

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 15669 of 2026.

Decided on : 5th October, 2026.

Bhanu Pratap Singh

...Petitioner.

Versus

State of H.P. & Ors.

....Respondents.

Coram:

Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting?¹

For the Petitioner:

Mr. Abhishek Dulta and Mr. Vishal Verma,
Advocates.

For the respondents:

Mr. Sikander Bhushan, Dy. Advocate
General for respondents No. 1 to 3.
Mr. Vikrant Thakur, Senior Advocate with
Mr. Shubham Guleria, Advocate for
respondent No.4.

Jyotsna Rewal Dua, Judge.

Despite being selected as Constable in the recruitment process undertaken for filling up posts of Constable in terms of advertisement dated 04.10.2024 (Annexure P-4) and 17.08.2026 (Annexure P-9), whereby additional posts of Police Constable were approved to be filled up on the basis of the result declared by the Himachal Pradesh Public Service Commission, appointment order was not issued to the petitioner in view of registration of two criminal cases against him. Feeling aggrieved, the petitioner has instituted this writ petition seeking directions to the respondents to appoint him to the post of Constable

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

forthwith and also for quashing and setting aside the order dated 21.08.2026 (Annexure P-12) whereby the respondents had invoked Rule 15(2) of the Recruitment of Constable Rules, 2024 for keeping petitioner's appointment in abeyance till he gets clearance during investigation/trial.

2. Heard and considered the case file.

Admittedly, FIR No. 157 of 2023 dated 25.07.2023 was registered against the petitioner under Sections 143, 147, 148, 149, 160, 323 and 504 of the Indian Penal Code at Police Station Boileauganj, District Shimla. FIR No. 241/2023 has also been registered against the petitioner on 07.11.2023 under Sections 147, 148, 149 and 323 IPC at Police Station Boileauganj, District Shimla. Both the above cases are stated to be pending adjudication before the court of learned Additional Chief Judicial Magistrate-II, District Shimla.

2(i) Respondents have invoked following Rule 15(2) of the Recruitment of Constable Rules, 2024 for keeping petitioner's appointment as Constable in abeyance:-

“Rule 15. Character and antecedents

(1) The verification of character and antecedents of the selected candidate who have been selected provisionally will be carried out through concerned district police but the process for issuance of appointment letters will not be withheld due to pendency of such verification. The

appointing authorities will issue provisional appointment letters after obtaining the filled and duly signed attestation form and self declaration from the candidate. In case, a candidate is found to have been convicted in a court of law, the applicant/candidate shall not be offered appointment irrespective of the nature of the offense and the period of sentence.

(2) In case of a candidate against whom investigation trial is pending the offer of appointment may be held in abeyance until candidate/applicant get clearance during investigation or trial. Such a candidate shall not be deemed to have become overage on this account alone.

(3) The post may be filled up from the waiting list and the candidate will be offered a subsequently occurring vacancy."

2(ii) Rule 15(2) is similar to Clause 19(2) of HP Government notification dated 05.08.2021 (Recruitment Rules), which reads as under:-

Character and antecedents	19 (1) The verification of character and antecedents of the selected candidates who have been selected provisionally will be carried out through concerned district police but the process for issuance of appointment letters will not be withheld due to pendency of such verification. The appointing authorities will issue provisional appointment letters after obtaining the filled and duly signed attestation form and duly signed attestation form and self declaration from the candidate. In case, a candidate is found to have been convicted in a court of law, applicant/candidate shall not be offered appointment irrespective of the nature of the offence and the period of sentence.
	2) In case of a candidate against whom investigation trial is pending the offer of appointment may be held in abeyance until candidate/applicant get clearance during investigation or trial. Such a candidate shall be deemed to have become overage on his account alone.
	(3) The post may be filled up from the waiting list and the

	candidate will be offered subsequently occurring vacancy.
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The above Rule/Clause 19(2) was considered by the Division Bench of this court in CWP No. 6851 of 2022 (Sanjay Kumar vs. State of Himachal Pradesh & Ors.). The writ petition was allowed on 15.11.2022. Relevant portions from the aforesaid decision are as under:-

“9. It is often said that the word 'may' and 'shall' are used as interchangeable terms while interpreting the statutory provisions notwithstanding their grammatical meaning. But it is not accurate to say that the word 'may' sometimes acquires the meaning of 'must' or 'shall'.

10. As pithily and graphically expressed by Cotton, L.J. in Inre Nichols v. Baker, 59 LJ Ch 661, 'May' can never mean must, so long as the English language retains its meaning; but it gives a power and then it may be a question, in what cases, when any authority or body has a power given to it by the word 'may', it becomes its duty to exercise that power. In other words, it is the context which can attach the obligation to the power compelling its exercise in a certain way. The context, both legal and factual, may impart to the power that obligatoriness

11. As a general rule, the word 'may' is permissive and operative to confer discretion. The ultimate rule in construing auxiliary verbs like 'may' and 'shall' is to discover the legislative intent; and the use of the words 'may' and 'shall' is not decisive of its discretion or mandates. The use of word 'may' and 'shall' help the courts in ascertaining the legislative intent without giving to either a controlling or a determinating effect. The courts have further to consider the subject matter, the purpose of the provisions, the object intended to be secured by the statute which is of prime importance, as also the actual words employed.

12. Now, in so far as Clause 19 is concerned, the Rule makers by using the expression 'may', we are of the considered view that the respondents never intended to make Rule 19 mandatory as the authorities were fully aware that merely on account of pendency of investigation or trial, a candidate appointment could not be withheld without actually looking to the nature, seriousness and the gravity etc. of the offence, for which, the candidate has been accused, or else the Rule making authority would have expressly used the expression "shall" and not "may". After all, offences of trivial nature cannot be considered or equated with the offences of heinous and serious nature like rape and murder.

14. This Court cannot lose sight of the fact that today employment opportunities are scarce commodity in our country. Every advertisement invites large number of aspirants for limited number of vacancies. However, this by itself may not be sufficient to invoke sympathy for grant of relief where the credentials of the candidate may raise serious question regarding suitability, irrespective of eligibility.

19. Adverting to the facts of the instant case, it would be noticed that it was not only the petitioner alone, as an accused in the FIR, but a number of persons have been arrayed as an accused. According to the petitioner, there was a dispute with respect to the cremation place between two groups of villagers. Earlier some beatings had been given to the uncle of the petitioner, which led to registration of an FIR No.110/2019, at Police Station, Nahan, on 14.11.2019 and there were as many as nine persons named in the instant FIR. As a counter blast, the opposite party lodged and FIR on 20.11.2019, being FIR No.113/2019, that too after six days, which has been lodged solely for roping the uncle of the petitioner.

20. In the facts and circumstances of the case, we are of the considered view that the respondents could not have straightway kept in abeyance the appointment of the petitioner without considering the relevant factors like the nature and gravity of the accusation because, in case, these allegations are subsequently found to be false or not proved in the trial,

resulting in acquittal, the same would cause undue hardship to the petitioner, as the petitioner would then be appointed only after getting clearance during investigation and trial and would be offered appointment subsequently occurring vacancies for no fault on his part, which may take several years if not decades.

21. In the given facts and circumstances of the case, we deem it appropriate to allow the instant petition by directing the third respondent to consider the gravity and nature of offence alongwith all accumulative facts and circumstances including the FIR registered against the petitioner and may thereafter take a decision with regard to the offering appointment to the petitioner or keeping the same in abeyance until the petitioner gets clearance during investigation or trial. We further clarify that while considering the matter, the respondents shall not be influenced by what has been observed above, as the observations are only prima facie and tentative and shall not otherwise be treated as binding on the respondents. Meaning thereby, that the respondents shall take an independent decision in the matter."

Pursuant to the directions issued in CWP No. 6851 of 2022, the concerned Superintendent of Police rejected the case of the petitioner (therein) on the ground that criminal case having been registered against him under Sections 297, 34, and 323 IPC, offer of appointment could not be given to him till his clearance during investigation or trial as per Clause 19(2) of the Recruitment Rules. Feeling aggrieved, the petitioner therein instituted *Sanjay Kumar vs. State of HP and others*². After tracing petitioner's previous history of litigation, the writ petition was allowed. The fact-situation in *Sanjay Kumar*² applies to the facts of the instant case as well.

²CWP No. 9026 of 2022 decided on 10.01.2023

In view of the above, this writ petition is disposed of with directions to Respondent No. 3, Superintendent of Police, Mandi, to consider the case of the petitioner for his appointment in consonance with the law laid down in *Sanjay Kumar*², after considering the gravity and nature of offences along with all accumulative facts and circumstances, including the FIRs registered against him. Respondent No. 3 shall take an independent decision in the matter, keeping in view *Sanjay Kumar* and the facts of the instant case, within two weeks, i.e. by 21.10.2026. Pending applications, if any, also stand disposed of.

Jyotsna Rewal Dua
Judge

5th October, 2026.
(jai)