

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA
CWPOA No.4430 of 2019

Decided on: 20th August, 2026

Dr. Gian Chand Thakur

...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. V.B. Verma, Advocate.

For the respondents:

Mr. Amit Kumar Chaudhary, Deputy Advocate General, for respondents No.1 and 2-State.

Mr. Vikrant Thakur, Senior Advocate with Ms. Shivani Priya, Advocate, for respondent No.3.

Jiya Lal Bhardwaj, Judge (*Oral*)

By way of present petition, the petitioner has prayed

for the following substantive reliefs:-

"i) That the impugned order dated 12.06.2016 (Ann P-3), may kindly be quashed and set-aside and further the respondents are directed to appoint the applicant for the post of Homoeopathic doctor on the basis of parity.

ii) That the applicant after being appointed be allowed all consequential benefits including his seniority and arrears of pay and allowances etc.

iii) That the record of T.A. No.5628 of 2015 may kindly be summoned for the kind perusal of this Hon'ble Court."

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 earlier sought direction to the respondents to offer him appointment to the post of Homoeopathic Doctor (Class-II) on the basis of parity and in terms of the letter dated 13.11.1998, vide which earlier appointments were given to Dr. Jugal Kishore and Dr. Poonam Kaushal. It has been averred that the said writ petition, which was registered as CWP No.2781 of 2013, was later on transferred to the H.P. Administrative Tribunal and was registered as TA No.5628 of 2015, but the petitioner is not in possession of the copy of the T.A. along with annexures. It has further been averred that the Tribunal, vide order dated 29.04.2016, had disposed of the same with a direction to the respondents/competent authority to consider the claim of the petitioner in light of the judgment passed in CWP No.1744 of 2009, read with judgment dated 10.12.2009, Annexure R-3/1, passed in CWP(T) No. 4402 of 2008 (OA No. 1130/97), **Gian Chand vs. State of H.P. and others**, and in case the petitioner is found to be similarly situate with the petitioners as above, the benefits of the judgment in CWP No.1744 of 2009, if the same has attained finality and has been implemented, shall also be

extended to him along with consequential benefits.

3. Respondent No.1 in sequel to the direction given by the Tribunal, passed an order on 21.06.2016 (Annexure A-3) and rejected the claim of the petitioner, holding that, there is no merit in the claim raised by him for appointment as Homoeopathic Medical Officer (in short "HMO"). However, he can apply for appointment through direct recruitment as and when the posts are advertised by the recruiting agency i.e. the H.P. Public Service Commission (in short "HPPSC").

4. The petitioner, feeling aggrieved by the said order passed by respondent No.1 has approached this Court *inter alia* on the grounds that the impugned order is illegal, arbitrary, unjustified, unconstitutional and contrary to the principles of natural justice. It has further been averred that the impugned order is non-speaking and is a result of non-application of mind by respondent No.1. It has also been averred that the case of the petitioner is squarely covered by the judgment dated 23.02.2011 passed in CWP No.1744 of 2009, titled, ***Dr. Poonam Kaushal vs. State of HP and others***. Despite a categorical direction given by the Tribunal, respondent No.1 has rejected

the claim of the petitioner without noticing the details of the case in a hasty manner. It has also been averred that respondent No.1 in the impugned order has admitted that two posts of HMO are lying vacant. Despite this, respondent No.1, without assigning any cogent reason as to whether the case of the petitioner was squarely covered under the judgment passed in ***Dr. Poonam Kaushal's*** case (supra), has rejected the claim and thus sought a direction to quash the order with a further direction to offer him appointment to the post of HMO.

5. Respondents No.1 and 2 filed reply to the petition and raised preliminary submissions that appointment to Dr. Jugal Kishore (since deceased) and Dr. Poonam Kaushal as HMO was not given in terms of the letter dated 13.11.1998. The appointment of Dr. Jugal Kishore was given on receiving the recommendations from the HPPSC, which had carried out the whole process before recommending his name to the Government for appointment as well as in compliance with orders passed by the Tribunal. Further, in compliance with the orders of this Court in ***Dr. Poonam Kaushal's*** case, she was given the appointment with the prior approval of the Council of

Ministers.

6. As per the Recruitment and Promotion Rules notified on 15.09.2010, the minimum educational qualification for the post of HMO is 10+2 or its equivalent examination from Board/University recognized by the Central/State Government, a Degree in Homeopathy of 5½ years duration from a recognized University/Board established by law or institution recognized by the Central/State Government, mentioned in the 2nd and 3rd Schedules of the Homeopathy Central Council Act, 1973 and further the candidate should be registered with the Central Homeopathy Council/Homeopathy Council of Himachal Pradesh. The method of recruitment to the post is 100% by direct recruitment on regular basis or by recruitment on contract basis as the case may be. It is settled law that recruitment to the vacant posts of all the categories in almost all Government Departments is made in accordance with the R&P Rules for the respective post and all eligible candidates are considered on merit in accordance with the Rules through the Recruitment Agency i.e. HPPSC and no other relaxation/relief can be claimed as a matter of right by any candidate for

employment and as such the respondents have prayed for dismissal of the petition.

7. In terms of the order dated 05.05.2022, the respondents-State filed compliance affidavit, pursuant to a specific direction as to whether consultation was made with the Public Service Commission in the case of the petitioner and what was the distinction between the case of the petitioner and those of other two persons, namely Dr. Poonam Kaushal and Dr. Jugal Kishore.

8. In the compliance affidavit, it has been averred that the case of the petitioner was not sent to the HPPSC for the reason that there was no direction of the Tribunal to allow the petitioner alongwith other 65 similar candidates to participate in the process of entrance test/interview conducted by the HPPSC for the post of HMO.

9. So far as the difference between the case of the petitioner and those of Dr. Poonam Kaushal and Dr. Jugal Kishore is concerned, it was stated that, in case of Dr. Jugal Kishore, he was offered appointment on the basis of the recommendation received from the HPPSC, which had carried

out whole process/completing all formalities before recommending his name to the Government for appointment. In case of Dr. Poonam Kaushal, the appointment to the post of HMO was given in compliance with the direction given by this Court in LPA No.514 of 2011, titled, ***State of H.P. and another versus Dr. Poonam Kaushal and others***, that too, with the prior approval of the Council of Ministers.

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

11. No doubt, as per the direction given by the learned Tribunal in the earlier proceeding instituted by the petitioner, which came to be disposed of on 29.04.2016, the respondents/competent authority had to consider the claim of the petitioner in terms of the decision passed in CWP No.1744 of 2009, read with judgment in CWP(T) No.4402 of 2008 (OA No.1130/97) and in case, on verification, it is found that the petitioner is similarly situate with the petitioners therein, the benefits of the judgment in CWP No.1744 of 2009, if the same had attained finality and had been implemented, were to be extended to him along with consequential benefits. But this

Court cannot ignore the fact that when the petition was instituted by the petitioner, he was 54 years old in the year 2018 and now even if a direction is given to re-consider his claim again, it will not make much difference for the reason that now he has attained the age of superannuation, and as such at this juncture, no relief can be granted to him.

12. Learned counsel for the petitioner has vehemently argued that since the competent authority has not returned any findings with respect to the fact that the case of the petitioner is similar to the one in ***Dr. Poonam Kaushal's*** case (supra), the petitioner should be offered appointment at least from the date when the claim of the petitioner was rejected. However, the said contention cannot be accepted, more especially when the petitioner has attained the age of superannuation and hence the same is rejected.

13. Consequently, I do not find any merit in the present petition and the same is accordingly dismissed. Pending application(s), if any, shall also stand disposed of.

20th August, 2026
(ankit)

(Jiya Lal Bhardwaj)
Judge