

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

LPA No.820 of 2025
Decided on : 14.09.2026

Pinki

...Appellant

Versus

Himachal Pradesh Public Service Commission and Anr.

...Respondents.

Coram

Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice.

Hon'ble Mr. Justice Bipin Chander Negi, Judge.

Whether approved for reporting?¹

For the appellant : Mr. Surender Sharma, Sr. Advocate with
Mr. Neeraj Sharma, Advocate.

For the respondent(s) : Mr. Vikrant Thakur, Sr. Advocate with
Mr. Shubham Singh Guleria, Advocate,
for respondent No.1.

Mr. Raman Jamalta, Advocate, for
respondent No.2.

Bipin Chander Negi, Judge

The present appeal has been preferred against the impugned judgment dated 21.08.2025 passed in CWP No.3239 of 2024, titled Pinki Vs. Himachal Pradesh Public Service Commission and Anr., whereby the writ petition preferred by the present appellant has been dismissed.

¹Whether the reporters of the local papers may be allowed to see the Judgment? *Yes*

2. The present appeal pertains to an appointment to the post of Conductor in respondent No.2-Corporation, the recruitment process whereof was initiated and conducted by respondent No.1. Respondent No.2-Corporation, vide order dated 23.03.1996 (Annexure P-1, page 90 of the paper-book), with the prior concurrence of the Government of Himachal Pradesh, had framed the Himachal Road Transport Corporation (Class-I, II, III and IV) Services (Recruitment, Promotion and Certain Conditions of Service Regulations), 1996. Thereunder, criteria for selection was provided in terms of Regulation 7.

3. The initial 1996 Regulations qua recruitment and promotion for the post of Conductors in the respondent No.2-Corporation have been placed on record at page 101 of the paper-book (Annexure A-42 of Annexure P-2). The aforesaid Recruitment and Promotion Rules for the post of Conductors were amended vide notification dated 21.11.2015 (Annexure P-2, page 107 of the paper book). In accordance with the amendment so made, the minimum educational qualification required for direct recruitment to the post of Conductor in the respondent No.2-Corporation was 10+2 pass

from any Board of School Education/University recognized by the Government of Himachal Pradesh.

4. Vide Advertisement No.4/4-2023 dated 04.04.2023, respondent No.1-Commission initiated the process of direct recruitment for the post of Conductors. The last date for submission of application and determination of eligibility as per the same was 01.05.2023. Copy of the advertisement so issued has been placed on record as Annexure P-3 (page 110 of the paper-book).

5. The total posts advertised were 360, out of which 130 were meant for the General category. The appellant in the case at hand had applied for the General category post of Conductor. The requisite educational qualification required therein was 10+2 pass from a recognized Board of School Education/University or equivalent.

6. Other than the aforesaid, a Note had been appended, whereby it had been provided in the advertisement that in order for a candidate to be eligible for appointment to the post of Conductor, he/she should have passed Matriculation and 10+2 from any School/Institution situated within Himachal Pradesh. The aforesaid condition was not to

apply to bona fide Himachalis. The Note so appended in the advertisement is the bone of contention in the case at hand.

7. In pursuance to the advertisement, the appellant had applied. The application form has been placed on record as Annexure P-5 (page 123 of the paper book). Admit Card issued in pursuance to the application so made in favour of the appellant is placed on record as Annexure P-6 (page 125 of the paper book). A written objective screening test was held on 10.12.2023. In pursuance thereto, 826 candidates had been shortlisted. The same is evident from notice issued in this respect dated 02.02.2024, placed on record as Annexure P-7 (page 127 of the paper book). The appellant had successfully cleared the written objective screening test and, in pursuance thereto, had been called for document verification, as is evident from notice dated 05.02.2024 issued in this respect, placed on record as Annexure P-8 (page 130 of the paper book).

8. Post verification of the documents, the candidature of the appellant had been rejected on the account that she was neither a bona fide Himachali, nor had she passed her Matriculation and 10+2 from a School/Institution situated

within the State of Himachal Pradesh. The aforesaid rejection is evident from Annexure P-9 (page 135 of the paper book).

9. It is in the aforesaid backdrop that the present appellant had laid a challenge to the Note appended in the advertisement dated 04.04.2023 (Annexure P-3), which required that a candidate, in order to be eligible for appointment, must have passed Matriculation and 10+2 from any School/Institution situated within the State of Himachal Pradesh. The same was assailed on two counts; i) namely, the same being illegal as it was contrary to the Recruitment & Promotion Rules meant for the post of Conductor as amended vide notification dated 21.11.2015 (Annexure P-2), and secondly, on the count that the same was violative of the provisions of the Constitution as 100% recruitment in the case at hand was being done on the basis of institutional preference.

10. No response in the case at hand was filed by respondent No.2. In the response filed by respondent No.1-Commission, a categorical stand had been taken that insofar as the State of Himachal Pradesh is concerned, vide notification dated 19.11.2019, placed on record at page 173

of the paper-book, eligibility for appointment to Class-III and Class-IV posts had been limited to individuals who had passed their Matriculation and 10+2 from any School/Institution situated within the State of Himachal Pradesh. Further, in the response filed by respondent No.1-Commission, it had been mentioned that vide office order dated 15.06.2020 (page 176 of the paper book), the Managing Director of the respondent No.2-Corporation had been authorized to adopt all notifications/instructions issued by the State Government in future which are applicable to the HRTC.

11. In the rejoinder filed, categorical stand taken by the present appellant was that notification dated 19.11.2019 issued by the State Government, whereby recruitment to the posts of Class-III and Class-IV had been limited to individuals who had passed their Matriculation and 10+2 examination from Schools/Institutions situated within the State of Himachal Pradesh, had not been adopted by the HRTC, as nothing has been placed on record.

12. In the impugned judgment, the claim of the appellant has been denied on account of the fact that once having participated in the process, the appellant could not

have turned back and challenged the same. Further, it has been presumed that notification dated 19.11.2019 (page 173 of the paper book) has been adopted by the respondent-Corporation.

13. Admittedly, in the case at hand, the Recruitment & Promotion Rules for the post of Conductor, as amended in the year 2015 (Annexure P-2, page 107 of the paper book), provide that for being appointed against the post of Conductor through direct recruitment, a candidate is required to possess a 10+2 from any Board of School Education/University recognized by the Government of Himachal Pradesh.

14. From the application form submitted by the appellant in the case at hand (Annexure P-5, page 123 of the paper book), it is evident that the appellant had passed her 10+2 from the Board of School Education Haryana, Bhiwani. From a perusal of Annexure P-11 appended along with the rejoinder (page 207 of the paper book), i.e., list of updated recognized/equivalent Boards/Universities/Bodies as on 24.07.2019 issued by the H.P. Board of School Education, Dharamshala, it is evident from Sr. No.8 thereof that the

Board of School Education Haryana, Bhiwani is a recognized Board insofar as the State of Himachal Pradesh is concerned.

15. In the aforesaid backdrop, when the Note appended to the educational qualifications in the advertisement issued for recruitment to the post of Conductor in the case at hand (Annexure P-3, page 110 of the paper book) is examined, it is evident that the Note which requires a candidate to pass Matriculation and 10+2 from a School/Institution situated within the State of Himachal Pradesh for being eligible for the post of Conductor in the case at hand, is nowhere mentioned in the Recruitment & Promotion Rules. The addition is a patent illegal.

16. Mere participation in a process which is illegal would not bar the appellant from assailing the same, as the principle of estoppel by conduct or acquiescence would have no application. In this regard, reference can be made to **(1997) 9 SCC 527, titled Raj Kumar and Ors. Vs. Shakti Raj and Ors.** (Bench of Three Hon'ble Judges). The relevant extract of the same is reads as under:-

"16. Yet another circumstance is that the Government had not taken out the post from the purview of the Board, but after the examinations

were conducted under the 1955 Rule and after the results were announced, it exercised the power under the proviso to para 6 of 1970 notification and the post were taken out from the purview thereof. Thereafter the Selection Committee was constituted for selection of the candidates. The entire procedure is also obviously illegal. It is true, as contended by Shri Madhava Reddy, that this Court in *Madan Lal vs. State of J & K* [(1995) 3 SCC 486] and other decisions referred therein had held that a candidate having taken a chance to appear in an interview and having remained unsuccessful, cannot turn round and challenge either the constitution of the selection Board or the method of Selection as being illegal; he is estopped to question the correctness of the selection. But in his case, the Government have committed glaring illegalities in the procedure to get the candidates for examination under 1955 Rules, so also in the method of selection and exercise of the power in taking out from the purview of the Board and also conduct of the selection in accordance with the Rules. Therefore, the principle of estoppel by conduct or acquiescence has no application to the facts in this case. Thus, we consider that the procedure offered under the 1955 Rules adopted by the Government or the Committee as well as the action taken by the Government are not correct in law.”

In this respect, see also **(2017) 4 SCC 357, titled Ashok Kumar and anr. Vs. State of Bihar and Others.**

17. Other than the aforesaid, in this respect reference can also be made to **(2019) 20 SCC 17, titled Dr (Major) Meeta Sahai Vs. State of Bihar and Ors.** The relevant extract of the same reads as under:-

"17. However, we must differentiate from this principle insofar as the candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it. In a situation where a candidate alleges misconstruction of statutory rules and discriminating consequences arising therefrom, the same cannot be condoned merely because a candidate has partaken in it. The constitutional scheme is sacrosanct and its violation in any manner is impermissible. In fact, a candidate may not have locus to assail the incurable illegality or derogation of the provisions of the Constitution, unless he/she participates in the selection process."

18. The same was followed in **(2024) 7 SCC 262, titled Abhimeet Sinha and Ors. Vs. High Court of Judicature at Patna and Ors.** The relevant extract of the same reads as under:-

"36. As argued by the learned counsel for the High Courts, the legal position is that after participating in the recruitment process, the unsuccessful candidate cannot turn around and challenge the recruitment process. However, it is also settled that in the principle of estoppel cannot override the law. Such legal principle was reiterated by the Supreme Court in Meeta Sahai V. State of Bihar, (2019) 20 SCC 17."

19. During the course of hearing, learned counsel appearing on behalf of the appellant has drawn the attention of the Court to the information obtained under the Right to Information Act. The same pertains to the requisition dated 05.07.2022 sent by the respondent No.2-Corporation to the respondent No.1-Commission for initiating the process of recruitment of Conductors in the case at hand. From the requisition, it is evident that it has been categorically mentioned that recruitment has to be initiated in terms of the Recruitment & Promotion Rules and the same have been appended with the requisition sent. No reference of the notification dated 19.11.2019 (page 173 of the paper book)

has been made in the requisition, while specifying eligibility for the post of Conductors in the case at hand. Thereby implying that till the date of sending the requisition, the same had not been adopted by respondent No.2-Corporation. Even otherwise, no material has been placed on record by respondent No.2-Corporation to show that the Notification Dated 19.11.2019 issued by the State of Himachal Pradesh had been adopted by respondent No.2-Corporation.

20. In pursuance to order dated 26.02.2026, an affidavit had been filed by the Deputy Divisional Manager (Legal), HRTC, Head Office, Shimla (placed at page 213 of the paper-book). From a perusal of the same, it is evident that one post of General category advertised in the case at hand is lying vacant as a candidate selected against the General category post, namely, one Shri Kailash Kumar, had not joined.

21. For the afore-stated reasons, the present appeal is allowed and the impugned judgment passed by the learned Single Judge is quashed and set aside. The appellant is held entitled to the appointment against the vacant post of

Conductor, along with all consequential benefits including seniority on a notional basis.

22. In the aforesaid terms, the present appeal is disposed of, so also the pending miscellaneous application(s), if any. It is made clear that the question of constitutionality of the impugned note though raised has not been gone into since the same is being set aside on other grounds.

(G.S. Sandhawalia)
Chief Justice

(Bipin Chander Negi)
Judge

14th September, 2026
S (Gaurav Rawat)