

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWPOA No.3721 of 2019

Decided on: 21st September, 2026

Jonki Ram

...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. Vikas Rajput, Advocate.

**For the respondents: Mr. R.P. Singh, 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 order of rejection dated 25-09-2014, at Annexure P-9 may kindly quashed and set aside.*
- ii. *That the Respondents may very kindly be directed to consider the petitioner for promotion to the post of Assistant Mining Inspector w.e.f. due date i.e. 1985 or from the date when the clerks and drivers have been promoted as Assistant Mining Inspector i.e. 19-03-1993 instead of 31-07-2001 and he may further be promoted as Mining Inspector w.e.f. due date instead of 08-01-2013 and further promotion as Mining Officer may also be kindly given to the petitioner with all consequential benefits, in the interest of justice."*

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

2. Shorn of unnecessary details, the key facts of the case are that the petitioner was appointed as Mining Guard on 08.08.1977. As per the Recruitment and Promotion Rules (for short the 'R&P Rules) for Class-III (Technical) posts in the Geological Wing of Industries Department, H.P., the post of Assistant Mining Inspector is to be filled up 50% by promotion, failing which, by direct recruitment and 50% by direct recruitment. The case of the petitioner is that since he was having the requisite qualification and the promotion was to be made from Mining Guards in the pay scale of Rs.70-95 with seven years' service in the grade for Middle pass and two years for Matriculates, he ought to have been promoted when he had become eligible. But the respondents, instead of considering his claim for promotion to the post of Assistant Mining Inspector in the year 1993, offered appointment to other persons and the petitioner came to be promoted as Assistant Mining Inspector, vide office order dated 31.07.2001, in the pay scale of Rs.4020-6200 instead of due date i.e. 1985 or from the date when the other categories, i.e. Clerks and Drivers were made as Assistant Mining Inspector on 19.03.1993. It has also been averred that the petitioner was further promoted to the post of Mining Inspector Class-III, vide office order dated 08.01.2013 in the pay scale of

Rs.5910–20200+Rs.2800 Grade Pay, instead of due date. It has further been averred that the petitioner had earlier approached this Court by way of CWP No.4774 of 2014-H and this Court vide order dated 24.07.2014 (Annexure P-8), had directed respondent No.2 to decide the pending representation dated 06.04.2014 (Annexure P-7) made by him by affording an opportunity of hearing to him within a period of one month from the date of production of the copy of the order. In sequel to the said direction given by this Court, respondent No.2 had considered and rejected the claim of the petitioner vide order dated 25.09.2014, (Annexure P-9), on the ground that that as per the provisions of R&P Rules prevailing in the year 1985 and 1993, 50% posts were required to be filled in by way of promotion and 50% posts by way of direct recruitment; out of 24 sanctioned posts of Assistant Mining Inspector, 12 posts fall under the quota of departmental officials by virtue of their seniority from the feeder category of Mining Guards having seven years service for Middle pass incumbents and two years in case of Matric pass incumbents; during the aforesaid period, no post of Assistant Mining Inspector was lying vacant under the promotional quota in the year 1993, however, in the year 1993 some posts of Assistant Mining Inspectors were lying vacant under the quota of direct recruitment; and the State Government in order to strengthen the working of Geological

Wing to stop illegal mining in the State of Himachal Pradesh, had decided to fill up the various vacant posts of mining staff of Geological Wing by way of deployment of incumbents amongst the existing staff against the posts, which fall under the quota of direct recruitment.

3. The petitioner feeling aggrieved by the rejection of his representation vide order dated 25.09.2014, has approached this Court *inter alia* on the grounds that the impugned order is unjust, illegal, arbitrary and contrary to the principles of natural justice. It has further been averred that the respondent-Department had promoted/deployed the Clerks and Drivers as Assistant Mining Inspector despite the fact that they did not possess the essential qualifications provided for the post of Assistant Mining Inspector, as per R&P Rules vide office order dated 19.03.1993. There was no necessity to deploy other persons, who did not possess even the requisite qualification to hold the post. The R&P Rules for the post of Assistant Mining Inspector were repealed vide Notification dated 22.12.1997 and further repealed/modified on 11.06.2010 and the petitioner was fully eligible and entitled for promotion to the post of Assistant Mining Inspector as per old Rules and thus sought a direction to the respondents to promote him to the post of Assistant Mining Inspector with effect from due date i.e. 1985, after quashing

the order dated 25.09.2014, whereby the representation made by him was rejected.

4. The respondents filed reply to the petition and in preliminary submissions averred that the petitioner is estopped from filing the present petition by his own conduct, deed and acquiescence. The petitioner was appointed in the year 1977 to the post of Mining Guard (Class IV) and had joined his duties on 08.08.1977. He was promoted to the post of Assistant Mining Inspector in the year 2001 against the vacancy arisen under promotional quota from the feeder category of Mining Guard. The petition is not maintainable, since he has suppressed the material facts. There was no post of Mining Inspector in the year 1985 to 1993 to be filled up from the feeder category of Mining Guard. It has further been averred that the petitioner had earlier also filed an **O.A. No.2033 of 1993** before the erstwhile Himachal Pradesh Administrative Tribunal in the year 1993 on the same grounds for his promotion with effect from 1985 or 1993, which was dismissed by the Tribunal vide order dated 07.12.2007.

5. On merits, it has been averred that due to ban on direct recruitment, the respondent-Department had decided to fill up the posts by way of deployment from amongst the existing staff in view of strengthening the Geological Wing to stop illegal mining in the

State. The deployment of the staff in the cadre of Assistant Mining Inspector was made against the vacant posts of Assistant Mining Inspector only under the direct recruitment. After the direction given by this Court, the matter was considered and examined on the basis of record and the claim of the petitioner was not found in accordance with the Rules/law and was rejected and thus, prayed for dismissal of the petition.

6. The petitioner filed rejoinder to the reply and controverted the averments made therein. It was not denied that the petitioner had earlier filed the original application seeking the same relief as claimed in the petition. The petition has been filed against the rejection order dated 25.09.2014, and it has nothing to do with the **O.A. No.2033 of 1996**.

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

8. Mr. Vikas Rajput, learned counsel representing the petitioner has vehemently argued that even if the petitioner had filed the original application earlier seeking the same reliefs, once it has been dismissed in default for non-appearance of the petitioner, he can still claim the said relief, especially when he has approached this Court against the order of rejection of his representation dated 25.09.2014. However, the said contention cannot be accepted for

the reason that the petitioner in the entire petition has not disclosed that he had earlier filed the original application seeking the same reliefs as have been prayed in the present petition. Even when the petitioner had earlier filed the writ petition seeking decision on the representation dated 06.04.2014, which came to be disposed of on 24.07.2014, it was not disclosed that the original application preferred by him was dismissed in default. Even if it is accepted that the original application earlier filed by him was dismissed in default, the petitioner could have immediately thereafter approached the Court either seeking revival of the said original application or disclosing the fact before the Court that the original application earlier filed by him has been dismissed in default. The petitioner did not choose both the remedies and filed the representation and got the direction from this Court to decide the same by the competent authority.

9. It is settled by now in catena of judgments by the Hon'ble Supreme Court that the remedy of writ jurisdiction under Article 226 of the Constitution is discretionary and the same has to be exercised only in case the person approaches the Court with clean hands. In the present case, the petitioner has not come to the Court with clean hands and it is not even the case of the petitioner

that he was not aware of the order passed by the Tribunal, whereby his original application was dismissed in default.

10. Even on merits, the petitioner does not have any right to consider him for promotion for the reason that that there was no vacancy of Assistant Mining Inspectors during the year 1985 to 1993. The petitioner came to be promoted to the post of Assistant Mining Inspector in the year 2001 against the vacancy arisen under the promotion quota from the feeder category of Mining Guard. The claim put forth by the petitioner that the other persons, who were appointed were ineligible, is concerned, those persons were appointed against the posts meant for direct recruitment. Thus, the order of rejection of the representation by respondent No.2 is a well-reasoned order and does not require interference, more especially when the petitioner has not approached this Court with clean hands.

11. Consequently, I do not find any merit in the present petition and the same is accordingly dismissed. No order as to costs. Pending applications, if any, also stand disposed of.

21st September, 2026
(naveen)

(Jiya Lal Bhardwaj)
Judge