IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWPOA No.3677 of 2019
Decided on: 30th October, 2026

Balbir Singh Pathania ...Petitioner

versus

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

Coram

Hon'ble Mr.Justice Jiya Lal Bhardwaj, Judge.

Whether approved for reporting?[1] Yes.

For the petitioner:	**Dr. Lalit K. Sharma, Advocate.**
For the respondents:	**Mr. R.P. Singh, Deputy Advocate General.**

Jiya Lal Bhardwaj, Judge (Oral)

The petitioner by way of present petition has sought a direction to the respondents to consider his case for regular promotion to the post of Librarian with effect from 25.06.1998 in the UGC pay scale of Librarian, since he was eligible and qualified to hold the post strictly as per the University Grants Commission's Instructions and Notifications and even as per the Recruitment and Promotion Rules with all consequential benefits along with interest @12% per annum.

2. Shorn of unnecessary details, the key facts of the case are that the petitioner, who had obtained degree of Bachelor of Library Science, Master of Arts and degree in Masters of Library and

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

Information was appointed as Assistant Librarian in Indira Gandhi Medical College (in short "IGMC"), where he joined his duties on 18.09.1993. Since the petitioner was possessing the requisite qualification to hold the post of Librarian, respondent No.1 vide office order dated 28.09.1999 (Annexure P-4) had accorded approval for giving him additional charge of the post of Librarian in respondent No.3-College in addition to his own duties and further he was held entitled to the benefit of officiating allowance as admissible under Fundamental Rule 49.

3. The petitioner who was possessing the qualification to hold the post of Librarian made a representation to respondent No.3 for his promotion to the post of Librarian, which representation was forwarded by respondent No.3 to respondent No.2 on 27.04.2001 (Annexure P-5), specifically mentioning therein that the post of Librarian is lying vacant since 25.11.1997 due to promotion of Shri M.L.Verma as Librarian on *ad hoc* basis, who has been posted in Dr. Rajendra Prasad Medical College, Tanda (in short "Dr.RPMC Tanda") against the newly created post and the post of Librarian is lying vacant in IGMC since 25.06.1998 due to retirement of Shri N.K. Gupta. Respondent No.2 on receipt of the representation made by the petitioner took up the matter with respondent No.1, vide letter dated on 29.03.2003 (Annexure P-10), reiterating the same facts

and requested to consider the case of the petitioner for promotion as Librarian against the vacant post of Librarian on the analogy of Shri M.L. Verma, Assistant Librarian, who was promoted vide Government Notification dated 22.11.1997, so that the work of the Central Library of IGMC Shimla does not suffer for want of adequate staff as per the norms of the Medical Council of India.

4. Since no action was taken by respondent No.1, the petitioner had approached the Himachal Pradesh Administrative Tribunal (in short "Tribunal") by way of Original Application No.2352 of 2003 seeking redressal of his grievances. Since the Original Application was not decided, the petitioner made a representation to respondent No.1 on 21.04.2007 (Annexure P-11) for considering him for promotion to the post of Librarian in IGMC Shimla and he had already made a representation dated 23.10.2002.The Original Application preferred by the petitioner was transferred to this Court after abolition of the Tribunal and this Court vide order dated 24.02.2011 had directed the respondents to finalize the Recruitment and Promotion Rules (in short the 'R&P Rules'), since it was mentioned in the reply that there is a proposal for amendment in the Recruitment and Promotion Rules of the Librarian.

5. Even after the direction given by this Court to finalize the R&P Rules, the proposal for amendment of the R&P Rules of the

post of Librarian was not finalized and the petitioner had to approach this Court by way of a writ petition being CWP No.227 of 2014, titled, **Balbir Singh Pathania** vs. **State of HP and others**, which came to be disposed of on 30.06.2014 (Annexure P-19) with a direction to the respondent-State to finalize the R&P Rules, preferably within a period of 10 weeks, by publishing the same in the official gazette.

6. After the direction given by this Court, respondent No.1 had notified the R&P Rules for the post of Librarian, Class-III (Non-Gazetted) in the Department of Medical Education and Research Himachal Pradesh, vide Notification dated 21.10.2014 (Annexure P-20) and thereafter, the petitioner was promoted to the post of Librarian, vide office order dated 12.08.2015 (Annexure R-1).

7. The precise grievance of the petitioner as raised in the writ petition and canvassed by Dr. Lalit K. Sharma, Advocate is that since the petitioner was possessing the requisite qualification to hold the post of Librarian, which was sanctioned and further he was even given the charge of the said post, he is entitled to promotion to the said post from the date when he was given the additional charge. Further, the petitioner is also entitled to the UGC pay scale, more particularly, when the respondent-State had granted the said scale

to Shri M.L. Verma, Librarian vide order dated 20.06.2007 (Annexure P-12).

8. Learned counsel for the petitioner also submitted that similar benefits of UGC scales were extended to Shri Narendra Kumar Gupta, who was earlier holding the post of Librarian in IGMC Shimla and since the petitioner has also discharged the same duties, functions and responsibilities, he is also entitled to the same benefits, more particularly, when he is working and discharging his duties on the post of Librarian in IGMC Shimla against a sanctioned post.

9. The respondents filed reply to the petition and in preliminary submissions averred that the R&P Rules to the post of Librarian in the Medical Education Department have been finalized and notified by the Government, vide Notification dated 21.10.2014, by which, the pay scale of Librarian is Rs.10300-34800+3600 Grade Pay. After notifying the R&P Rules, respondent No.2 had convened a meeting of the Departmental Promotion Committee (in short 'DPC') on 10.08.2015 and promoted the petitioner along with Shri Pradeep Bahl, after completing all formalities to the post of Librarian. The claim of the petitioner to treat him at par with those Librarians, who are working in the Education Department for the purpose of pay parity, is not justified and sustainable as every Department of the

State has its own R&P Rules for the different posts and these employees are governed by the R&P Rules for the different posts and these employees are governed by the R&P Rules for the respective Departments accordingly. Hence, the question of granting UGC scale to the petitioner does not arise. The principle of 'equal pay for equal work' with reference to grant of pay scales has been defined in clear terms by the Hon'ble Supreme Court. Further, this Court in LPA No.11 of 2012, decided on 22.09.2014 has laid down the principle that parity of pay scale cannot be claimed on the sole ground of designation and there are other important factors which are to be taken care of while determining the parity in pay scales. On merits, a similar stand has been taken and prayer has been made to dismiss the petition.

10. In rejoinder, the petitioner has specifically mentioned that he is discharging the duties of Librarian right from 25.06.1998 i.e. after the retirement of the then Librarian Shri Narendra Kumar Gupta, who was getting the UGC scale at the time of his retirement, which was even revised from time to time. Further, it has been averred that the respondents cannot adopt pick and choose policy and it is settled law that there can't be two different pay scales for one post in the same Department.

11. I have heard Dr. Lalit K. Sharma, learned counsel for the petitioner and Mr. R.P. Singh, learned Deputy Advocate General for the respondents and also perused the record carefully.

12. It is not in dispute that the petitioner was possessing the requisite qualification to hold the post of Librarian. It is also not in dispute that the post of Librarian was sanctioned and lying vacant and the petitioner was given the additional charge of the post of Librarian. The petitioner has placed on record the order dated 20.06.2007 (Annexure P-12, page 31)), whereby Shri M.L. Verma, Librarian, who was working in the Department of Medical Education, Himachal Pradesh and serving in Dr. RPGMC, Tanda was granted the UGC scale of Rs.8,000-13,500/- with effect from 01.01.1996.Once the post of Librarian was sanctioned and lying vacant and further the petitioner was possessing the requisite qualification to be promoted to the said post, the action on the part of the respondents in not promoting him to the post of Librarian from the due date is not justified, more especially when earlier the posts was manned by Sh. Narendra Kumar Gupta. This action on the part of the respondents is arbitrary, discriminatory and violative of Article 14 of the Constitution of India.

13. As per the order passed by this Court, which is based on the reply filed by the respondents to the Original Application, the

stand of the respondent-State was only that the proposal for amendment in the R&P Rules of Librarian is under consideration, in which mode of recruitment had been proposed 100% by promotion from amongst the Assistant Librarians, failing which, by direct recruitment and this Court had given direction to the respondents to finalize the R&P Rules of the post of Librarian. Once the petitioner was possessing the requisite qualification and the post was sanctioned and lying vacant, there was no justification to linger on the matter and not to make the promotion of the petitioner to the post of Librarian, only on the ground that there is proposal of amendment of the R&P Rules for the post of Librarian.

14. Learned Deputy Advocate General has vehemently argued that once the petitioner has been promoted as per the recommendations of the DPC convened on 10.08.2015, the relief claimed by him has been redressed. However, this submission cannot be accepted for the reason that the petitioner is claiming his promotion from the date when the post was lying vacant and he was possessing the requisite qualifications to hold the post. Once the petitioner was discharging the duties on the post of Librarian, he cannot be denied the remuneration of the said post after adjusting the benefit granted to him under FR 49.

15. Learned Deputy Advocate General has further vehemently argued that the claim of the petitioner to treat him at par with those Librarians working in the Education Department for the purpose of pay parity is not justified and the said relief cannot be granted to him for the reason that every Department of the State has its own R&P Rules for the different posts and these employees are governed by the R&P Rules of the respective Departments. There is no quarrel with respect to this settled proposition of law that the petitioner cannot claim parity and pay scale as granted to the employees of other Departments. However, at the same time, this Court cannot ignore the fact that once the respondent-State in the same Department, where the petitioner had been working had granted the UGC pay scale, as is evident from a perusal of office order dated 20.06.2007 (Annexure P-12), when the Government had accorded approval to grant the UGC scale of Rs.8000-13500/- to M.L. Verma, Librarian, who retired from service with effect from 01.01.1996 from Dr. RPMC Tanda, the same scale cannot be denied to the petitioner. Not only this, even prior to this, Shri N.K. Gupta, who was working in IGMC Shimla as Librarian, where the petitioner was working and given the additional charge of the post of Librarian, was also granted the UGC pay scale and once the incumbents in the same Department were granted the benefit of

UGC scale, the petitioner cannot be denied the said benefit, more especially, when he has also discharged the same duties, functions and responsibilities and denying the UGC pay scale to the petitioner is violative of Articles 14 and 16 of the Constitution of India.

16. Learned counsel for the petitioner has placed reliance upon the judgment passed by a Division Bench of this Court in CWP (Original Application) No.4314 of 2020, titled, **P.N. Chauhan** vs. **Himachal Pradesh University** and contended that since the petitioner has discharged the duties of Librarian, which fact is evident from a perusal of the office order dated 28.09.1999 (Annexure P-4), when he was granted the approval of getting additional charge of the post of Librarian in addition to his own duties and further entitled to the benefit of officiating allowance as admissible under FR 49, he is also entitled to the UGC pay scale as granted to the incumbent, who was earlier discharging the duties on the said post. The Division Bench of this Court in the aforementioned judgment has held that once a person has performed duties of a higher office for a long period of time and thereafter his services have been regularized on the said post, he must get the salary of the same post. The relevant paras of the judgment read as under:-

> *"14. Thus, what can be taken to be settled is that a person, who performed duties of a higher office especially for a long period of time and his services thereafter regularized on the said post or is otherwise appointed to the said post must get the salary of the same post. They cannot waive fundamental/legal right to get higher salary even if an endorsement was made in the office order that the petitioner will not get mandatory benefits. This was held by a learned Single Judge of this Court in CWP(T) No. 7099 of 2008 titled Shiv Dayal Kataria Vs H.P University and another and the said judgment in turn has been upheld by this Court in LPA No.100 of 2010 in case titled as Himachal University Vs. Shiv Dayal Kataria and another decided on 27.10.2015. Admittedly, the said judgment has attained finality and we see no reason to take a different view.*
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> *15. In addition to the aforesaid, it is failed to understand as to how the University could have denied the benefit of the pay to the petitioner merely on the basis of queries raised by the Audit Department. Admittedly, such queries are not brought to the notice of the petitioner and in such circumstances, the benefits to the petitioner could not have been withheld solely on the basis that the audit para remained unsettled on the part of the State Audit Department."*

17. Learned Deputy Advocate General has placed reliance upon the judgment passed by the Division Bench of this Court in LPA No.11 of 2012, titled, **The Principal Secretary (Personnel) and another** vs. **Pratap Thakur**, decided on 22.09.2014 to contend that the parity of pay scale cannot be claimed on the sole ground of designation and there are other important factors, which are also to be considered while determining the parity in pay scales. As already observed above, no doubt, it is settled law that an employee cannot be granted the benefit of same scale on the basis of designation in two different Departments, but in the present case, two persons

who were holding the same post of Librarian in the same Department once having been granted the UGC pay scale, the petitioner cannot be deprived of the said benefit and in case, it is done, it would amount to arbitrary and discriminatory action as well as would be violative of Articles 14 and 16 of the Constitution of India. Thus, the aforementioned judgment is not attracted to the facts of the present case.

18. Consequently, the present petition is allowed and the respondents are directed to grant the UGC pay scale to the petitioner of the post of Librarian from the date when he became eligible under the R& P Rules, on the analogy of UGC pay scale granted to Shri M.L. Verma, Librarian with all consequential benefits. Since the petitioner has retired from service, the respondents are also directed to revise his pension and grant him the arrears within six months from today and in case the arrears of salary and pension are not paid to him within the aforesaid period, the respondents shall pay interest on the arrears @6% per annum from today till actual payment. No order as to costs. Pending applications, if any, also stand disposed of.

(**Jiya Lal Bhardwaj**)
Judge

30th October, 2026
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