

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**CWP No. 4240 of 2023
Reserved on 11.3.2025
Pronounced on:11.04.2025**

Ashish Kumar Rana and another ...Petitioners.

Versus

Hon'ble High Court of HP and others
.....Respondents.

Coram:

**The Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice.
The Hon'ble Mr. Justice Ranjan Sharma, Judge.**

Whether approved for reporting?

For the petitioners: Mr. Rajnish Maniktala Senior Advocate
with Mr. Dinkar Bhaskar, Advocate.

For the respondents: Mr. Rajiv Jiwan, Senior Advocate with Mr.
Nitin Thakur, Advocate, for respondent
No.1.
Respondents No. 1 to 4 ex parte.

G.S. Sandhawalia, Chief Justice.

Petitioners seek quashing of the final result for the posts of Translators which is in favour of the private respondents No. 2 to 4, who were appointed as such from the posts of Junior Assistants, which order dated 07.07.2023 (Annexure P.10/A) was made subject to the final outcome of the present writ petition. Similarly, a prayer has also been

made challenging the final result for the posts of Translators dated 26.06.2023 (Annexure P-10), whereby the petitioners were shown as not selected on account of the fact that they already stood promoted as Senior Assistants. The relief thus claimed is that a direction be issued by this Court for re-drawing the final result after declaring the petitioners as eligible for the posts of Translators, as per the amended writ petition.

2. As per the reply filed by respondent No. 1, petitioners were not selected as Translators on the ground that they already stood promoted as Senior Assistants which is a post having equivalent grade pay to that of Translator. It is thus the stand of respondent No. 1 that by staking a claim to the post of Translator, the petitioners ought to have refused promotion to the post of Senior Assistants and the same is also hit by the principle of estoppel. The Himachal Pradesh High Court Officers and the Members of Staff (Recruitment, Promotion, Conditions of Service, Conduct & Appeal) Rules, 2015 (hereinafter called as the 'R&P Rules') provided that there is a requirement to occupy a class-III post with a grade pay lesser than that of a Translator. Thus,

it is the stand of respondent No. 1 that the status of the candidates on the date of selection must be within the contours of the aforesaid Rule and during the pendency of the recruitment process, petitioners stood promoted and appointed to the posts having equivalent grade pay to that of a Translator. The post in question being a selection post and 50% of the same had to be filled up by way of selection and the petitioners had rendered themselves ineligible by accepting the promotion to the higher grade pay during the selection process. As such the petitioners could not be allowed to take advantage of their promotion as well as seek consideration for appointment as Translators. The pleadings that the last date of possessing the eligibility was the cut off date, was accordingly rebutted that on an ineligibility disqualification is invited and they are not entitled for selection to the posts of Translators and they having changed their position out of their own volition by accepting the promotion entailing higher grade pay, they could not claim appointment as such to the posts of Translators.

3. It is in such circumstances, the argument has been raised by the learned Senior Counsel for the petitioners that the petitioners had a right to appear for the posts of Translators and therefore, they should have been put on an option as such at the stage of promotion and reliance was placed upon the judgment in **Kameshwar Singh Dhaulta and others versus State of HP and others, 2011 SCC Online HP 1078** in this context. Reliance is also placed on the judgment in the case of **Ashok Kumar Sharma and others versus Chander Shekhar and another (1997) 4 SCC 18** and **Bhupinderpal Singh and others versus State of Punjab and others (2000) 5 SCC 262** and similarly in the case of **Shankar K. Mandal and others versus State of Bihar and others (2003) 9 SCC 519** in support of the said principles of law that the eligibility is to be seen at the time of application or cut off date.

4. The learned Senior Counsel thus has argued that at the time of interview, the case of the petitioners could not have been rejected for consideration only on account of the fact that they have been promoted as Senior Assistants and the action of respondent No.1 was not justified whereby

while drawing up the result, no marks were given to the petitioners in the interview, though they have been called for the said process.

5. The learned Senior Counsel for the High Court on the other hand submitted that the eligibility continues till the date of consideration and if there is any disqualification by any mode by way of resignation or dismissal and the educational qualifications have been cancelled, the eligibility could not be only pegged down to the date of last date of submission of forms once the Rule itself provided a lesser grade pay than that of the Translator. It is argued that having accepted the promotion, the petitioners cannot claim a right of consideration and in the absence of any provision for an option in the Rules and the respondents not knowing whether the exam would be passed and whether the petitioners would appear in the examination or not, no such right could be given, as argued. It was accordingly submitted that the principle of estoppel would come as the petitioners with their eyes open had accepted the promotion at an earlier point of time and occupied the posts and therefore, cannot now stake their claim for selection as

Translators which have been granted to the private respondents. It is accordingly argued that once the Rule as such provides that the grade pay has to be of a lower level, the promotion from the post of clerk to the post of Senior Assistant had put the petitioners at the same pay scale and therefore, there was a bar and the marks were rightly not given at the time of interview.

6. The petitioners had approached this Court when they were not granted marks in the interview and thereafter result had been declared which led to the filing of the amended writ petition. It is accordingly argued that while promoting the persons, option could not have been taken from the persons who are appearing for the post. It is argued that the judgment in **Kameshwar Singh Dhaulta (supra)** was a case where senior persons were being put to disadvantage of not being considered for appointment and the said judgment has no application to the facts and circumstances of the present case.

7. The factual matrix need to be delineated in order to decide the above said issue since the posts of Translators were sought to be filled by a circular dt.04.08.2022

(Annexure P-6) in the pay band of Rs.38500-122700/- (Level-II) from amongst the eligible class-III and Class -IV employees of the Registry of this Court who possess Graduation degree with at least 50% marks in English with Hindi as a subject at the Graduation level having five years length of service. The cut of date as such was 20.09.2022 and the incomplete applications were liable to be rejected straightway.

8. Before the written test was held on 15.06.2023, petitioner No. 2 was promoted vide order dated 01.02.2023 (Annexure P-12) as Senior Assistant in the pay level-II of Rs.38500-122700/- of the pay matrix. Similarly petitioner No. 1 was also promoted on 02.03.2023 (Annexure P-11) in the same pay level. The Rule in question provides that the appointment is to be done by various modes which is as under:-

"5 (1) Appointment of the Officers and members of the staff on the Establishment of the High Court shall be made:-

- (i) by posting of members of Himachal Pradesh Judicial Service*
- (ii) by direct recruitment*
- (iii) by selection*

- (iv) by promotion
- (v) by absorption
- (vi) by deputation
- (vii) on contract basis
- (viii) on daily wage basis
- (ix) [Part Time basis]²
- (x) on secondment basis
- (2) The mode and manner of appointments on the Establishment shall be as indicated against every such post(s), class or category of posts in Schedule-III."

9. Similarly, Rule 8 provides that no person shall be eligible for appointment on the Establishment in or upon any post unless, he possesses all the necessary qualifications-academic or otherwise and also fulfills the requirements for such appointment as indicated in these Rules and Schedule-III and IV.

10. Part-C of Schedule -III provides that 50% of the posts shall be filled-up on the basis of limited competitive examination as per Schedule-IV from amongst Class-III & Class-IV employees of the Registry having lesser grade pay than that of Translators by way of selection. The relevant part of Part-C of Schedule-III reads as under:

2	Translators	8	(a)50% of the posts by selection on the	Graduation with 50% marks in	Five years	Rs.10300-34800+Rs. 4400/-Grade
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			<i>basis of limited competitive examination as per Schedule-IV from amongst Class-III & Class - IV employees of the Registry having lesser grade pay than that of Translator.</i>	<i>English and also have studied Hindi as a subject at the Graduation level</i>		<i>pay+ Rs.900 Secretariat Pay.</i>
			<i>(b) Failing (a) above, then by direct recruitment by competitive examination as per Schedule-IV.</i>	<i>-Do-</i>	<i>--</i>	
			<i>(c) 50% of the posts by direct recruitment on the basis of competitive examination as per Schedule-IV. Note-1: One post shall be filled up from amongst the candidates having studied Urdu in Matriculation. Note-II One post shall be filled up from amongst the candidates having studied Punjabi in Matriculation.</i>			

11. The requisite experience of five years as such as an employee of the Registry was a requirement which is not subject matter as such of the dispute. In spite of knowing that the Rule as such provided that the selection process

would only be of the employees having lesser grade pay than that of the Translators, the petitioners chose to accept the promotion order earlier, as noticed above, whereby their pay became equivalent to the Translators and thus, they incurred a disqualification during the process of selection and then they took a chance to sit in the examination on 15.06.2023.

12. Having secured the requisite marks in the written test, they were called for interview on 26.06.2023 and asked to bring their testimonials along with the photocopies. Apparently, at the time of interview, it transpired that since they were already promoted as Senior Assistants, they were not given marks in the interview which led to the filing of the present writ petition on 01.07.2023 which came to be listed on 23.07.2023, for the first time in the Court. In the meantime, private respondents were appointed who were working as Junior Assistants vide office order dated 27.07.2023 in the said pay level-II and as noticed earlier, subject to the final outcome of the writ petition. It is thus apparent that the petitioners having accepted the promotion, are estopped from now claiming

consideration against the posts of Translators which is a selection post.

13. As noticed above, 50% of the posts were also to be filled up by direct recruitment on the basis of competitive examination which is a different category and in case 50% posts on the basis of limited competitive examination amongst level Class-III and Class-IV employees of the Registry are not filled up then the posts were to be filled up by direct recruitment as per Schedule-IV. It is in such circumstances, we are of the considered opinion that having incurred a disqualification and not being eligible at the time of consideration, the petitioners as such are estopped from claiming their right for selection against the posts of Translators. They have already occupied the posts having been promoted as Senior Assistants which is on an equal grade pay level. It was open to them to have declined the same at that point of time but at an earlier period of time approximately three months before they took a chance as such and have occupied the posts at the costs of others. They cannot now be allowed to blow hot and cold in the same breath. Thus, principle of estoppel as such would have

to be applied to them apart from the fact that the Rule also specifies that the employees have to have a lesser grade of pay than that of the Translators.

14. The action of the High Court as such thus in not awarding any marks for the interview only on account of the fact that they were already promoted as Senior Assistants, cannot be faulted as such and the High Court could not have been acted against the provisions of the said Rules which are binding on both the parties.

15. Perusal of Rule (8) of the Rules confers eligibility for appointment for a post subject to fulfilment of twin conditions, *firstly*, the necessary qualifications and *secondly*, the requirement for such appointment as indicated in these Rules and Schedule - III and IV thereof. As regards, *first* condition of educational qualifications the same are satisfied by the petitioners, which is not in dispute. So far as second condition regarding the fulfilment of requirement for such post as indicated in the Rules and Schedule - III thereof that 50% posts of Translator(s) are to be filled, by selection, on the basis of limited competitive examination, "*from amongst Class-III and Class-IV employees of the Registry*" having "*lesser Grade Pay*

than that of Translator", from persons having "five years service" as such. Thus the eligibility for appointment should mandatorily exist subject to fulfilment of above these twin conditions, in the teeth of Rule (8) of the Rules. In instant case, though the petitioners were eligible, at the time of applying for post of Translators but during the course of selection process and prior to the culmination of such process into appointment; the petitioners gained ineligibility by ceasing to be Class-III Employees with lesser grade pay, by accepting and joining the promotional post of Senior Assistant in Pay Band of Rs.38,500-1,22,700 on 2.3.2023 and 1.2.2023 [Annexure P-11 & P-12] which was in identical pay scale of the post of Translator(s) for which selection was undertaken by Respondents which has resulted in ousting the petitioners from feeder category/grade. Petitioners having suffered ineligibility and ouster from the feeder category/grade as in Rules and therefore, the ineligibility entails disqualification of the petitioners for the post of Translator in terms of applicable Rules. Even the Hon'ble Supreme Court in **Commissioner of Municipal Administration and another versus M.C.Sheela Evanjalil and others, (2020) 19 SCC 317** has mandated that mere possessing educational

qualifications will not confer right of appointment, whereas the right of a person for consideration ripens into appointment only in case a person is in feeder cadre/grade and also fulfils all other terms preceding such appointment as prescribed in the recruitment rules. The operative Paras of the judgement read as under:

“13. We find that the orders of the High Court are patently illegal and unwarranted. The respondent was initially appointed as Road Gang Mazdoor. She came to be appointed as Revenue Assistant in pursuance of the orders passed by the Madras High Court for the reason that she is qualified for such post. **The qualification for the post is not the criteria for appointment to the public post as any appointment to a public post cannot be made merely on the basis of possessing required educational qualifications. Any appointment to a public post can be made in the manner provided by the applicable recruitment rules in terms of law enacted under Article 309 of the Constitution of India or the Rules made in terms of proviso to Article 309 of the Constitution of India.** In the absence of law and/or the rules, the executive instructions may also prescribe the eligibility conditions including the educational qualifications, experience, age limit for appointment to the post. In the present case, the respondent sought appointment as Revenue Assistant only on the basis of the fact that she possesses Diploma in Civil Engineering. The possession of

Diploma in Civil Engineering is not entitlement to a public post unless such post is advertised and opportunity is given to all the eligible candidates to apply for the post in terms of applicable rules.

14. The fact remains that the Commissioner, Kuzhithurai Municipality has appointed the respondent as Revenue Assistant way back in 2006. However, the greed of the respondent for further promotion or appointment to the higher post did not end. She wanted to be appointed as Town Planning Officer again on the strength of her qualification of Diploma in Civil Engineering. As per the facts on record, the post of Town Planning Inspector is governed by the Tamil Nadu Municipal Town Planning Service Rules, 1970 and that such post can be filled up either by way of promotion or by direct recruitment. **The respondent is not in the feeder cadre for appointment to the post of Town Planning Inspector. In the absence of her being in feeder cadre, the High Court committed illegality in directing the consideration for appointment of the respondent to the post of Town Planning Inspector.** It may be noticed that Town Planning Officer Grade II is a promotional post from amongst Town Planning Inspectors, who has worked in regular capacity for a period of ten years as per the Rules.

15. The stand of the respondent that the post of Town Planning Inspector is governed by the General Rules, is not made out as such Rules provide for promotion for the post of Revenue Assistant to the post of Revenue Inspector but not to the post of Town Planning Inspector. **The Town**

Planning Assistant Draughtsman is the feeder cadre for promotion of Town Planning Inspector and that the Revenue Assistant is not the feeder cadre nor the respondent can claim any right to appointment only on the basis of her educational qualifications.

16. We find the manner in which the High Court has issued directions time and again shows utter disregard to the basic principles of law and then calling upon the officers to face contempt if the directions are not complied with. Such directions are wholly without any legal basis and, thus, cannot be sustained.

16. In the above background, once the petitioners stand ousted from the feeder cadre/grade, after "ceasing to be in the Lower Grade vis-à-vis grade of Translator", as per Rule (8) and Schedule-III of the Rules, then, the disqualification attained during selection process results in rendering the petitioner ineligible for the post of translator as per Rules.

17. The argument which thus raised by the learned Senior Counsel for the petitioners that the eligibility is to be seen at the time of cut of date of the application, has no application to the facts and circumstances of the case since having incurred the disqualification and the petitioners cannot be permitted to hold out that they were eligible at the time of

cut off date. The said selection process is also from the employees of the Registry of Class-III and Class-IV category and in case a person is dismissed or has resigned prior to the date of examination or interview, he cannot as such claim that on the date as such of the application, he was still eligible being in service. Similarly in case of a dismissed employee after the date of submission of form would not as such make him still eligible to counter the argument which has been raised by the learned Senior Counsel for the petitioners.

18. The judgments as such relied upon are on the principles that the qualification has to be seen on the cut of date of application and the acquisition of the said qualifications is to be before the said date and not in the intervening period before the date of interview as it will open up a *pandora's box* of people appearing and who had become eligible post the cut off date and also on the ground that similarly placed persons could have also applied but would not have applied in view of the said condition. In case of **Bhupinderpal (supra)** also the apex Court noticed that the eligibility was to be seen by reference to the date of interview and that the authorities of the State were to be tied on the

principle of governing the cut of date for testing the eligibility qualifications which is treated as settled service jurisprudence and the loose practice which was being followed in the State of Punjab was thus depreciated.

19. Similarly, in ***Shankar K. Mandal's case (supra)*** the apex Court laid down that the eligibility on the cut off date has to be satisfied and can be the date appointed by the relevant Service Rules or to be mentioned in the advertisement calling for applications and eligibility has to be seen with reference to the last date by which applications have to be received. In such circumstances, the argument raised as such that the eligibility is to be seen only on the cut off date of the application and on account of disqualification having been incurred at a later date, the same cannot be taken into consideration, cannot be accepted and the said argument is liable to be rejected. The petitioners were vying for the post of Translators qua the selection posts as per the terms of the advertisement and they were well aware of the Rules which governed the said process and having on their own during the selection process accepted the promotion as Senior Assistants, cannot now turn around and claim consideration and are

estopped by their own act and conduct. It has been rightly argued by the respondents as such that employer as such would not know whether the examination would be passed and whether he would appear in the examination or not and there is no such provisions for an option in the Rules. The reliance upon the judgment of **Kameshwar Singh Dhaulta's case (supra)** is without any basis as in the said case that Rule as such provided that the feeder cadre had been specified for which the appointment was to be made to the Himachal Pradesh Administrative Services. The juniors as such of the writ petitioners were accordingly being considered for promotion whereas writ petitioners therein who had been duly promoted from the posts of Assistant Registrars as Deputy Registrars or Joint Registrars were not being considered and it is in such circumstances, the observations had flown that if they were to be promoted in a department then an option was to be taken from them that they chose to seek appointment in their own department and will forego their right of consideration for promotion in terms of the Rule (7) and only after such an option had been given, then only the State could contend that they had foregone the right to be considered for appointment to the

Himachal Pradesh Administrative Services. The circumstance's of the present case are that the petitioners are aspiring for the same level of the post having been already been promoted as Senior Assistants and thus having an equal pay level-II of Rs.38500/- 122700/- and have already also on account of their promotion, denied other employees for their right of promotion to the said posts of Senior Assistants and they cannot be allowed to change track at this belated stage.

20. Keeping in view the above, there is no merit in the writ petition and the same is accordingly dismissed. Pending applications, if any shall also stand disposed of.

(G.S. Sandhawalia)
Chief Justice

(Ranjan Sharma)
Judge

April 11, 2025.
(cm Thakur)