2026:HHC:49251

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.5153 of 2020 &
CWPOA No.1886 of 2020
Decided on: 06.11.2026

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1. CWPOA No.5153 of 2020

Ashok Kumar ...Petitioner

Versus

State of HP and others ...Respondents

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2. CWPOA No.1886 of 2020

Seema Sharma ...Petitioner

Versus

State of Himachal Pradesh and others ...Respondents

Coram
Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge
Whether approved for reporting?[1]

For the petitioner(s): Mr. R.L. Chaudhary and Mr. H.R. Sidhu, Advocates in CWPOA No.5153 of 2020 and Mr. Dilip Sharma, Senior Advocate with Ms. Ridhima Karol, Advocate in CWPOA No.1886 of 2020.

For the respondents: Mr. Rupinder Singh Thakur, Additional Advocate General for respondents No.1 and 2 in CWPOA No.5153 of 2020 and for the respondents-State in CWPOA No.1886 of 2020.

Mr. Dilip Sharma, Senior Advocate with Ms. Ridhima Karol, Advocate for

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[1] *Whether reporters of Local Papers may be allowed to see the judgment?*

respondent No.3 in CWPOA No.5153 of 2020.

None for respondent No.4 in CWPOA No.5153 of 2020.

Jiya Lal Bhardwaj, Judge (Oral)

Since both these petitions arise out of the selection made to the post of Ayurvedic Pharmacist, on contract basis, pursuant to advertisement dated 27.12.2016 (Annexure A-4) in CWPOA No.1886 of 2020 & (Annexure A-7) in CWPOA No.5153 of 2022, hence are being taken up together for decision and are being disposed of by a common order.

2. For the purpose of deciding these petitions, the facts of CWPOA No.5153 of 2020 are taken up for consideration.

3. The petitioner, who was possessing the requisite qualification to hold the post of Ayurvedic Pharmacist and further having locomotor disability to the extent of 50% on account of his having one leg, which was assessed as 50%, as per Annexure A-4, had applied to the said post pursuant to advertisement dated 27.12.2016 (Annexure A-7). The petitioner had appeared in the interview conducted by the Selection Committee on 27.02.2017 and was awarded 11.31 marks, as evident from a perusal of Annexure A-8 and respondent No.3 who was also falling under the category of disabled person was awarded 15.62 marks. Since respondent No.3

had secured 15.62 marks, she was offered appointment to the post of Ayurvedic Pharmacist.

4. It has been averred in the petition that as per the medical certificate submitted by respondent No.3, she did not meet the criteria of the Notification dated 05.07.2012 (Annexure A-6) since she was having one arm and two legs, whereas the Notification provides reservation to the physically handicapped person against the post of Ayurvedic Pharmacist as Orthopedically handicapped (having atleast two arms and one leg). The petitioner was having two arms and one leg, but he was not selected for the post of Ayurvedic Pharmacist for the reason that he was lower in merit.

5. The grievance of the petitioner Ashok Kumar is to the effect that once respondent No.3 was not fulfilling the criteria as per the Notification dated 05.07.2012, issued by the respondent-Department, she has wrongly been selected to the post of Ayurvedic Pharmacist, which is not sustainable in the eyes of law and hence her appointment be quashed and the petitioner, who fulfills the requisite criteria as per the Notification dated 05.07.2012 be offered appointment to the post of Ayurvedic Pharmacist on contract basis w.e.f. 27.02.2017 with all consequential benefits.

6. Respondents No.1 & 2 filed reply to the petition and in

preliminary submissions averred that the original application is not maintainable, since it was preferred before the erstwhile Himachal Pradesh Administrative Tribunal (in short 'the Tribunal'), which has been registered as present petition. The selection to the post of Ayurvedic Pharmacist amongst the physically handicapped category is done as per the Special Selection Committee notified by the Department of Personnel vide office order dated 28.02.2015 (Annexure R-II in CWPOA No.1886 of 2020) and not by respondents No.1 and 2. Total number of posts as advertised are six, out of which there is only one post meant for orthopedically handicapped candidate, against which respondent No.3 has been selected as per direction/orders dated 05.05.2017 passed by the Court of Commissioner (Disability)-cum-Principal Secretary (SJ&E) in case No. 1 of 2017. The petitioner is estopped from filing the original application by his own act, conduct, deed and submission. It has been mentioned that distribution of marks marked by the committee for disability according to the instructions of the Department of Social Justice and Empowerment and as per the weightage earmarked for maximum disability, is certified by the Medical Board. The medical certificate furnished by the petitioner depicts that he is suffering from 50% disability and as such the marks allotted to him, as per the norms, are less than respondent No.3, whose disability as

per medical certificate is 84%. Respondent No. 3 has also filed an OA No. 1843 of 2017 regarding her appointment, which has been challenged by the petitioner and in compliance to which notice was issued to respondent No. 3 and has obtained stay order dated 04.05.2017.

7. On merits, it has been averred that the Special Selection Committee has awarded marks as per the weightage earmarked for disability and as such prayed for dismissal of the petition.

8. Respondent No.3 filed separate reply to the petition and averred that she participated in the selection process for the post in question reserved for orthopaedically handicapped persons and as a result of her selection, she was offered appointment to the post of Ayurvedic Pharmacist vide order dated 03.03.2017 (Annexure R-3/1). She joined on the said post at Ayurvedic Health Centre, Saribasa on 04.03.2017. She was served with notice dated 26.04.2017 (Annexure R-3/2) on the ground that she was ineligible for appointment to the post in question, as the candidate was required to have at least two arms and one leg, whereas she had only one arm and two legs and that her earlier recommendation was treated as null and void. She submitted a detailed representation dated 29.04.2017 (Annexure R-3/3) to the State Commissioner for Persons with Disability, Government of Himachal Pradesh pointing

out that the action of the respondent-Department to treat her ineligible was in violation of Section 3(3) of the Rights of Persons with Disabilities Act, 2016, as the discrimination meted out to her by making her ineligible on account of her disability was not proportionate to the job profile of the post. She has filed OA No. 1843 of 2017 and the learned Tribunal stayed the operation of impugned notice dated 26.04.2017. As per the order dated 05.05.2017, representation made by her was allowed by the Commissioner (Disability)-cum-Principal Secretary (SJ&E) to the Government of Himachal Pradesh by upholding her appointment and it was also held that the requirement had been unnecessarily made onerous to the job requirement by the respondent-Department. The impugned condition contained in the Notification dated 05.07.2012 (Annexure A-6) with the writ petition has already been assailed by respondent No.3 in the aforesaid OA. It has further been averred that since the Commissioner (Disability) has already found the impugned criteria making respondent No.3 ineligible as disproportionate to the job requirement of the post in question and her appointment has already been upheld, the writ petition is not maintainable and as such the petition also deserves to be dismissed.

9. The petitioner filed rejoinder to the reply filed by respondents No.1 & 2 and controverted the averments made

therein.

10. I have heard the learned counsel for the parties and also gone through the record of the case carefully.

11. As per the advertisement issued for making selection to the post of Ayurvedic Pharmacist on contract basis in the pay scale of Rs.5910-20200+3200 Grade pay, a person suffering with disability in the category of orthopaedically handicapped (having at least two arms and one leg) was eligible and the petitioner as per the disability certificate had suffered the disability to the extent that he had two arms and one leg and his disability was assessed as 50%, which fact has not been disputed by the respondents. Once as per the advertisement issued vide Annexure A-7, only those persons who were having disability under orthopedically handicapped category (two arms and one leg) were eligible, which was as per the Notification dated 05.07.2016 (Annexure A-6), the Special Selection Committee could not have ignored the claim of the petitioner, since the selection was to be made strictly as per the advertisement dated 27.12.2016 (Annexure A-7). The Special Selection Committee could have not considered the claim of respondent No.3 for the post of Ayurvedic Pharmacist, since she was not fulfilling the criteria stipulated in the advertisement, for the reason that as per the disability certificate (Annexure A-9) though she had suffered 84%

disability, but she was having one arm and two legs, whereas, as per the advertisement dated 27.12.2016 (Annexure A-7), the post of Ayurvedic Pharmacist had to be filled up from the category of orthopedically handicapped, who was having at least two arms and one leg.

12. It is now settled by the Constitution Bench judgment of the Hon'ble Supreme Court in ***Tej Prakash Pathak and others vs. Rajasthan High Court and others,*** (2025) 2 SCC 1, that the Rules of the game cannot be damaged in the mid-way. The relevant paras of the judgment reads as under:-

> *"65. We, therefore, answer the reference in the following terms:*
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> ***65.1.*** *Recruitment process commences from the issuance of the advertisement calling for applications and ends with filling up of vacancies;*
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> ***65.2.*** *Eligibility criteria for being placed in the select list, notified at the commencement of the recruitment process, cannot be changed midway through the recruitment process unless the extant Rules so permit, or the advertisement, which is not contrary to the extant Rules, so permit. Even if such change is permissible under the extant Rules or the advertisement, the change would have to meet the requirement of Article 14 of the Constitution and satisfy the test of non-arbitrariness;*
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> ***65.3.*** *The decision in K. Manjusree lays down good law and is not in conflict with the decision in Subash Chander Marwaha. Subash Chander Marwaha deals with the right to be appointed from the select list whereas K. Manjusree deals with the right to be placed in the select list. The two cases therefore deal with altogether different issues;*
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> ***65.4.*** *Recruiting bodies, subject to the extant Rules, may devise appropriate procedure for bringing the recruitment process to its logical end provided the procedure so adopted is transparent,*

non-discriminatory/non-arbitrary and has a rational nexus to the object sought to be achieved;

65.5. *Extant Rules having statutory force are binding on the recruiting body both in terms of procedure and eligibility. However, where the rules are non-existent, or silent, administrative instructions may fill in the gaps;*

65.6. *Placement in the select list gives no indefeasible right to appointment. The State or its instrumentality for bona fide reasons may choose not to fill up the vacancies. However, if vacancies exist, the State or its instrumentality cannot arbitrarily deny appointment to a person within the zone of consideration in the select list."*

13. As per the dictum passed by the Hon'ble Supreme Court in the aforementioned judgment, once the petitioner was possessing the requisite criteria and respondent No.3 though had scored more marks than the petitioner, but was not having the requisite disability as per the advertisement, respondents No.1 and 2 had wrongly offered appointment to her to the post of Ayurvedic Pharmacist on contract basis and deprived the petitioner of his appointment.

14. Learned Senior Counsel representing respondent No.3 vehemently argued that since respondent No. 3 was offered appointment to the post of Ayurvedic Pharmacist, vide order dated 03.03.2017 and in sequel to the said appointment order, she had joined as Ayurvedic Pharmacist at Ayurvedic Health Centre Saribasa on 04.03.2017, her services could not have been dispensed with on the ground that she was ineligible for appointment to the post in question. He further argued that after issuance of the notice to

respondent No.3, she had made a representation to the competent authority and as per order dated 05.05.2017 (Annexure R-3/4), her representation was duly considered by the competent authority, i.e., Commissioner (Disability)-cum-Principal Secretary (SJ&E) to the Government of Himachal Pradesh and it was held that the Department of Ayurveda has unnecessarily made the requirement of the said job onerous and the identification is a fit case for review and re-notification and the Department of Health was directed to look into the need for revision of the medical certificate format, which may be changed, if need be to better reflect the status and degree of handicap which may be helpful in avoiding such errors. He further submits that there is no challenge to the said decision taken by the competent authority.

15. No doubt, as per the decision passed by the competent authority, the representation of the petitioner in CWPOA No.1886 of 2020 has been accepted and further she has also preferred a separate petition, challenging the notice dated 26.04.2017, but it cannot be said that the criteria adopted by the selection committee is in consonance with the criteria stipulated in the advertisement dated 27.12.2016. At the most, respondent No.3, who has been selected and has been serving the respondent-Department for the last 9 years, her appointment can be protected since she is not at

fault. Reference in this regard is made to the judgments of the Hon'ble Supreme Court in ***Vikas Pratap Singh and others vs. State of Chhattisgarh and others,*** (2013) 14 SCC 494 and ***Anmol Kumar Tiwari and others vs. State of Jharkhand and others,*** (2021) 5 SCC 424.

16. On the date when the advertisement was issued to make selection to the post of Ayurvedic Pharmacist on contract basis, the Notification dated 05.07.2012 (Annexure A-6) was in existence and the Department of Ayurveda was making selection to the post of Ayurvedic Pharmacist on the basis of the said criteria. Once the petitioner fulfilled the said criteria and was eligible on all four, he cannot be deprived of his selection to the post of Ayurvedic Pharmacist, more especially when he meets the eligibility criteria stipulated in the advertisement and was in the merit as per the eligibility criteria and as such, the petitioner is entitled for his appointment to the post of Ayurvedic Pharmacist on contract basis.

17. Learned counsel representing the petitioner has not placed on record any document, which can suggest that the petitioner after appearing in the selection process undertaken in the year 2017 has not served anywhere. Since there is no such material having been placed on record, the petitioner is not held entitled for any monetary benefits, but is entitled to appointment as Ayurvedic

Pharmacist w.e.f. 03.03.2017 when respondent No.3 was offered appointment to the post.

18. Consequently, both the petitions are disposed of with a direction that respondent No.2 shall offer appointment to the petitioner in CWPOA No.5153 of 2020 namely Ashok Kumar to the post of Ayurvedic Pharmacist from orthopedically handicapped quota, on contract basis in the pay scale of Rs. 5910-20200 + 3000 Grade Pay w.e.f. 03.03.2017, with all consequential benefits, except monetary benefits, which shall be paid to him after three months from today. Appointment of Seema Sharma-petitioner in CWPOA No.1886 of 2020 is not disturbed. In case respondent No.2 does not offer appointment to the petitioner Ashok Kumar, within three months from today, he shall be paid salary w.e.f. 07.02.2027 onwards by the respondents-State. No order as to costs. Pending application(s), if any, also stand disposed of.

06th November, 2026 **(Jiya Lal Bhardwaj)**

(Anurag) **Judge**