IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.7715 of 2022
Decided on: 31st October, 2026

Chitar Lekha ...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. Lovneesh Kanwar, Senior Advocate with Mr. Mohar Singh and Mr. Tek Chand, Advocates.**
For the respondents:	**Mr. R.P. Singh, Deputy Advocate General for respondents No.1 & 2-State.**
	Mr. Rajender Thakur, Advocate for respondent No.3.
	Name of respondent No.4 stands deleted vide order dated 06.01.2023.

Jiya Lal Bhardwaj, Judge (Oral)

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

> *"i. That the respondent no. 1 and 2 may kindly be directed to consider the petitioner for the post of supervisor (LDR with all consequential benefits.*
>
> *ii. That respondent no. 1 and 2 may kindly be directed to consider the petitioner to the post of supervisor (LDR) as per Model Roaster of Reservation (Annexure P-8) against 51*

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

> *posts of supervisor (LDR) filled up under one and same advertisement i.e. 35-3/2019 dated 28/12/2019 and to give appointment to the petitioner from the date when other similar situated persons were given appointment with all consequential benefits."*

2. Shorn of unnecessary details, the key facts of the case are that the petitioner, who was working as Anganwari Worker in Anganwari Centre, Kainth Ka Jubbar, Tehsil and District Shimla, H.P. had applied to the post of Supervisor, pursuant to Advertisement dated 28.12.2019 (Annexure P-1) which was to be filled up from amongst the Anganwari Workers/Balwari Workers/ Balwari Teachers, Bal sevikas/Principal/Lady Social Instructor of Anganwari Training Centre/Middle Level Centres, having passed matriculation examination from recognized Board of School Education/Institution with ten years experience. Total 41 number of posts were advertised to be filled up under Limited Direct Recruitment (in short 'LDR') on contract basis. The petitioner appeared in the screening test/written examination conducted by respondent No.3 on 20.09.2020. Thereafter, respondent No.3 recommended 41 candidates for appointment to the post of Supervisor vide Notification dated 08.02.2021 (Annexure P-2).

3. The petitioner has placed on record the merit/category-wise waiting panel for the post of Supervisor

(LDR) and as per the said waiting list, who belongs to Other Backward Class unreserved [(in short “OBC”) (“UR”)] is shown at Serial No.2. It has been averred that after the recommendation made by respondent No.3 to fill up 41 posts of Supervisor, respondent No.1 had filled up 10 more posts of Supervisors as per the recommendation made by respondent No.3, vide Notification dated 09.07.2021 (Annexure P-4).

4. Since respondent No.3 had not recommended the persons on the basis of the reservation roster and thereafter, respondent No.1 had offered appointments, a petition was instituted before this Court by one Smt. Chander Kala, which came to be registered as CWP No.4497 of 2021, contending therein that she was placed at Serial No.1 in the waiting list of OBC category and her name ought to have been recommended for appointment as Supervisor and since respondent No.3 did not recommend her name, though she ought to have been offered the appointment in case the reservation was provided to the category of OBC, this Court vide judgment dated 14.10.2022 had allowed the said petition and came to the conclusion that the omission on the part of respondents No.1 and 2 by not providing reservation to OBC(UR) category against 10 additional posts

of Supervisor is unconstitutional, arbitrary, unreasonable and irrational and, therefore, respondents No.1 and 2 were directed to provide proportionate reservation to OBC (UR) category against 10 posts of Supervisor, requisitioned to be filled vide communication/requisition dated 30.06.2021 and to offer appointment to the petitioner against the post allotted to the said category, since 01.07.2021 or the date from which, 10 persons recommended for additional posts in pursuance of requisition dated 30.06.2021 were offered appointment and to extend all consequential benefits, including pay, arrears, seniority, etc. After passing the judgment by this Court, the petitioner Chander Kala was offered appointment under the OBC (UR) category.

5. The grievance of the petitioner in the present petition is that as per the Model Roster of Reservation (Annexure P-8) appended with the petition, in case 10 posts of Supervisors were filled up after filling up 41 posts of Supervisors, the post at Serial Nos.45 and 49 were to be filled up from the category of OBC (UR) as per Annexure-C (Page 91), but despite the judgment passed by this Court, respondents had only offered the appointment to Chander Kala, OBC(UR) category, who had approached this Court by way of writ petition mentioned above. Since the

respondents did not adhere to the Model Roster of Reservation to fill up the posts, hence the action on the part of the respondents by not providing 9th post to OBC (UR) candidate, against total 51 number of posts of Supervisors (LDR), is misconceived, irrational, arbitrary, unconstitutional, violative of Articles 14 and 16 of the Constitution of India and against the principles of natural justice and as such, prayed that respondents No.1 and 2 may kindly be directed to consider the petitioner for the post of Supervisor (LDR) with all consequential benefits, as per Model Roster of Reservation against 51 posts of Supervisors filled up under one and same Advertisement dated 28.12.2019.

6. Respondents No.1 and 2 filed reply to the petition and in preliminary submissions averred that there is a provision in the Recruitment and Promotion Rules (in short 'R&P Rules) of the Supervisors for filling up 40% of total posts by way of LDR through respondent No.3 from the eligible Anganwari Workers, who have minimum qualification of matriculation and have more than 10 years' experience as an Anganwari Worker. The posts reserved for the candidates belonging to the categories of BPL, Ex-servicemen, Children/Grand Children of Freedom Fighters,

specially abled persons and Distinguished Sports Persons to specific/earmarked roster points were lying vacant for a long time and due to non-availability of the candidates of these categories, proposal to fill up 41 posts under Direct Recruitment (LDR) from the residuary categories, to which, the point originally belongs was sent to the Government. The Government had advised to take decision as per the instructions issued by the Department of Personnel and thereafter requisition was sent to respondent No.3 to fill up 41 posts of Supervisor under LDR. Thereafter, the State Government decided to fill up 10 vacant posts of Supervisor, which were anticipated by way of LDR and in pursuance of the said decision, a requisition was sent to respondent No.3. Accordingly, 8 posts were allocated to the General category and remaining 2 posts were earmarked for Scheduled Caste category as the LDR is construed to be promotion as per the instructions of the Department of Personnel and hence no posts were reserved for the OBC category. Further, there is no provision of reservation for the OBC in promotion, as reservation to this category is confined to the recruitment only as per the decision taken by the Government. The requisition to fill up the anticipated vacancies was sent to respondent No.3 and the petitioner is

from the OBC category and, therefore, she is not entitled for appointment as Supervisor, as no posts were reserved for this category while filling 10 posts of Supervisors.

7. On merits, it has been averred that the Department had sought one-time relaxation to fill up vacant posts of Supervisor under horizontal reservation from the respective main category to which the points originally belong, allocating seven posts of Supervisor to the OBC category as special case as these posts were lying vacant for quite a long time. However, no posts were to be earmarked to the OBC category as per the instructions of the Department of Personnel, since LDR was to be construed as a promotion and hence these posts were not reserved to the OBC in the subsequent requisition of 10 posts of Supervisor, which was sent to respondent No.3, as per decision of the Government and thus, prayed for dismissal of the petition.

8. Respondent No.3 filed separate reply to the petition and averred that Chander Kala had earlier filed a petition before this Court and vide judgment dated 14.10.2022, this Court had directed respondents No.1 and 2 to provide proportional reservation to OBC (UR) category against 10 posts of supervisor LDR vide requisition letter

dated 30.06.2021 and offer appointment to her against the post allocated. After passing the judgment by this Court, respondent No.1 had requested respondent No.2 to take further necessary action in the matter. Respondent No.3 is a recruiting agency and its work is only to recommend the candidates as per the requisition received from the employer Department.

9. The petitioner filed rejoinder to the replies filed by the respondents and controverted the averments made therein.

10. I have heard Mr. Lovneesh Kanwar, learned senior counsel duly assisted by Mr. Mohar Singh and Mr. Tek Chand, Advocates, Mr. R.P. Singh, learned Deputy Advocate General as well as Mr. Rajender Thakur, learned counsel representing respondent No.3. The record of the case has also been perused carefully.

11. As per the reply filed by respondents No.1 and 2, when 10 number of posts of Supervisor were subsequently filled up, no post was reserved for OBC category for the reason that there is no provision of reservation for the OBC in promotion, as reservation to this category is confined to the recruitment only, as per the decision taken by the Government.

12. In the petition instituted by Chander Kala, who belongs to the category of OBC, similar plea was raised by respondents No.1 and 2. However, this Court had negated the said plea holding that the respondent-State does not consider Anganwari workers as its employees, but they are considered to have been engaged as Anganwari workers in the ICDS scheme formulated by the Central/State Government in terms of the scheme/guidelines for appointment of Anganwari workers/Helpers under ICDS program in Himachal Pradesh on honorarium basis under ICDS scheme run by Social Justice and Empowerment Department. Once under the said scheme, Anganwari workers are appointed on honorarium basis paid by the Centre and the State Government on sharing basis as agreed and notified, the Anganwari workers or helpers engaged under the scheme shall have no right to claim regularization/ absorption/ appointment as regular employees of the State Government. Had the Anganwari workers been employees of the Department, the LDR may have been construed as promotional channel provided to such employees, but once the Anganwari workers are not the employees of the Department, therefore, LDR provided for Anganwari workers to the post of Supervisor can by no

stretch of imagination be construed as promotion and thus, the plea raised by the respondents for not providing any post of OBC (UR) category in additional 10 posts of Supervisor was held to be misconceived, irrational, arbitrary and unreasonable and directed the respondents to offer appointment to Chitar Lekha-peitioner as Supervisor pursuant to requisition dated 30.06.2021 and extend all consequential benefits. The relevant paras of the judgment are reproduced here in below:-

> *"9. Admittedly, respondent/State does not consider Anganwari workers its employees but they are considered to have been engaged as Anganwari workers in the ICDS Scheme formulated by Central/State Government, in terms of Scheme/Guidelines for appointment of Anganwari Workers/Helpers under ICDS Programme in Himachal Pradesh on honorary basis, under ICDS Scheme run by Social Justice and Empowerment Department, notified and revised by Government of Himachal Pradesh, vide Notifications No.WLF-B(14)-3/87 dated 11.4.2007, 6.7.2007, 20.9.2007, 17.6.2008, 18.11.2008, 7.1.2009 and 5.10.2009. Under this Scheme, Anganwari Workers are appointed on honorarium basis, paid by Centre and State Governments on sharing basis, as agreed and notified and they are responsible to perform all duties/ responsibilities related to ICDS and Women Empowerment Programmes, as per ICDS manual and*

instructions issued by the Centre and State Government from time to time. As per Scheme, Anganwari Workers or Helpers engaged under the Scheme shall have no right to claim regularization/absorption/appointment as regular employees of the State Government. Thus, Anganwari Workers are not extended any benefit as an employee of State Government or department of Women and Child Welfare, whereas Supervisor is Government employee of the said department and appointment to the post of Supervisor is made through Direct Recruitment, wherein certain percentage of posts, as per R&P Rules, are to be filled from amongst the candidates working as Anganwari workers by way of Limited Direct Recruitment restricting the eligibility of candidates for such percentage of posts of Supervisor, who are serving as Anganwari Workers with certain qualification with specified length of period of service. Therefore, appointment of Anganwari workers as a Supervisor is not a promotion but is a direct recruitment to the said post, but by limiting the source for such direct recruitment for a particular percentage of posts. This fact is also evident from Advertisement 35- 3/2019 (Annexure P-1) whereby 41 posts of Supervisor were advertised to be filed by direct recruitment by inviting Online applications for direct recruitment to the post advertised through this advertisement.

10. Had Anganwari workers been employees of Department, the Limited Direct Recruitment may have been construed as promotion channel provided to such employees. But Anganwari workers are not

employees of Government, therefore, Limited Direct Recruitment provided for Anganwari worker to the post of Supervisor can at no stretch of imagination be considered a promotion. Therefore, plea of respondents-department for not providing any post to OBC (UR) category in additional 10 posts is misconceived, irrational, arbitrary and unreasonable.

11. Instructions dated 17th November, 2014 issued by the Department of Personnel are not the instructions dealing with Limited Direct Recruitment as provided to the post of Supervisor in Women and Child Welfare Department from amongst Anganwari workers who are not employees of State but are only engaged Anganwari workers on honorarium basis under a project/scheme. These instructions are applicable where LDR is provided to the Government employees as promotion to next higher post. Further, quota in these instructions clearly indicates that instructions are related to promotion of Class-IV employees to the post of Clerk, meaning thereby that such limited direct recruitment quota is that quota which has been provided to already serving employees in the department to next higher post i.e. from Class-IV to Class-III post and as discussed earlier Anganwari workers are not any kind of employees of Government, muchless Class-IV or Class-III employees of department.

12. As recruitment to the post of Supervisor from amongst Anganwari workers is a direct recruitment out of non-Governmental employees, who have been engaged as Anganwari workers on honorarium basis under the Project/Scheme, therefore, reservation applicable to direct recruitment at the time of initial

appointment shall also be applicable to vacancies/posts available to be filled by way of Limited Direct Recruitment from amongst Anganwari workers as applicable for other direct recruitment and therefore, candidates belonging to Other Backward Classes working (engaged) as Anganwari workers are also entitled for reservation in Limited Direct Recruitment to the post of Supervisor through Limited Direct Recruitment. Thus, omission or commission on part of respondents No.1 and 2 by not providing reservation to OBC category (UR) in 10 additional posts is unconstitutional, arbitrary, unreasonable and irrational and, therefore, respondents No. 1 and 2 are directed to provide proportionate reservation to OBC (UR) category against the 10 posts of Supervisor requisitioned to be filled vide communication/ requisition dated 30.6.2021 and to offer appointment to petitioner against post allotted against the said category, since 1st July, 2021 or the date from which 10 persons recommended for additional posts in pursuance to requisition dated 30.6.2021 were offered appointment and to extend all consequential benefits, including pay, arrears, seniority etc. to petitioner on or before 31st December, 2022 failing which petitioner shall also be entitled for interest on arrears at the rate of 5% per annum from the date of accrual thereof."

13. Once a coordinate Bench of this Court has already held that the appointment to the post of Supervisor under LDR cannot be construed as promotional channel, the

plea taken by the respondent-State that there is no provision of reservation for the OBC in promotion cannot be countenanced and the said plea is rejected.

14. In the reply, the respondent-State has not disputed the roster of reservation (Annexure P-8) appended with the petition. Once the respondent-State has not disputed the roster point in the roster of reservation, the posts of Supervisors at Serial Nos.45 and 49 were to be filled through the candidates from OBC category and since the petitioner was in the waiting list (Annexure P-3) at Serial No.2 and Chander Kala, who was at Serial No.1 in the waiting list (Annexure P-3) has been offered the appointment qua the roster point at serial No.45, the petitioner is entitled to be offered appointment as Supervisor at roster point 49 and thus, the action on the part of respondents No.1 and 2 not to offer appointment to the petitioner is illegal, arbitrary and unconstitutional. The action on the part of respondent No.3 too in not recommending the names as per the reservation to the category of OBC(UR) is arbitrary and unconstitutional.

15. Learned senior counsel representing the petitioner has submitted that the judgment passed by a coordinate Bench of this Court was assailed by the

respondent-State by way of Letters Patent Appeal, which came to be dismissed on 17.08.2023. Once the judgment passed by a coordinate Bench has attained finality and further the respondents have not disputed the decision passed by a coordinate Bench of this Court and further not stated anything that the said judgment was further assailed, the petitioner, who belongs to OBC category and was in the waiting list at Serial No.2, ought to have been offered appointment as per the roster of reservation and since the respondents have not adhered to the roster and did not keep any post reserved for OBC(UR) category, the action on the part of the respondents is arbitrary and discriminatory as well as violative of Articles 14 and 16 of the Constitution. The petitioner who belongs to OBC(UR) category cannot be deprived of appointment to the post of Supervisor from the date when Chander Kala was appointed.

16. Consequently, the present petition is allowed and the respondents are directed to offer appointment to the petitioner to the post of Supervisor from the date when Chander Kala has been offered appointment with all consequential benefits. However, it is made clear that the petitioner shall be paid the monetary benefits from today

only. No order as to costs. Pending applications, if any, also stand disposed of.

(Jiya Lal Bhardwaj)
Judge

31st October, 2026
(naveen)