

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.8104 of 2019
Decided on: 10.08.2026

Ram Krishan and another

...Petitioners

Versus

State of Himachal Pradesh and another

...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

*Whether approved for reporting?*¹

For the petitioners: Mr. Suneet Goel, Senior Advocate,
with Mr. Aman Hansretta,
Advocate.

For the respondents: Mr. Amandeep Sharma, Additional
Advocate General.

Jiya Lal Bhardwaj, Judge (Oral)

The petitioners, by way of present petition, have
prayed for the following substantive reliefs:-

- "a. *Issue directions directing to the respondents to consider the case of the applicants to the post of Senior Assistant as per R&P Rules with all consequential benefits.*
- b. *Issue directions as the Hon'ble Court may deem fit to promote the applicant to the post of Senior Assistant as per their educational qualification (Matric) as per R&P Rules. Record of the case may be called. Cost of the petition may be awarded in favour of the applicants. Any other order which this Hon'ble Court may deem fit may also be passed in favour of the applicants."*

¹ Whether 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 petitioners were initially appointed as Process Server in the year 1984 with the respondents-State. Petitioner No.1 was promoted as Clerk in the year 2003 and petitioner No.2 in the year 2005. Later on, both of them were promoted to the post of Junior Assistant in the year 2010. As per the tentative seniority list of Clerks as on 31.01.2010, petitioners No.1 & 2 were at serial numbers 97 and 98, respectively.

3. It has further been averred that the next promotional post from the post of Junior Assistant is Senior Assistant and five posts were lying vacant. As per the old Recruitment and Promotion Rules (in short 'R&P' Rules), the post of Senior Assistant is to be filled up 100% by promotion from amongst the common Clerical cadre of Clerks/Senior Clerks/Junior Assistants with 10 years of combined regular service or regular combined with continuous ad-hoc service in the grade as minimum qualification and so far as educational qualification is concerned, there is no such mention. However, as per the Notification dated 03.08.2011 (Annexure A-3), published on 04.08.2011, the qualification for the post of Senior Assistant has been changed to 10+2,

as prescribed for direct recruitments. After issuance of aforesaid Notification dated 03.08.2011 (Annexure A-3) published on 04.08.2011, the respondents promoted the incumbents on the basis of the educational qualification of matriculation to the post of Senior Assistant, as per the final seniority list of Senior Assistants of Deputy Commissioner office, Kullu on 31.12.2015 (Annexure A-4). The respondents are not promoting the petitioners to the post of Senior Assistant, even though they are fully eligible to be promoted as Senior Assistants as per the old R & P Rules, since they had completed their 10 years of regular service as Clerk. The respondents are giving the reference of new R&P Rules and saying that the petitioners are not eligible since they do not fulfill the educational qualification of 10+2 as per the amended R&P Rules.

4. The petitioners feeling aggrieved by the inaction on the part of the respondents, in not considering their candidatures for promotion to the post of Senior Assistant, have approached this Court *inter alia* on the grounds that the action on the part of the respondents is unfair, arbitrary, discriminatory and violative of Articles 14, 16 and 21 of the Constitution of India. It has further been averred that the

petitioners were eligible under the old R&P Rules and they had legitimate expectations to get promotion to the post of Senior Assistant, since respondents had promoted such incumbents to the post of Senior Assistant in the year 2011, who had possessed the matriculation qualification. There were five posts lying vacant and the respondents despite the petitioners being eligible under the old R&P Rules did not make their promotion and delayed the whole process just to debar them from getting promotion to the post of Senior Assistant. Further the respondents have adopted the pick and choose policy by promoting other Junior Assistants to the post of Senior Assistants as per the old R&P Rules and as such, the petitioners have prayed for their promotion to the post of Senior Assistant.

5. The respondents filed reply to the petition and averred that the petitioners are not eligible for promotion to the post of Senior Assistants, as per the amended provisions of R&P Rules notified on 18.04.2012. As per the amended Rules, the Clerks/Junior Assistants should possess minimum educational qualification of 10+2 for promotion to the post of Senior Assistant and the petitioners were not possessing the essential qualification at the time when they became

eligible for promotion, on the basis of seniority and length of service, i.e. 10 years regular service as Clerk/Junior Assistant. It has also been averred that the recruitment to the post of Senior Assistant is 100% by promotion from amongst the common clerical cadre of Clerk/Junior Assistant. It has further been averred that as per the R&P Rules for promotion to the post of Senior Assistant notified on 03.08.2011, there was a provision for the category of Class-IV, but the said column was amended vide Notification dated 18.04.2012 in which it has been added that all such incumbents will be eligible for promotion to the post of Senior Assistant, only if, they possess the minimum educational qualification of 10+2 as prescribed for direct recruits. It has been admitted in the reply that after amendment in the R&P Rules notified on 18.04.2012, five incumbents were promoted on the basis of matriculation qualification inadvertently. It was due to oversight of amended R&P Rules and as such those promotions are erroneous and occurred due to above mentioned reasons. The above promotions were made in different years, i.e. one in the year 2012, one in 2013, two in 2014, and one in 2015. However, the matter regarding the promotions made

contrary to the amended provisions of R&P Rules, has been reported to the Government by respondent No.2 and as such have prayed for dismissal of the petition.

6. The petitioners filed rejoinder to the reply and controverted the averments made therein.

7. I have heard the learned counsel for the parties and gone through the record carefully.

8. No doubt the respondents had promoted five incumbents, on the basis of qualification, which was prescribed under the un-amended Rules, but all those persons were senior to the petitioners. The claim of the petitioners for promotion to the post of Senior Assistant could have been considered, if those persons were junior to them. Even otherwise, it is settled law that the person, who is approaching the Court, cannot claim negative parity. Reference in this regard is made to the judgment of the Hon'ble Supreme Court in ***Jyostnamayee Mishra versus The State of Odisha and others***, 2025(1) SLR 823 (S.C.).

The relevant extract is reproduced herein below:

"31. Another argument was raised while referring to two communications dated 28.06.1999 appointing Ms. Jhina Rani Mansingh and Sri Lalatendu Rath as Tracer on promotion, claiming to be from the post of Peon, on the basis of which the petitioner is claiming violation of Article 14, namely the discrimination.

Suffice to add, this Court cannot put a stamp on the illegalities committed by the department while perpetuating the same. A litigant coming to the Court cannot claim negative discrimination seeking direction from the Court to the department to act in violation of the law or statutory Rules. It is a settled proposition of law that Article 14 does not envisage negative equality. Reference for the purpose can be made to a judgment of this Court in R. Muthukumar & others v. The Chairman and Managing Director TANGEDCO & others, 2022 INSC 157 : 2022 SCC OnLine SC 151: [2022(2) SLR 778 (SC)]. Relevant para thereof is extracted below:

"28. A principle, axiomatic in this country's constitutional lore is that there is no negative equality. In other words, if there has been a benefit or advantage conferred on one or a set of people, without legal basis or justification, that benefit cannot multiply, or be relied upon as a principle of parity or equality. In Basawaraj v. Special Land Acquisition Officer, 2013 INSC 551: (2013) 14 SCC 81 this court ruled that:

"8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated."

9. From the position of law, as enunciated above, it is evident that the foundation of any claim based on equity

has to be devoid of the element of negative discrimination. In the present case, the petitioners are not possessing the essential qualification to be promoted to the post of Senior Assistant, as per the amendment carried out in the R&P Rules. Once the petitioners are not possessing the requisite qualification to be considered for promotion to the post of Senior Assistant, the relief claimed by them, cannot be granted. As per the R&P Rules, for the post of Senior Assistant, which Rules are called as the Himachal Pradesh, Department of Personnel, Senior Assistant, Class-III (Non-Gazetted, Ministerial Services) Common Recruitment and Promotion Rules, 2011, the post of Senior Assistant was to be filled up 100% by promotion, from amongst the Common Clerical cadre of Clerks/Junior Assistants of concerned Departments possessing ten years regular service or regular combined with continuous adhoc service rendered, if any, in the grade, provided that all such incumbents will be eligible for promotion to the post of Senior Assistant, only if, they possess the minimum qualification of 10+2 as prescribed for direct recruits or Clerks absorbed against direct recruitment post.

10. Learned senior counsel representing the

petitioners has vehemently argued that once the respondents, despite being the amendment carried out in the R&P Rules, have considered the candidature of other persons, though they were senior to the petitioners, parity demands that the petitioners ought to have also been considered for the post of Senior Assistant, especially when they were initially recruited as Class-IV employees. This contention cannot be accepted for the reason that once the Rules were amended and a particular qualification has been prescribed, until and unless, the said Rules are held to be ultra vires, no relief can be granted to the petitioners. As already observed above, for the purpose of arbitrariness and discrimination and to attract Articles 14 and 16 of the Constitution of India, no one can draw a negative parity. Thus, the petition being bereft of substance deserves dismissal.

11. Consequently, in view of the above, no relief can be granted to the petitioners and the petition being devoid of merits is dismissed. No order as to costs. Pending applications, if any, also stand disposed of.

10th August, 2026

(Anurag)

**(Jiya Lal Bhardwaj)
Judge**