

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 11542 of 2024

Decided on: 23.09.2026

Kapil Thakur and others Petitioners

Versus

Himachal Pradesh State Electricity Board Limited
and others ... Respondents

Coram

Hon’ble Mr. Justice Ajay Mohan Goel, Judge

Hon’ble Mr. Justice Yogesh Jaswal, Judge

Whether approved for reporting?¹Yes

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| For the petitioners | : | M/s Devender K. Sharma and
Rehamtullah, Advocates. |
| For the respondents | : | Mr. Rajesh Kashyap, Advocate for
respondent No. 1. |
| | : | Mr. O.P.Negi, Advocate for respondents
No. 2, 3, 11, 18, 31, 36, 57, 60 and
71. |
| | : | Mr. Dheeraj Kanwar, Advocate for
respondents No. 4, 7, 12, 13, 17, 19,
26, 40, 41, 43, 46, 48 to 50, 56, 58,
59, 63, 66, 70, 72 to 77, 81, 86, 90,
92, 100, 102, 106, 108, 109, 110, 114,
117, 121 and 125 to 128. |
| | : | Mr. Sudhir Bhatnagar, Advocate for
respondent No. 24. |
| | : | Respondent No. 79 <i>ex parte</i> . |

Ajay Mohan Goel, Judge [Oral]

By way of this writ petition, the petitioners have *inter alia* prayed for the following reliefs:-

¹ Whether reporters of the local papers may be allowed to see the judgment?

“1. That a writ of certiorari may kindly be issued and recruitment and promotion rules issued vide notification dated 13.09.2022 to the post Senior Assistant qua providing eligibility criteria to the post of Junior Assistant/junior office assistant (Annexure P-13) and recruitment and promotion rules dated 13.09.2022 to the post of Junior Office Assistant (IT) wherein provision for placement on the designation of Junior Assistant (Annexure P-14) may kindly be quashed and set aside.

2. That a writ of prohibition may kindly be issued and the respondent board be restrained from holding Departmental Promotion Committee (DPC) to the post of Senior Assistant in terms of office order dated 19.09.2024 (Annexure P-23) in the interest of justice and fair play.

3. That a writ of mandamus may kindly be passed and the respondent board may kindly be directed to treat both Clerk and Junior Office Assistant (IT) equally in the matter of promotion and pay scale in the interest of justice and fair play.”

2. The grievance of the petitioners is that the Recruitment and Promotion Rules to the post of Senior Assistant (Ministerial Services), which have been issued vide notification Annexure P-13 dated 13.09.2022, discriminate between the two feeder categories for

promotion to the said post, i.e., the category belonging to the post of Clerk and the post of Junior Office Assistant (Information Technology) (the category to which the petitioners belong), in a manner that whereas a Clerk is eligible for promotion after putting in four years of regular service, a Junior Office Assistant (IT) (the category to which the petitioners belong) becomes eligible only after putting in seven years of service.

3. Learned Counsel for the petitioners argued that the petitioners were appointed against the post of Junior Office Assistant (IT) [hereinafter to be referred to as JOA(IT)] in terms of advertisement Annexure P-1 in the year 2017-18. Thereafter their services were regularized against the said post in terms of Annexure P-3, order of regularization dated 07.10.2020 and subsequent notifications issued in the year 2021 and 2022. Learned Counsel further argued that earlier there were no posts of JOA(IT). By referring to orders Annexure P-4, dated 18.03.2015 and Annexure P-5, dated 22.06.2015, learned Counsel submitted that in terms of these two orders, 100 posts of JOA (IT) and 235 posts of JOA (IT) respectively were created in the pay band of Rs.5910-20200+1950 grade pay in the Electrical Sub-Divisions under Operation Wings. This was done by abolishing equal number of posts of Clerks in the respective Units under the Operation Wings. Learned Counsel

thereafter referred to the notification Annexure P-6, dated 18.03.2015 i.e. the Recruitment and Promotion Rules for the post of JOA (IT) and submitted that said post of JOA (IT) was to be filled 100% by way of direct recruitment on a regular basis or on a contract basis in the mode and manner prescribed therein. Said post was a Class-III Non-Gazetted Ministerial post, created in the pay scale of Rs.5910-20200+1950 grade pay. Learned Counsel referred to Clause 7 of the Rules and submitted that the essential qualifications required for being eligible to the said post were as provided therein. He submitted that the petitioners participated in the recruitment process undertaken by the Electricity Board and were appointed initially on contract basis. Subsequently, their services were regularized from the year 2020 onwards. Learned Counsel thereafter referred to Annexure P-8, i.e. notification dated 12.11.2008 and submitted that these were the Recruitment and Promotion Rules for the post of Clerk in the respondent-Board and in terms of said Rules, the post of Clerk was to be filled in 75% by way of direct recruitment and 25% by promotion from amongst Class-IV Non-Technical staff. By referring to Clause 7 of the said Rules, learned Counsel submitted that the minimum educational and other qualifications prescribed for recruitment to the post of Clerk were same and akin to those of a JOA (IT).

4. Learned Counsel thereafter referred to Annexure P-9, which is a notification dated 18.06.2012 and submitted that the Recruitment and Promotion Rules to the post of Clerk were amended by the respondent-Board in terms of Annexure P-9 and essential qualifications, as mentioned therein, stood amended in face of what was earlier existing in Annexure P-8. Learned Counsel thereafter referred to Annexure P-10, which is a notification of the respondent-Board dated 29.10.1975 and submitted that earlier there was no post of Senior Assistant and there existed a post of Upper Division Clerk, which was filled in 80% by way of promotion from amongst Lower Division Clerks/Stenos/Meter Readers and 20% by way of direct recruitment. He submitted that a perusal of the said Rules would demonstrate that for all the feeder categories for promotion to the post of Upper Division Clerk, similar period of minimum service in the feeder grade was prescribed.

5. Learned counsel thereafter referred to Annexure P-13 and submitted that in terms of the impugned Recruitment and Promotion Rules to the post of Senior Assistant, this post, which is again a Class-III Non-Gazetted post to be filled in 100% by way of promotion, the method of recruitment to the said post is by way of promotion from the category of Clerks to the extent of 43% with four years of regular service as a Clerk and from the category of Junior

Assistant to the extent of 57% with seven years of regular service as a JOA (IT) or Junior Assistant as mentioned therein.

6. Learned Counsel argued that there is no difference or distinction between the post of a Clerk and that of a JOA (IT). He submitted that as both the posts of Clerk and JOA (IT) are the feeder posts for promotion to the post of Senior Assistant, the distinction created by the respondent-Board whereby a Clerk is eligible for promotion to the post of Senior Assistant after four years of regular service, while a JOA (IT) has to put in seven years of service, is completely arbitrary and discriminatory. Learned Counsel has argued that it was evident from the documents referred to that the posts of JOA (IT) were created after the abolition of an equal number of posts of Clerk, which demonstrated that there was no difference or distinction between the post of a Clerk and JOA (IT). He submitted that in this backdrop also, the difference in the number of years to be put in by each of the categories to be rendered eligible for promotion to the post Senior Assistant, was totally unsustainable in law. Learned Counsel further argued that there is otherwise also no qualitative or quantitative difference in the kind of service being rendered by a Clerk as compared to a JOA (IT), therefore, this classification in the Rules is arbitrary and discriminatory. Learned Counsel also referred to Annexure P-16, which is a copy of

notification dated 11.11.2022, issued by the Department of Personnel, Government of Himachal Pradesh and submitted that in terms of this notification, which contains the Recruitment and Promotion Rules to the post of Senior Assistant, the feeder categories are both Clerks and JOA (IT), etc. and the eligibility criteria for both posts is the same, i.e. seven years of service.

Learned Counsel has relied upon the following judgments of the Hon'ble Supreme Court in support of his contentions:-

(I) S.G, Jaisinghani vs. Union of India and others, AIR 1967 Supreme Court 1427;

(II) E.P.Royappa v. State of Tamil Nadu, AIR 1974 Supreme Court 555;

(III) P.U. Joshi and Others vs. Accountant General, Ahmedabad and others, (2003) 2 SCC page 632;

7. On the other hand, learned Counsel for the respondent-Board argued that there is no merit in the petition and the same deserves dismissal. Learned Counsel has argued that the petitioners, were recruited against the post of JOA (IT) in the year 2017-18. Thereafter, their services were regularized against the said post from the year 2020 onwards. He submitted that the petitioners are assailing Annexure P-13, which is a notification issued on 13.09.2022, which prescribes the feeder categories for the post of

Senior Assistant (Ministerial Services). He submitted that the post of JOA (IT) was created in terms of Annexure P-4 and Annexure P-5 and the creation of these posts by abolishing an equal number of posts of Clerks is a matter of record. However, he submitted that this does not mean that the posts of a Clerk and the posts of JOA (IT) are qualitatively or quantitatively the same and similar. He referred to the Recruitment and Promotion Rules of the post of Clerk, Annexure P-8, dated 12.11.2008 and submitted that the educational qualifications mentioned therein were amended vide Annexure P-9, notification dated 18.06.2012 and if one compares the essential qualifications which are required for appointment against the post of Clerk with the essential qualifications which are required for recruitment against the post of JOA (IT), there is a qualitative and a substantive difference between the two. Learned Counsel drew the attention of the Court to the reply filed by the respondent-Board and submitted that the respondent-Board has created and notified the post of JOA (IT) on the pattern of the Government of Himachal Pradesh. The Recruitment and Promotion Regulations, which have been framed and notified in this regard are also on the same pattern as of the Government of Himachal Pradesh. He submitted that even as far as the promotional avenues are concerned, in Government Departments, the next promotional post from the post of JOA (IT) is

that of a Senior Assistant and a JOA (IT) becomes eligible for promotion to the post of Senior Assistant after putting in 7 years of service. He submitted that in light of this fact, there is no arbitrariness or discrimination in the act of the respondents as per the notification which is under challenge. He submitted that as the post of JOA (IT) was subsequently created on the pattern of the State Government in the Board, the 7-year period for eligibility to the promotional post was fixed in consonance with the Rules of the State. Learned Counsel for the respondent-Board has also relied upon the judgment of the Hon'ble Supreme Court in P.U. Joshi and Others vs. Accountant General, Ahmedabad and others reported in (2003) 2 SCC 632, to substantiate his contentions.

8. Learned Counsel appearing for the private respondents have adopted the arguments addressed by the learned Counsel for the respondent-Board.

9. In rebuttal, learned Counsel for the petitioner referred to Annexure P-14, i.e. Notification dated 13.09.2022 and argued that in terms of said Annexure the essential qualifications for recruitment to the post of JOA (IT) stood amended and it is now same as that of a Clerk.

10. We have heard learned Counsel for the parties and have also carefully gone through the pleadings and documents produced

on record, as well as the judgments relied upon by the learned counsel for the parties.

11. The factum of the petitioners having been recruited against the post of JOA (IT) pursuant to the creation of the post of JOA (IT) as per two office orders dated 18.03.2015 (Annexure P-4) and 22.06.2015 (Annexure P-5), which posts were created after the abolition of an equal number of posts of Clerk, is a matter of record.

12. Otherwise also, it is settled law that what terms or conditions are to be applied in of the Recruitment and Promotion Rules for a post, is the prerogative of the employer. The Courts, ordinarily are not to interfere or intervene with the said prerogative unless it has been exercised by the employer either in a manifestly illegal manner or is a result of some malafide.

13. The Hon'ble Supreme Court of India in S.G. Jaisinghani vs. Union of India and others, AIR 1967 Supreme Court 1427, has been pleased to hold that the absence of arbitrary power is the first essential of the rule of law upon which the whole constitutional system is based and in a system governed by the rule of law, discretion, when conferred upon executive authority, must be confined within clearly defined limits. The Hon'ble Supreme Court has also held that the rule of law from this point of view means that decisions should be made by the application of known principles

and rules and in general, such decisions should be predictable and the citizen should know where he stands.

14. Similarly, in E.P.Royappa v. State of Tamil Nadu, AIR 1974 Supreme Court 555, Hon'ble Supreme Court of India was pleased to hold that Article 16 of the Constitution of India is merely an instance of the application of the concept of equality enshrined in Article 14 of the Constitution. The Hon'ble Supreme Court held that in other words, Article 14 is the genus, while Article 16 is a species. Article 16 gives effect to the doctrine of equality in all matters relating to public employment and the basic principle informing both Articles 14 and 16 is equality and prohibition against discrimination. The Hon'ble Supreme Court also held that Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situated persons and it must not be guided by any extraneous or irrelevant considerations as that would amount to denial of equality. The Hon'ble Supreme Court further held that where the operative reason for State action as distinguished from the motive originating from the antechamber of the mind is not legitimate and relevant, but extraneous and outside the realm of permissible considerations, it would amount to a malafide exercise of power and is hit by Articles

14 and 16 of the Constitution of India.

15. Similarly, in P.U. Joshi and Others vs. Accountant General, Ahmedabad and others, (2003) 2 SCC 632, the Hon'ble Supreme Court was pleased to hold that questions relating to the constitution, pattern, nomenclature of posts, cadre, category, their creation, abolition, prescription of qualifications and other conditions of service, including avenues of promotion and criteria to be fulfilled for such promotion, pertain to the domain of policy. These fall within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India. It is not for statutory Tribunals to direct the State Government to adopt a particular method of recruitment, eligibility criteria, or avenues of promotion, nor to impose themselves by substituting their view for that of the State. The Hon'ble Supreme Court also held that it is well open to and within the competence of the State to change the rules relating to service and to alter, amend, or vary by addition or subtraction the qualifications, eligibility criteria and other conditions of service, including avenues of promotion, from time to time as administrative exigencies may need or necessitate.

16. Coming to the facts of this case, as we have already observed herein above, the grievance of the petitioners is solely that

while there are two feeder categories for promotion to the post of Senior Assistant, a Clerk becomes eligible for promotion after four years of service, whereas the condition of seven years of service for a JOA (IT) to become eligible for promotion to the said post, is arbitrary and discriminatory.

17. In our considered view, as the post of Clerk and the post of JOA (IT) are two distinct posts, it cannot be said that the condition of seven years of service as a JOA (IT) for promotion to the post of Senior Assistant is *per se* arbitrary or discriminatory vis-à-vis the category of Clerks. We say this because the petitioners could not demonstrate before us that in any other department, whether of the Government or otherwise, a JOA (IT) is eligible for promotion to the post of Senior Assistant after four years of service. On the contrary, it is evident from the documents appended by the petitioners themselves with the writ petition, that even in Government departments, a JOA (IT) becomes eligible for promotion to the post of Senior Assistant only after seven years of service.

18. In terms of the judgment of the Hon'ble Supreme Court of India in E.P. Royappa v. State of Tamil Nadu (supra), State action must be based on valid and relevant principles applicable alike to all similarly situated individuals and it must not be guided by extraneous or irrelevant considerations. In the present case, the

petitioners have failed to substantiate from the record that the requirement of seven years of service as a JOA (IT) for promotion to the post of Senior Assistant is guided by any extraneous or irrelevant considerations.

19. On the contrary, the Board has explicitly stated in its reply generally and in paragraph 11 on merits thereof in particular, that the post of JOA (IT) in the respondent-Board was created on the same analogy as corresponding posts in Government departments. Since the post of JOA (IT) serves as a feeder post for promotion to Senior Assistant, and a JOA (IT) becomes eligible after seven years of service, a similar provision was adopted by the respondent-Board for promotion to the post of Senior Assistant for this particular category. The petitioners could not prove the contrary that in Government departments, a JOA (IT) becomes eligible for promotion after only four years of service.

20. The judgment of the Hon'ble Supreme Court in P.U. Joshi v. Accountant General (supra) clearly lays down the law that the prescription of qualifications and service conditions including promotional avenues and eligibility criteria, fall in the field of policy and the exclusive discretion and jurisdiction of the State, subject only to constitutional limitations or restrictions. These limitations or restrictions, as envisaged in the Constitution, are those spelled out

in E.P. Royappa vs. State of Tamil Nadu case (supra).

21. We have already observed that it could not be demonstrated before this Court that the seven year service requirement for a JOA (IT) for promotion to the post of Senior Assistant, is motivated or guided by extraneous or irrelevant considerations. As the Hon'ble Supreme Court has clearly and categorically held that matters regarding promotional avenues and criteria, belong to the field of policy and is within the exclusive discretion and jurisdiction of the State and since we find no arbitrariness or discrimination in the act of respondent-Board to prescribe seven years of service as a condition for a JOA (IT) for promotion to the post of Senior Assistant, we are of the considered view that this is not a case where said prerogative of the Board requires any interference by this Court under Article 226 of the Constitution of India.

22. However, in light of the fact that as amongst the feeder category to the post of Senior Assistant, a Clerk is made eligible after completion of four years of service, whereas, presently a JOA (IT) has to put in seven years of service, though we are not holding that the said provision in the Recruitment and Promotion Rules is arbitrary or unconstitutional, however, this adjudication shall not come in the way of the respondent-Department, if it intends to have a re-look on

the issue, independently. With these observations, the writ petition is disposed of, so also pending miscellaneous applications, if any.

(Ajay Mohan Goel)
Judge

(Yogesh Jaswal)
Judge

September 23, 2026
(*narender*)