IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.310 of 2019

Decided on: 29th October, 2026

Nand Lal **...Petitioner**

Versus

State of H.P. and others **...Respondents**

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

For the petitioner:	Mr. Sunil Mohan Goel, Senior Advocate with Mr. Paras Dhaulta, Advocate.
For the respondents:	Mr. Rupinder Singh Thakur, Mr. Amandeep Sharma, Additional Advocates General and Mr. Balvinder Singh Ballu, Deputy Advocate General, for respondents No.1 and 2-State. Mr. Nitin Thakur, Advocate, for respondent No.3. None for respondent No.4.

Jiya Lal Bhardwaj, Judge (Oral)

The petitioner by way of present petition has prayed for the following substantive reliefs:-

> *"(a) That this Hon'ble Court may be pleased to issue a writ of Certiorari quashing office dated 22nd July 2010 issued by Respondent Number 2 (Annexure P11) whereby Respondents 3 and 4 have been promoted to*

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

the post of Senior Assistant and recommendations of review DPC held on 16.7.2010 Annexure P10 to the extent it recommends names of Respondents 3 and 4 for promotion to the post of Senior Assistant over and above the petitioner.

(b) This Hon'ble Court may be pleased to issue a writ of Mandamus directing respondent No 2 to consider and promote the petitioner to the post of Senior Assistant , being senior most incumbent in the combined feeder category seniority, based on recommendations of review DPC dated 16.7.2010 w.e.f. 22.7.2010 i.e. the date when respondents No.3 and 4 were promoted to the said post with all consequential benefits and grant him time to pass typing test as has been done in the case of other Restorers."

2. Shorn of unnecessary details, the key facts of the case are that the petitioner was initially appointed as Peon in respondent No.2-Department and thereafter, on the recommendations of the Departmental Promotion Committee (in short "DPC") was promoted to the post of Restorer, vide office order dated 24.12.1994 (Annexure P-1), on ad hoc basis in the pay scale of Rs.950-1800/- with immediate effect, subject to the approval of the Government. It was specifically mentioned in the office order that the promotion is purely on ad hoc basis and will not confer any right for the purposes of seniority and regularization in future. Subsequently, vide office order dated 23.06.1999 (Annexure P-2), again on the recommendations of the DPC held on 16.06.1999, the petitioner was promoted to the post of Restorer in the pay scale of Rs.3120-5160/- with immediate effect, purely on temporary basis. Thereafter

the petitioner was granted the benefit of Assured Career Progression Scheme (in short "ACPS") vide office order dated 03.01.2004 (Annexure P-3), taking his date of appointment on the post of Restorer as 24.12.1994, as evident from the said order.

3. As per the Recruitment and Promotion Rules, which are called "The Advocate General Himachal Pradesh Senior Assistant (Class-III Non Gazetted) Recruitment and Promotion Rules, 1996 (in short "R&P Rules"), the post of Senior Assistant is a non-selection post and it is to be filled up 100% by promotion from amongst the incumbents of the clerical cadre, which includes Clerks/Senior Clerks/Junior Assistants and Restorers, who possess 10 years regular service or regular combined with continuous ad hoc (rendered upto 31.03.1991). The R&P Rules were amended vide Notification dated 06.07.2004 and it was incorporated that in all cases of promotion, the continuous ad hoc service rendered in the feeder post, if any, prior to regular appointment to the post, shall be taken into account towards the length of service as prescribed in the rules for promotion, subject to the condition that the ad hoc appointment/promotion in the feeder category had been made after following proper acceptable process of selection in accordance with the provisions of R&P Rules.

4. The DPC was convened for making promotion to the

post of Senior Assistant and in the meeting held on 16.07.2010 (Annexure P-10), the name of the petitioner was also considered, but the DPC recommended the names of respondents No.3 and 4 for promotion as Senior Assistants on regular basis in the pay scale of Rs.10300-34800/- + Rs.3800/- Grade Pay, since they were senior to the petitioner. Thereafter, vide office order dated 22.07.2010 (Annexure P-11), respondents No.3 and 4 were promoted to the post of Senior Assistant.

5. The precise grievance raised by the petitioner in the writ petition is that since the petitioner was senior to respondents No.3 and 4 in the feeder category, for the reason that he was initially promoted to the post of Restorer on ad hoc basis vide office order dated 24.12.1994 (Annexure P-1) after the recommendations of the DPC, his continuous ad hoc service as Restorer could not have been ignored by the DPC for promotion to the post of Senior Assistant. It has further been averred that in the DPC proceedings dated 16.07.2010, it has been held that the petitioner is eligible for promotion to the post of Senior Assistant, but despite that respondents No.3 and 4 have been promoted, who were junior to him in the feeder category. It has also been averred that respondent No.2 had earlier also, promoted Restorers to the post of Senior Assistant with the condition that they would pass typing test

as prescribed in the rules within six months and it is not the case that the petitioner had been called upon to pass typing test and he has failed to do so. The petitioner was not called for any typing test and thus the petitioner also had a right to be promoted conditionally, subject to his passing typing test within six months and as such, prayed for quashing the appointment of respondents No.3 and 4 to the post of Senior Assistant and issuing a writ of mandamus directing respondent No.2 to consider and promote him to the post of Senior Assistant, being senior most incumbent in the combined feeder category seniority.

6. Respondents No.1 and 2 filed reply to the petition and averred that the petitioner was promoted as Restorer on ad hoc basis vide office order dated 24.12.1994, subject to the approval of the Government, and his appointment was purely as a stop-gap arrangement with the rider that the promotion will not confer any right for the purposes of seniority and regularization in future. The petitioner's promotion was never approved by the State Government. As a matter of fact, after framing R&P Rules by the State Government, the petitioner was promoted as Restorer on regular basis vide office order dated 23.06.1999 (Annexure P-2). The petitioner has no cause whatsoever for claiming seniority over respondents No.3 and 4, that too, at this belated stage by counting

his so called ad hoc service w.e.f. 24.12.1994, especially when tentative seniority list of Restorers as on 31.12.1999 was circulated for inviting objections on 20.04.2000. The petitioner was not aggrieved by the said tentative seniority list and no objections were received against this seniority list and, therefore, final seniority list was issued on 09.06.2000. Similarly, another tentative seniority list of Restorers as on 31.12.2002 was issued on 15.05.2003 and no objections were received against this list and, therefore, the final seniority list was issued on 31.07.2003. Thereafter, another tentative seniority list as on 31.12.2005 was issued on 13.03.2006 by inviting objections, if any. Again this time, no objections were received and final seniority list was issued on 03.12.2006. Subsequently also the seniority list was issued on 01.06.2007 and no objections were received. In all these seniority lists finalized by the Department, the date of appointment of the petitioner in the cadre of Restorer is shown as 23.06.1999, which was never challenged by him at any point of time.

7. In the present petition, the petitioner is claiming seniority over and above the private respondents for the purpose of his promotion to the post of Senior Assistant. As a matter of fact, both respondents No.3 and 4 are senior to the petitioner, being regular appointees of 1996 and 1994 respectively. In view of the

above, it is crystal clear that the petitioner being junior most in the feeder category cannot be promoted as Senior Assistant over and above his seniors in the feeder category and, therefore, prayed that the present petition may be dismissed being devoid of any merit.

8. The petitioner has nowhere challenged the final seniority list of Restorers issued from time to time and hence not entitled, at this belated stage, to unsettle the settled seniority of Restorers.

9. On merits, it has been averred that in the DPC convened on 16.07.2010, the name of the petitioner along with other persons in the feeder categories were considered for promotion to the posts of Senior Assistant. The names of respondents No.3 and 4 were rightly shown at Sr. Nos.1 and 2 and the name of the petitioner was at Sr. No.6, being junior most in the feeder category. Further, mentioning of the date of appointment against the name of the candidates in the proceedings is not necessary. It is denied that the petitioner was senior most candidate in the feeder category. The petitioner was appointed as Restorer on regular basis in the year 1999, whereas respondents No.3 and 4 were appointed as Clerks in the years 1996 and 1994 respectively. A meeting of review DPC was fixed on 20.07.2010 and in the meeting; the eligibility of the petitioner for promotion as well

as desirability of reviewing the proceedings of DPC dated 16.07.2010, whereby private respondents No.3 and 4 were recommended for promotion was considered and the DPC did not recommend the reviewing of earlier proceedings on the ground that the appointment of the petitioner in the absence of Government approval cannot be taken as 1994 as the same will unsettle the settled position of seniority amongst the Restorers, because at no point of time the petitioner has ever challenged the seniority position assigned including date of appointment mentioned therein, which has become final. Further, it has also been observed that the petitioner has not qualified the typing test as prescribed under the Rules and, therefore, he is not eligible for promotion as Senior Assistant over and above other senior eligible persons in the feeder categories.

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

11. I have heard the learned counsel for the parties and also perused the record carefully.

12. No doubt, when the petitioner was promoted to the post of Restorer as per office order dated 24.12.1994, his promotion was made purely on ad hoc basis in the pay scale of Rs.950-1800/-

with immediate effect, subject to the approval of the Government and further it was made clear that the promotion did not confer any right for the purposes of seniority and regularization in future. However, he was promoted to the post of Restorer on the recommendations of the DPC. Further, it is not in dispute that the petitioner has discharged his duties on the post of Restorer after issuing the office order dated 24.12.1994. Thereafter, as per office order dated 23.06.1999 (Annexure P-2), his promotion was again made on the basis of the recommendations of the DPC held on 16.06.1999 to the post of Restorer in the pay scale of Rs.3120-5160/- with immediate effect. The respondents have not considered the claim of the petitioner for promotion to the post of Senior Assistant from the date of his ad hoc promotion to the post of Restorer from 24.12.1994 mainly for two reasons. Firstly, that his ad hoc promotion was not approved by the State Government and it was a stop-gap arrangement with the rider that promotion did not confer any right for the purposes of seniority and regularization in future; secondly, he did not challenge the final seniority list issued by respondent No.2, wherein the petitioner was shown to be appointed as Restorer w.e.f. 23.06.1999, though the first tentative seniority list of Restorers as on 31.12.1999 was issued which was circulated for inviting objections on 20.04.2000 and the petitioner

did not raise any objection and the final seniority list was issued on 09.06.2000. Thereafter also, many provisional seniority lists were issued and the petitioner did not raise any objection regarding assigning him seniority from the anterior date, wherein he was shown to have been appointed as Restorer w.e.f. 23.06.1999.

13. Before adverting to the aforesaid submissions, it would be relevant to consider the R&P Rules for the post of Senior Assistant notified on 13.09.1996, which clearly provides that the post of Senior Assistant is a non-selection post and the same is to be filled up 100% by way of promotion from amongst the incumbents of the clerical cadre which includes Clerks/Senior Clerks/Junior Assistants and Restorers, who possess 10 years regular service or regular combined with continuous ad hoc (rendered up to 31.03.1991). The aforesaid R&P Rules were subsequently amended vide Notification dated 06.07.2004 (Annexure P-5), when column No.11 of the unamended Rules was substituted and it was incorporated that in all cases of promotion, the continuous ad hoc service rendered in the feeder post, if any, prior to regular appointment to the post shall be taken into account towards the length of service as prescribed in these Rules for promotion, subject to the condition that the ad hoc appointment/ promotion in the feeder category has been made after following

proper acceptable process of selection in accordance with the provisions of R&P Rules. The relevant amendment carried out in the Rules is as under:

> *"(c) For the existing provisions against Col.No.11 the following may be substituted; namely:-*
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> *"By promotion from amongst the common clerical Cadre of Clerks/Junior Assistants and Restorers with 10 years regular service or regular combined with continuous adhoc service in the grade;*
>
> *Provided that these Clerks/Restorers who have been promoted from amongst the Class-IV employees or appointed on compassionate grounds having the educations qualification Martic pass or Matric in English only and Hindi Rattan pass at the time of such promotion/appointment shall not be promoted to the post of Senior Assistant unless they possess the essential qualification viz; Matric 2nd Division or 10+2 pass as prescribed for direct recruitment*
>
> *"Provided that Restorer will have to qualify the typing test prescribed for the post of clerks before being eligible for promotion to the post of Senior Assistant."*
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> *For the purpose of promotion a combined seniority list in respect of incumbent of clerical cadre and Restorers based on the length of service from the date of appointment without disturbing their unit-wise inter-se/ seniority shall be prepared.*
>
> *(1) In all cases of promotion, the contineous adhoc service rendered in the feeder post if any, prior to regular appointment to the post shall be taken into account towards the length of service as prescribed in these rules for promotion subject to the condition that the adhoc appointment/promotion in the feeder category had been made after following proper acceptable process of selection in accordance with the provisions of R&P Rules, provided that:*
>
> *1) in all cases where a junior person becomes eligible for consideration by virtue of his total length of service (including the service rendered on adhoc basis in the feeder post in view of the provision referred to above, all persons senior to him in*

the respective category/post/cadre shall be deemed to be eligible for consideration and placed above the junior person in the field of consideration;

Provided that all incumbents to be considered for promotion shall possess the minimum qualifying service of at least 3 years or that prescribed in the R&P Rules for the post, whichever is less;

Provided further that where a becomes ineligible to be considered for promotion on account of the requirements of the preceding proviso, the persons(s) junior to him shall also be deemed to be ineligible for consideration for such promotion."

14. A perusal of aforesaid Rule clearly reveals that for the purpose of promotion, a combined seniority list in respect of incumbents of Clerical Cadre and Restorers based on the length of service from the date of appointment, without disturbing their unit-wise *inter se* seniority, shall be prepared and further the continuous ad hoc service rendered in the feeder post, if any, prior to regular appointment to the post shall be taken into account towards the length of service as prescribed in the Rules. Once the petitioner was appointed on ad hoc basis as a Restorer on the recommendations of the DPC vide office order dated 24.12.1994 and again he was appointed on the same post on the recommendation of the DPC, the period of ad hoc service rendered by him on the post of Restorer ought to have been counted for the purpose of making promotion to the post of Senior Assistant without disturbing the unit-wise *inter se* seniority. His appointment as Restorer on ad hoc

basis was made after following proper procedure.

15. The plea taken by the respondents that since the ad hoc appointment of the petitioner as Restorer was not approved by the State Government, the petitioner is not entitled to count the said service, more especially when it was specifically mentioned in the order that the promotion is purely on ad hoc basis and will not confer any right for the purpose of seniority and regularization is concerned, the said contention cannot be accepted for the reason that it was not within the ambit of the petitioner to get the approval of the State Government for ratifying his promotion to the post of Restorer. Further, it is not the case of the respondents that the promotion of the petitioner was not on the basis of the recommendations of the DPC and he has not continuously rendered services from 24.12.1994 till his promotion again made on 23.06.1999. Once respondent No.2 had convened the DPC before making ad hoc promotion of the petitioner to the post of Restorer and thereafter the office order dated 24.12.1994 (Annexure P-1) was issued, the period of service rendered by him as Restorer on ad hoc basis cannot be ignored, especially when the Rules specifically envisage that the continuous ad hoc service rendered in the feeder post, if any, prior to regular appointment to the post shall be taken into account towards the length of service. Had the Rules not

envisaged that the continuous service rendered in the feeder post if any, prior to regular appointment to the post shall be taken into account towards the length of service for promotion, the respondents were right in ignoring the said service.

16. Learned Additional Advocate General and learned counsel representing respondent No.3 vehemently argued that since the petitioner did not challenge the final seniority list, which was in his knowledge and was issued on 09.06.2000, wherein the date of appointment of the petitioner as Restorer has been shown as 23.06.1999, after a gap of 10 years, he cannot draw any benefit of the ad hoc service rendered by him. However, the said contention cannot be accepted for the reason that once the Rules governing the field of promotion clearly mention that the continuous ad hoc service rendered in the feeder post, if any, prior to regular appointment to the post shall be taken into account towards the length of service, irrespective of the petitioner showing to be appointed on 23.06.1999, the past service rendered by him on ad hoc basis cannot be obliterated for the purpose of considering his candidature for promotion to the post of Senior Assistant. The petitioner is not aggrieved by his seniority. His claim is only to the effect that since the Rules envisage that the continuous ad hoc service prior to regular appointment to the post of Restorer shall be

taken into account for promotion, which has not been considered, the issue regarding delay is not fatal to him since he has approached the Court immediately after promotion of respondents No.3 and 4.

17. Learned Additional Advocate General has placed reliance upon the judgments passed by the Hon'ble Supreme Court in *Karnataka Power Corpn. Ltd. Through its Chairman & Managing Director and another vs. K. Thangappan and another,* (2006) 4 SCC 322 and *Tridip Kumar Dingal and others vs. State of West Bengal and others* a/w connected matters, (2009) 1 SCC 768 and contended that since the petition is hopelessly time-barred, the petitioner is not entitled for any relief for the reason that he did not rake up the issue regarding his seniority, which was assigned to him way back in the year 2000, when the final seniority list was issued, wherein the petitioner was shown to be appointed on 23.06.1999.

18. So far as the judgment in *Karnataka Power Corporation Limited's* case (supra) is concerned, the Hon'ble Supreme Court has undoubtedly considered that delay and laches is one of the factors, which is to be borne in mind by the High Court, when they exercise their discretionary powers under Article 226 of the Constitution of the India. But in the present case, the petitioner is not aggrieved by the seniority list of Restorer, for the reason that as per the final

seniority list as issued on 31.12.1999, he was shown to have been appointed in the grade of Restorer on 23.06.1999 and two other persons who have also been appointed on the same date have been shown junior to him and earlier to him, the person who was appointed in the same grade was appointed on 30.12.1980. The petitioner is aggrieved by the promotions of respondents No.3 and 4 only for the reason that his ad hoc service has not been counted while preparing the *inter se* seniority and the plea which has been taken by the respondents that the seniority will be disturbed is not correct for the reason that there is no dispute regarding the seniority in the cadre of Restorer raised by the petitioner for the purpose of claiming any benefit. His grievance is only to the extent that as per the Rules, the continuous ad hoc service rendered by him as Restorer had to be counted for the purpose of making promotions, which has wrongly been denied to him.

19. The another judgment which has been cited by the learned Additional Advocate General in ***Tridip Kumar Dingal's*** case (supra) is also not attracted to the facts of the present case for the reason that the petitioner is not aggrieved by the seniority list in the cadre of Restorer, his precise grievance is only to the effect that once the petitioner has rendered continuous ad hoc service in the feeder post of Restorer prior to his regularization, the same ought

to have been taken into account for promotion to the post of Senior Assistant, which has not been done.

20. Another ground, which has been raised by the respondents that as per the R&P Rules for the post of Senior Assistant, the pre requisite condition for appointment to the post of Senior Assistant is that the candidate has to qualify the typing test. The petitioner has specifically mentioned in para (c) of the grounds of the petition that he was not called upon to pass any typing test and once the petitioner was not given chance to pass the typing test and the DPC was convened on 16.07.2010, the plea raised that he did not qualify the typing test cannot be countenanced and the same is rejected. Had the petitioner been called for the typing test and failed, respondent No.2 could have been right in rejecting the claim or not considering the claim for the purpose of promotion to the post of Senior Assistant.

21. Learned counsel representing respondent No.3 has vehemently argued that since there is no fault on the part of respondents No.3 and 4, who have been promoted to the post of Senior Assistant considering their appointment in the feeder category in the years 1996 and 1994, which was before the appointment of the petitioner on regular basis, their promotion may not be disturbed at this belated stage, especially when they have

now retired from service. There is a force in the said contention and this Court without disturbing the promotion of respondents No.3 and 4, is ordering to make promotion of the petitioner to the post of Senior Assistant from the same date when respondents No.3 and 4 have been promoted. Since the petitioner has now retired from service, the respondents shall not undertake his typing test for the purpose of making promotion to the post of Senior Assistant.

22. Learned counsel for the petitioner has submitted that though the petitioner was subsequently promoted to the post of Senior Assistant in the year 2012, but since he was wrongly ignored in the year 2010, when the DPC was convened on 16.07.2010, he is entitled to all the benefits from the said date. It is clarified that in case there was no post available in the year 2010, the respondents/ competent authority shall create a supernumerary post, so as to accommodate the petitioner to the post of Senior Assistant.

23. Consequently, the present petition is disposed of with a direction to respondents No.1 and 2 to promote the petitioner to the post of Senior Assistant w.e.f. 22.07.2010, when respondents No.3 and 4 were promoted with all consequential benefits. In case the post of Senior Assistant was not available as on 22.07.2010, respondents No.1 and 2/competent authority shall create a supernumerary post, so that the promotion of respondents No.3

and 4, who have now retired, is not disturbed, to accommodate the petitioner. No order as to costs. Pending applications, if any, also stand disposed of.

29th October, 2026
(ankit)

(Jiya Lal Bhardwaj)
Judge