case are that the petitioner had applied for the post of Jal Rakshak/Water Guard for operation and maintenance of Rural Water Supply Schemes under Gram Panchayat, Sholi in District Shimla, for which the applications were invited. As per office order dated 14.09.2017 (Annexure A-6), a Committee was constituted for the selection of Jal Rakshak/Water Guard comprising of Assistant Engineer being its Chairman, President of Gram Panchayat concerned and Junior Engineer (IPH) concerned, as its Members. As per this office order, the person belonging to IRDP/BPL family was to be given preference for selection. For the post of Jal Rakshak in Gram Panchayat, Sholi, 8 candidates had applied, who were interviewed on 23.09.2017, including the petitioner and respondent No.5. The Committee so constituted had awarded marks to each of the candidates separately. Respondent No.5 was awarded 108 marks, whereas the petitioner was awarded 100 marks. Since respondent No.5 had scored highest marks in the interview, he was selected to the post of Jal Rakshak.

3. The petitioner feeling aggrieved by the selection

of respondent No.5 has preferred the present petition *inter alia* on the grounds that respondent No.5 was not at all eligible in any manner for the aforesaid post inasmuch as the preference was to be given to the petitioner, who belongs to a IRDP/BPL family.

4. It has also been averred that the petitioner is having 2 years diploma in the Trade of Mechanic Fitter and, therefore, he should have been given preference over respondent No.5, being an expert in the Trade of Fitter for looking after the water supply in more effective and efficient manner.

5. In the case of respondent No.5, the annual income of his family is more than Rs.15 Lakhs, as his father is running a Cooperative Society and is the Pradhan of the said Society and also owner of two commercial vehicles (Mahindra Pick Up), while his mother is serving as an Anganwari Helper in Anganwari Centre, Nirath. Besides this, brother of respondent No.5, namely Sh. Bhupinder Singh, is serving as a Driver in the Family and Health Department. However,

despite belonging to a well-off family, he was selected and his selection is contrary to the guidelines issued for the selection of Jal Rakshak. Further, the Pradhan of Gram Panchayat Sholi i.e. Kamla Devi, is the cousin sister of respondent No.5 and as such, she had participated in the selection process and awarded marks to him, who should not have participated in the selection process being the interested party. It has also been averred that respondent No.5 has obtained an income certificate contrary to the actual income of the family under IRDP/BPL etc. and, therefore, the petitioner has prayed for quashing of appointment of respondent No.5 and sought a direction to the respondents to offer him appointment as Jal Rakshak, being more meritorious and also belongs to a BPL family.

6. Respondents No. 1 to 3 filed reply to the petition and averred that respondent No.5 had submitted the BPL certificate issued by the concerned authority i.e. Secretary, Gram Panchayat Sholi and as per the guidelines, he was also eligible for consideration for the post of Jal Rakshak. As per

the advertisement notice for filling up the post of Jal Rakshak, the essential qualification was Matriculation and no other/desirable qualification was mentioned. Both the petitioner and respondent No.5 were considered as Matriculate and awarded marks as per the criteria set out by the Committee for the purpose. Since respondent No.5 was a local resident as well as belonging to the BPL Category and obtained the maximum marks in the selection process, he was selected for the post. So far as the allegation that the Pradhan of the Gram Panchayat was related to respondent No.5 was concerned, it was stated that the said averment pertains to respondent No.4.

7. Respondent No.5 filed separate reply to the petition and raised preliminary objections that the petition instituted by the petitioner is misconceived and he does not have any enforceable cause of action. The petitioner is estopped to file the petition as he has participated in the selection process first and has now taken U-turn by assailing the selection process. The petition is not maintainable as

respondent No.5 has not been selected against the civil post, as such is not a holder of civil post and he has been appointed by the concerned Gram Panchayat. The petition is also filed on false and frivolous facts. So far as the plea taken by the petitioner that respondent No.5 was related to the Pradhan of the Gram Panchayat is concerned, it has been averred that the Pradhan of the Gram Panchayat is the daughter of cousin sister of respondent No.5's father and as such belongs to a far-off relation. Moreover, there were two more official members in the Selection Committee, so there was no chance of her acting bias or arbitrarily as the official members were in a controlling position and they were independent in awarding marks to the participants. It has also been averred that as far as this objection is concerned, the petitioner could have raised the same before her participation, but in case in hand, firstly he participated in the selection process and after being declared unsuccessful, has taken a U-turn, which is not permissible under law.

8. The petitioner has not filed any rejoinder to rebut

the contentions raised in the reply filed by the respondents.

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

10. As per the office order dated 14.09.2017, the preference was to be given to the persons belonging to IRDP/BPL family for selection, but it does not say that in case the selected candidate has scored more marks, even then, his claim has to be rejected only for the reason that the other candidate, who scored less marks belongs to IRDP. Therefore, the contention raised by the learned counsel for the petitioner that respondent No.5, who has procured the certificate of IRDP could not have been selected, is without any merit and thus rejected.

11. Learned counsel for the petitioner has further argued that since father of respondent No.5 is running a Cooperative Society and is also the owner of two commercial vehicles (Mahindra Pick Up), he could not have been selected. However, the said contention cannot be accepted for the reason that the criteria stipulated for making selection was

not the income, but it was on the basis of the qualification of Matriculation examination only and further the post was not meant only for the candidates belonging to IRDP category.

12. Learned counsel for the petitioner further argued that since the petitioner was having two years diploma in the Trade of Mechanic Fitter, he should have been given preference over respondent No. 5. However, even the said contention cannot be accepted for the reason that the eligibility for filling up the post of Jal Rakshak was not Diploma as claimed by the petitioner. Respondent No.5 has specifically denied the fact that Pradhan of the Gram Panchayat was his cousin. He has stated that the Pradhan of the Gram Panchayat is the daughter of the cousin sister of his father and as such she is not a close relative. The petitioner has not rebutted the said submission since no rejoinder has been filed.

13. Learned counsel representing respondent No.5 argued that the petitioner knew that the Pradhan of the Gram Panchayat is not related to respondent No.5 closely and

thus, he did not challenge the same before participating in the selection process. Once he has participated in the selection process without any demur or protest and found unsuccessful, he cannot raise the said issue. The said submission deserves acceptance for the reason that the petitioner was a resident of the same Gram Panchayat and knew fully well that the Pradhan of the Gram Panchayat, who is one of the Members of the Selection Committee, was distantly related to respondent No.5 and did not lay challenge to the constitution of the committee earlier and now once he has been declared unsuccessful, he cannot turn around and lay challenge to selection of respondent No.5 on the ground that the Pradhan of the Panchayat was his cousin, more particularly when the said averment has not been supported by any cogent material placed on record.

14. The Hon'ble Supreme Court has time and again held that once a candidate has participated in the selection process without any demur or protest, cannot challenge the same after having been declared unsuccessful. Reference in

this regard is made to the judgment in ***Tajvir Singh Sodhi and others vs. State of Jammu and Kashmir and others***, (2023) 17 SCC 147. The relevant paragraph of the judgment is reproduced as under:-

39. It is therefore trite that candidates, having taken part in the selection process without any demur or protest, cannot challenge the same after having been declared unsuccessful. The candidates cannot approbate and reprobate at the same time. In other words, simply because the result of the selection process is not palatable to a candidate, he cannot allege that the process of interview was unfair or that there was some lacuna in the process. Therefore, we find that the writ petitioners in these cases, could not have questioned before a Court of law, the rationale behind recasting the selection criteria, as they willingly took part in the selection process even after the criteria had been so recast. Their candidature was not withdrawn in light of the amended criteria. A challenge was thrown against the same only after they had been declare unsuccessful in the selection process, at which stage, the challenge ought not to have been entertained in light of the principle of waiver and acquiescence.

15. In the present case, the petitioner knew that Pradhan of Gram Panchayat, Sholi is distantly related to respondent No.5, but he did not challenge the constitution of the Selection Committee. Once he has been declared unsuccessful, he cannot turn around and challenge the constitution of the Selection Committee on the principle of

waiver and acquiescence.

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

01st September, 2026
(*ankit*)

(Jiya Lal Bhardwaj)
Judge