

(2026) 08 SHI CK 1279
In the High Court Of Himachal Pradesh
Case No : CWP No.5569 of 2020

Dr. Mukesh Surya

APPELLANT

Vs

State of Himachal Pradesh and others

RESPONDENT

Date of Decision : 05-08-2026

Acts Referred:

Himachal Pradesh Medical Education Rules, 1999
Right to Information Act
Constitution of India — Article 226

Citation : (2026) 08 SHI CK 1279

Hon'ble Judges : Jiya Lal Bhardwaj, Judge

Bench : Single Bench

Advocate : For the petitioner: Mr. Sunil Mohan Goel, Senior Advocate, with Mr. Paras Dhaulta, Advocate. For the respondents: Mr. Anup Rattan, Advocate General with Mr. Hemant Kumar Verma, Deputy Advocate General, for respondents No.1 to 6. Mr. Dilip Sharma, Senior Advocate with Mr. Manish Sharma, Advocate, for respondent No.7.

Final Decision : Dismissed

Judgement

Jiya Lal Bhardwaj, Judge

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 writ of certiorari quashing the ACRs of private respondent No. 7 Dr. Shikha Sood of the year 2007-2008. (Annexure P-7), 2008-2009 (Annexure P-8), 2009-2010 (Annexure P-9), 2011-2012 (Annexure P-10), 2012-2013 (Annexure P-11), whereby all the five ACRs have been wrongly and illegally just to give benefit to private respondent No. 7 Dr. Shikha Sood have been upgraded by the Accepting Authority from "Good" to "Very "Good" and thereafter four ACRS from "Very Good" to "Outstanding" without any authority of law totally in violation of Handbook on Personnel Matters Volume-II, Chapter-19 especially clause 19.8.5.

b) That this Hon'ble Court may further be pleased to issue writ of certiorari quashing the minutes of meeting of the DPC held for promotion to the post of Assistant Professor in the

Department of Radiology on 28.11.2015 to the extent whereby the DPC accepted the up-gradation done by the Accepting Authority and wrongly and illegally private respondent No. 7 Dr. Shikha Sood was made to supersede the petitioner who was otherwise senior to the private respondent No. 7 Dr. Shikha Sood.

c) That this Hon'ble Court may be pleased to issue writ of mandamus directing the respondents to convene review DPC and minutely look into each and every ACRs of the private respondent No. 7 Dr. Shikha Sood and further look into the aspects as to whether the Accepting Authority is having any authority of law to upgrade the ACRs from "Very Good" to "Outstanding" especially in view of clause 19.8.5 of Handbook on Personnel Matters Volume -II Chapter19.

d) This Hon'ble Court may further pleased to issue writ of mandamus directing the respondents to hold an inquiry as to how and under what circumstances the Accepting Authority i.e. Director Medical Education, Respondent No. 6 personally heard and accepted the representation made by the private respondent No. 7 Dr. Shikha Sood against the entries made in the ACRs by the Reporting and Reviewing Officer and under what authority of law respondent No. 6 disclose the gradation made by the Reporting and Reviewing Officer to respondent No. 7 Dr. Shikha Sood.

e) that this Hon'ble Court may pleased to issue writ of mandamus directing the respondents to explain as to why from the year 2015 onwards tentative seniority list of Assistant Professor in the Department of Radiology and calling of objection has not been circulated till date.

f) That this Hon'ble Court may issue writ of mandamus directing the respondents not to hold DPC for promotion to the post of Associate Professor in the Department of Radiology, IGMC, Shimla on the basis of the minutes of meeting of the DPC held for the post of Assistant Professor, Department of Radiology, IGMC, Shimla dated 28.11.2015."

2. The facts as emerged from the pleadings are that the petitioner did his Bachelor of Medicine and Bachelor of Surgery course (in short 'MBBS') and thereafter completed his internship in the year 1997. He joined his duties as Medical Officer on adhoc basis on 31.07.1997 in the Himachal Pradesh Health Services and was posted at Primary Health Centre, Pukhri, District Chamba, H.P. His services were regularized through the Himachal Pradesh Public Service Commission as a Medical Officer on 03.11.1998. Thereafter, he did his Master's Degree in Radiology in the year 2006 (Annexure P-1). Thereafter, he was selected as a Senior Resident in the Department of Radiology in Dr. Rajendra Prasad Government Medical College, Tanda, (in short 'RPGMC Tanda') where he joined his duties on 12.02.2007 and remained posted there till 19.01.2011. Thereafter, he was designated as Assistant Professor in RPGMC, Tanda, and served as designated Assistant Professor in the Department of Radiology till 2015.

3. It has been averred in the petition that the State of Himachal Pradesh is having two wings, one is regulated by the Director, Health Services (respondent No.2), which deals with the General Duty Medical Officers (in short 'GDOs') and the second wing is Director, Medical Education and Research (Respondent No.3), which regulates the teaching faculty of various Medical Colleges in the State of Himachal Pradesh. As per the Himachal Pradesh Medical Education Rules, 1999, an incumbent to enter the teaching faculty in the Medical Colleges of the State of

H.P., after completion of M.D. course, has to first do Senior Residency and after completion of three years of Senior Residency, he/she is eligible to be promoted/appointed to the post of Assistant Professor. After serving for five years as Assistant Professor, an incumbent is eligible for further promotion to the post of Associate Professor and thereafter, an Associate Professor is eligible to be promoted as Professor after having five years of service as Associate Professor.

4. The method of recruitment to the post of Senior Resident is 75% by appointment (by selection) from amongst the members of Himachal Pradesh Civil Medical Service, having post-graduate degree in the concerned specialty and two years of regular service or regular combined with adhoc service, failing which by direct recruitment. 25% of post is to be filled up by direct recruitment. The next promotion post from that of Senior Resident is that of Assistant Professor and the method of recruitment to the post of Assistant Professor is 50% by promotion, failing which by direct recruitment and 50% by direct recruitment. It has also been averred that the petitioner being eligible along with all other eligible Doctors and being senior most GDO was thereafter considered by the Departmental Promotion Committee (in short 'DPC'), which convened in the year 2015 for considering the eligible candidates for the post of Assistant Professor in the Department of Radiology in Indira Gandhi Medical College and Hospital, Shimla (in short 'IGMC Shimla'), since two posts of Assistant Professor were lying vacant in IGMC, Shimla.

5. The DPC was convened on 28.11.2015, on which date the ACR dossiers, integrity certificate and vigilance clearance certificates of eligible Doctors was placed before the DPC. As per the proceedings of DPC, four Doctors were eligible and in the zone of consideration. The petitioner was at serial No.352 and respondent No.7 was at serial No.538. The DPC, after analyzing the ACRs of the eligible Doctors, who were within the zone of consideration, assessed the eligible GDOs/Medical Officers and the petitioner was overall assessed as 'Very Good', whereas respondent No.7 was assessed as 'Outstanding'. Since respondent No.7 was overall assessed as 'Outstanding', as such, was promoted as Assistant Professor and she superseded the petitioner and one Dr. Dinesh Sharma. As per the minutes of the meeting of the DPC, respondent No.7 was shown at serial No.1 and the petitioner was shown at serial No.2. It has further been averred that despite the petitioner being senior and since the difference of length of service in the feeder grade between the petitioner and respondent No.7 was less than two years, as such respondent No.7 superseded him. The petitioner was also promoted as Assistant Professor in the Department of Radiology along with respondent No.7 and he was always remained under the impression that he being senior as GDO/Medical Officer, is at serial No.1 of the seniority list of the Assistant Professor, Radiology. The seniority list of Assistant Professor in the Department of Radiology, IGMC Shimla, had not been circulated. It was only in the first week of September, 2020, that incidentally, the petitioner met Dr. Dinesh Sharma, who is serving as Assistant Professor in the Department of Radiology, Dr. Yashwant Singh Parmar Government Medical College, Nahan (in

short 'YSPGMC, Nahan') and from him, he came to know that on the basis of the DPC convened on 28.11.2015 and further on the basis of the ACRs of respondent No.7, being 'Outstanding', she had superseded him. It was thereafter that he provided the relevant documents, since he was possessing the same, because he had been pursuing his case, when he was superseded by respondent No.7 and on the basis of the documents supplied by him, the petitioner came to know that even he was also superseded by respondent No.7. From the documents supplied by Dr. Dinesh Sharma i.e. Minutes of the Meeting of DPC dated 28.11.2015 and the ACRs of respondent No.7, it was found that there was large scale irregularities and illegalities, while upgrading the ACRs of respondent No.7 and it seems that respondent No.6, who is the accepting authority was hand in glove with respondent No.7. A close perusal of the ACRs of respondent No.7 and the Minutes of Meeting of the DPC dated 28.11.2015, held for promotion to the post of Assistant Professor in the Department of Radiology, IGMC, reveals that everything was done to favour respondent No.7. The petitioner thereafter made a detailed representation on 10.09.2020 to respondent No.1, however, till date nothing was done and in the month of December, 2020, the DPC is to be convened for promotion to the post of Associate Professor in the Department of Radiology. Both the petitioner and respondent No.7 are going to be eligible for being promoted to the post of Associate Professor in the Department of Radiology. The petitioner had approached the counsel for filing the petition in the last week of October 2020, since nothing was done on the representation made by him. However, counsel suffered from COVID-19 pandemic and was not well from first week of November, 2020, as such this petition could not be filed and it is being filed right now after recovery of the counsel from COVID-19. It was surprising to note that in what manner, the ACRs of respondent No.7, were upgraded by the accepting authority and further how the ACRs for the year 2008-2009, 2009-2010 were presented on 14.12.2011. The accepting authority while upgrading the ACRs as 'Very Good' of respondent No.7 for the period 01.04.2007 to 31.03.2008 had failed to assign any reason for upgrading the ACRs. Further the perusal of ACRs of the year 2008-2009 reveals that respondent No.7 had been graded as 'Very Good' by the reporting authority and the reviewing authority has also accepted the gradation of the reporting authority. However, the accepting authority upgraded the ACRs as 'Outstanding' by giving the reason that papers were presented and she has topped in DM Neuro-Radiology examination. Similarly, for the year 2009-2010, the petitioner was graded as 'Very Good' by the reporting authority and the reviewing authority had agreed to the gradation of reporting authority, however, again the accepting authority upgraded the ACRs to 'Outstanding' on the ground that certain papers were presented and conferences on Neuro-Radiology were attended in AIIMS, New Delhi. It has also been averred that the ACRs for the year 2008-2009 and 2009-2010, would demonstrate that ACRs for these years were presented on 14.12.2011 i.e. after a lapse of more than two years. Furthermore, no ACRs were issued for the year 2010-2011 since respondent No.7 was in a Gulf country. The ACRs for the year 2011-2012 of respondent No.7 reveal that she was graded

as 'Good', by the reporting authority, however, the reviewing authority upgraded the same as 'Very Good' and thereafter, the accepting authority upgraded the same as 'Outstanding' and the reason again was paper presentation, research publications and attending national conferences. Further in the ACRs for the year 2012-2013, respondent No.7 was graded as 'Very Good' by reporting authority and reviewing authority. However, again the accepting authority upgraded the same as 'Outstanding'. The reason again for upgrading was publications and attending national conferences. It has further been averred that it is not the ACRs of one year or two years, but consecutively of four years that is 2008-2009, 2009-2010, 2011-2012 and 2012-2013, which have been upgraded by the accepting authority from 'Very Good' to 'Outstanding'.

6. It has also been averred that the scope of judicial review, especially with regard to the ACRs of some other person is very-very limited and the Courts cannot go into the question, especially with regard to ACRs of a third person. However, despite the petitioner being aware of all the odds is constrained to approach this Court to highlight the manner, in which the employer is treating its employees and discriminating between them. The petitioner has averred that though he is not in possession of the ACRs of respondent No.7, prior to the year 2007-2008 and the perusal of the ACR of the year 2007-2008 shows that respondent No.7 was graded as 'Good' by the reporting authority and reviewing authority also graded as 'Good'. However, the accepting authority upgraded the same as 'Very Good' without assigning any reason. There are certain attributes of the parameters on the basis of which the reporting authority, who is the immediate superior of an employee, reports with regard to the working of an employee and on the basis of these attributes, respondent No.7 was graded as 'Good' by the reporting authority. As per clause 19.3 of chapter 19 on the Handbook on Personnel Matters, which deals with the time scale for writing of ACRs and communication of adverse remarks and as per that, a representation against adverse remarks and taking final decision has also been fixed. Respondent No.7 had applied for the ACR's well within the time, however, since the same were not to her liking, as such, she managed to get the same destroyed and applied afresh. It has further been averred that as per the policy layout on Personnel Matters, the entry of 'Outstanding' in the ACRs has to be given with great restraint, while making an entry of an officer or the official as 'Outstanding'. The reporting authority which exercises the authority of making an entry of officer or an official as 'Outstanding' and the accepting officer has no authority to do so and his/her role is very-very limited. Chapter 19 of the Handbook on Personnel Matters prescribes that the role in writing of the ACRs is basically of reporting officer and the accepting officer has a very limited role, especially with regard to upgrading of ACRs.

7. The petitioner in this background, has approached this Court entirely on the grounds that since respondent No.6, who is the accepting authority has upgraded the ACRs of respondent No.7 from 'Very Good' to 'Outstanding', which was not otherwise permissible as per the guidelines laid down in Handbook on Personnel

Matters, the same be quashed which have been upgraded just to give undue benefit to respondent No.7. Once specific procedure has been laid down in the Handbook on Personnel Matters to write the ACRs and thereafter make the representation, since the said procedure has not been followed, it seems that everything has been manipulated by respondent No.7 for uploading the ACRs for the year 2008-2009 and 2009-2010. Respondent No.6, being accepting authority has upgraded the ACRs of respondent No.7, on the basis of the representation and personal hearing given to her, which makes the meaning of ACRs meaningless. Despite the caution given by the State Government as contained in the Handbook on Personnel Matters that while writing the ACRs, restrain be used by the reporting officer, reviewing and accepting authorities to make it 'Outstanding', respondent No.6 has acted not only arbitrary, discriminatory vis-a-vis the ACRs of similar situated Doctors, who were also graded 'Very Good' has not been upgraded. Thus, prayed for the reliefs as stated in the opening para of the petition.

8. Respondents No.1 to 6 filed reply to the petition and raised preliminary submissions that neither any legal, legitimate and enforceable right of petitioner has ever been infringed and denied to him nor he is aggrieved by any action on their part in any way and manner. The claim raised in the petition is premature and is bad in the eyes of law and as such the petition deserves to be dismissed. On merits, it has been averred that initially in the year 2014, for filling up one vacant post of Assistant Professor by way of promotion in Radiology, IGMC Shimla, service particulars, bio-data of the petitioner had been forwarded by respondent No.2. At that time, respondent No.2 had not specified as to whether the petitioner was only senior most and eligible/willing candidate or not. Thereafter, respondent No.2 vide another letter dated 22.05.2014, forwarded the names of three candidates, namely Dr. Dinesh Sharma, Dr. Sushma Makhaik and Dr. Shikha Sood (respondent No.7). In the meanwhile, Dr. Sushma Makhaik was selected as Assistant Professor through Himachal Pradesh Public Service Commission and thereafter, for filling up the vacant post of Assistant Professor in Radiology, IGMC, the petitioner was at seniority No.352, Dr. Dinesh Sharma at 356 and respondent No.7 at 538. In the meanwhile, respondent No.7 filed a CWP No. 3025 of 2014 before this Court and the DPC meeting was held on 10.07.2014. As per DPC memorandum, the DPC had recommended the name of petitioner for his promotion as Assistant Professor in the Department of Radiology against vacant post in IGMC, Shimla and name of respondent No.7 had been considered against No.1 vacant post of Assistant Professor, whereas, the name of petitioner had been recommended against No.2 vacancy due to the reason that the ACRs of respondent No.7 had been reviewed by the then accepting authority i.e. respondent No.6 for the years 2008-2009, 2009-2010, 2011-2012 and 2012-2013 as 'Outstanding' from 'Very Good' and on the basis of such assessment, respondent No.7 had superseded her both seniors. It has also been averred that Dr. Dinesh Sharma has been promoted against the vacant post of Assistant Professor, Department of Radiology in Dr. YSPGMC, Nahan upon the

recommendations of DPC separately. As per the minutes of DPC, name of respondent No.7 had been considered against No.1 vacant post of Assistant Professor, whereas, the petitioner had been recommended against No.2 vacancy due to the reason that ACRs of respondent No.7 had been reviewed by the then accepting authority and she was graded as 'Outstanding' from 'Very Good' and as such, prayed for dismissal of the writ petition.

9. Respondent No.7 filed separate reply to the petition and raised preliminary submissions that the entries in the ACRs of an employee are matters of subjective and objective opinion of the reporting officer, subject to confirmation or modification by the reviewing officer/accepting authority and further subject to the remedies available under the relevant rules/instructions. It is a matter between an employer and the concerned employee. No other employee can challenge the entries so made in the ACRs of any other person. No one has a right to say whether another employee's performance should be assessed as poor, average, satisfactory, very good or excellent and as such, the petition challenging the assessment of respondent No.7 in her ACRs is not maintainable and is liable to be dismissed.

10. A perusal of the Minutes of DPC held on 28.11.2015 would go on to show that DPC was held for making promotions against two posts of Assistant Professor in Radiology, out of which one was anticipated vacancy likely to occur on promotion of Dr. Neeti Aggarwal, Assistant Professor in the month of December 2016. Four eligible Doctors were considered for promotion in the DPC and on the basis of the performance of respondent No.7, her overall assessment was 'Outstanding' and she was placed at serial No.1 in the merit list and the petitioner was placed at serial No.2 with 'Very Good' overall assessment and consequently, respondent No.7 was offered appointment as Assistant Professor on the recommendations of DPC vide Notification dated 11.12.2015 (Annexure R-7/1). The existing vacancy of Assistant Professor was utilized for promoting respondent No.7, being No.1 in the merit list and the petitioner was promoted vide another Notification dated 11.12.2015, against a non-existing vacancy, which was to become available in December, 2016 i.e. almost after one year from the date when meeting of DPC took place. Thus, it is clear that the petitioner was promoted against a non-existing vacancy and hence, he is not entitled to be placed even at serial No.2 in the seniority list below respondent No.7.

11. It has further been averred that the post of Assistant Professor in Radiology was advertised by the H.P. Public Service Commission in 2015 and the petitioner, Dr. Dinesh Sharma, Dr. Sumala Kapila and respondent No.7 had applied for the said post and participated in the selection process. The result of the selection process of the post was declared in the first week of December, 2015, in which respondent No.7 was placed at serial No.1 in the merit list and Dr. Sumala Kapila was kept at serial No.1 in the waiting list. Dr. Dinesh Sharma could not find place in the merit list. Since respondent No.7 had been recommended for promotion by the DPC held on 28.11.2015, she joined on the said post pursuant to Notification

dated 11.12.2015, and the post against direct recruitment quota was offered to Dr. Sumala Kapila, being second in merit. Thus, it is clear that respondent No.7, on the basis of her academic and professional records, as also her performance, was recommended for direct recruitment in open competition, held as per constitutional scheme, in which the petitioner could not find place in merit. Respondent No.7 was found more meritorious than the petitioner by DPC held on 28.11.2015 and was recommended against vacancy available, whereas the petitioner was placed at serial No.2 in the merit. The petitioner could not have been promoted on 11.12.2015, as vacancy was not available for his promotion.

12. It has also been averred that as per the information received under the Right to Information Act (in short 'RTI'), which was made available during January, 2017, it is unbelievable that a person, who obtained the information in January 2017 and allegedly pursuing his matter regarding supersession in promotion, did not communicate the same to the petitioner. The petitioner was senior to Dr. Dinesh Sharma, and DPC proceedings clearly show that the petitioner had also been superseded by respondent No.7. For challenging the 'Outstanding' grading of respondent No.7 in her ACRs for the relevant years, the petitioner has placed reliance on para 19.8.5 of the Handbook of Personnel Matters, Volume-II, which has been reproduced by him. However, these instructions do not dispense with the 'Outstanding' grading of ACRs, but only insist that for recording such entries, the details of specific performance and achievements justifying such entry should be recorded in the ACRs.

13. A perusal of the ACRs of respondent No.7 would go on to show that adequate justification for making such entries have been given in the ACRs. It has been specifically denied that there is any alleged irregularity/illegality in grading of respondent No.7. Respondent No.6 has assessed the replying respondent as 'Outstanding' by giving adequate reasons, which are supported by the material available on record. The bald allegations have been made by the petitioner against respondents No.6 and 7 being hand in glove, without substantiating the same by any cogent material on record. Such allegations are malicious and defamatory and the defending respondent seeks permission of the Court to initiate appropriate legal action against the petitioner for levelling such allegations. It has also been averred that the petitioner could have made a representation to the competent authority to give him better rating in his ACRs by supporting his representation by relevant material. However, instead of following such course, the petitioner is trying to pull respondent No.7 down, which is not permissible in law. Respondent No.7 and the petitioner along with others had also competed for the post of Assistant Professor, which was filled on the recommendations of HP Public Service Commission and the petitioner had failed to make his mark even in the said competition and could not rank even second in merit, which place was bagged by Dr. Sumala Kapila, who was placed at first waiting candidate and was offered appointment after the petitioner joined as Assistant Professor on the recommendation of the DPC.

14. Respondent No.7 was designated as Assistant Professor after she completed her senior residency in 2010. Thereafter, she competed for a post of consultant in Radiodiagnosis in Ministry of Kuwait and served on the said position during 2010-2011. Therefore, her ACR for the year 2010-2011 is not available. However, there is nothing unusual. Even the petitioner did not have his ACRs for the year 2012-2013 and in place of this ACR, his ACR for the year 2007-2008 was considered. It has further been averred that respondent No.7 had submitted her self-assessment report well in time and she does not have any control of further process of recording of finalization of ACRs. The prayer made by the petitioner to call for the ACRs of respondent No.7 before 2007-2008 is irrelevant, as ACRs of three to five years before holding DPC are relevant. A perusal of memorandum submitted for consideration of DPC would go on to show that for 2007-2008, the grading of respondent No.7 has been considered as 'Good', hence, the objection with regard to alleged upgradation of her ACR from 'Good' to 'Very Good' is baseless and does not have any merit. The accepting authority while upgrading the ACRs of respondent No.7 as 'Outstanding' has seen her performance and has given cogent reasons. Para 19.8.5 does not in absolute terms prohibit the assessment of 'Outstanding', but there is a note of caution that while making such assessment, the concerned officer should exercise great restraint and to make such entry, details of specific performance and achievements justifying the entries should be recorded in the ACRs. So, these guidelines have been followed in letter and spirit. If it is accepted that the accepting authority cannot differ from assessment made by the reporting and the reviewing authorities, then there would be no need to authorize an officer to act as an accepting authority. It has been denied that respondent No.7 had directly submitted the material to respondent No.6 who was the accepting authority. The reason for giving 'Outstanding' assessment of respondent No.7 by the accepting authority was fulfilled by the documents already available in the ACRs, which cannot be created subsequently, but are contemporaneous documents which have rightly been taken into account by the accepting authority. It has also been averred that the petitioner has come with a cook and bull story to cover up the plea of delay and laches. The challenge to the promotion of respondent No.7 at this belated stage is stale and grossly barred by delay and laches and as such, the writ petition is not maintainable.

15. The petitioner filed rejoinder to the reply filed by respondent No.7 and controverted the averments made therein.

16. Respondent No.7 by way of an application, had sought permission to file supplementary affidavit and the documents attached therewith, which application was allowed on 21.04.2025.

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

18. The petitioner is mainly aggrieved by the ACRs of respondent No.7, which have been upgraded by the accepting authorities. The petitioner has not

challenged his ACRs.

19. Learned senior counsel Mr. Sunil Mohan Goel duly assisted by Mr. Paras Dhaulta, learned counsel for the petitioner vehemently argued that respondent No.6, being the accepting authority, had upgraded the ACRs of respondent No.7, who was hand in glove with respondent No.6. No material has been placed on record to suggest that respondent No.6 was hand in glove with respondent No.7 while upgrading her ACRs. In the hierarchy, respondent No.6 is the accepting authority, who, on perusal of the material placed by respondent No.7, had graded her ACRs from 'Very Good' to 'Outstanding'. The petitioner has placed on record the ACRs of respondent No.7 for the year 2007-2008 i.e. w.e.f. 01.04.2007 to 31.03.2008. A perusal of the said ACR reveals that the reporting authority had graded her 'Good' whereas the accepting authority had graded her 'Very Good' on 10.06.2009. For the ACR for the year 2008-2009, respondent No.7 was graded as 'Very Good' by the reporting authority and reviewing authority and respondent No.6 being the accepting authority had graded her as 'Outstanding'. While grading respondent No.7 as 'Outstanding', respondent No.6 has given her reasons. When respondent No.7 was graded 'Very Good' for the ACR of 2007-2008, the accepting authority was not respondent No.6, who had graded her as 'Very Good' from 'Good'.

20. Similarly, for the ACR of 2009-2010, respondent No.7 was graded as 'Very Good' by the reporting authority and reviewing authority and respondent No.6 being the accepting authority had graded her 'Outstanding' and while grading her 'Outstanding', reasons have been assigned. For the ACR of 2011-2012, respondent No.7 was graded as 'Good' by the reporting authority and 'Very Good' by reviewing authority and 'Outstanding' by the accepting authority. For the year 2012-2013, respondent No.7 was graded as 'Very Good' by the reporting as well as reviewing authority and respondent No.6 being the accepting authority, had graded her as 'Outstanding'. From the perusal of the ACRs placed on record, it is crystal clear that the accepting authority while grading respondent No.7 as 'Outstanding' had assigned the reasons, except for the ACR of the year 2007-2008, when accepting authority was not respondent No.6.

21. Learned senior counsel for the petitioner had vehemently argued that the same has been done in connivance with respondent No.7. However, there is no material placed on record which can suggest that respondent No.6 was hand in glove with respondent No.7 and thus, the said plea cannot be accepted.

22. Now, the question which arises for consideration is whether the petitioner can question the ACRs of the private respondent or any other employee and what is the scope of interference by this Court. Learned senior counsel for the petitioner had placed reliance upon the judgment of the Hon'ble Supreme Court in **Lakhi Ram versus State of Haryana and others**, (1981) 2 SCC 674 and contended that a co-employee, who has better chances of promotion in the event of entries in the ACR of his colleague remaining as such, has a locus standi to challenge the modification of the entries. The first paragraph of the judgment is

reproduced hereunder:

"The only ground on which the writ petition filed by the appellant has been dismissed by the High Court is that the appellant has no locus standi to maintain the writ petition. The appellant filed the writ petition challenging the action of the government expunging the adverse remarks made in the annual confidential report of respondent 6. The High Court took the view that the appellant was not entitled to complain against the expungement of adverse remarks made in the confidential report of another officer. But this view is, in our opinion, erroneous because the effect of expungement of adverse remarks in the confidential report of respondent 6 is to prejudice the chances of promotion of the appellant and if the appellant is able to show that the expungement of the remarks was illegal and invalid, the adverse remarks would continue to remain in the confidential report of respondent 6 and that would improve the chances of promotion of the appellant vis-a-vis respondent 6. The appellant was, therefore, clearly entitled to show that the government acted beyond the scope of its power in expunging the adverse remarks in the confidential report of respondent 6 and that the expungement of adverse remarks should be cancelled. The appellant had, in the circumstances, locus standi to maintain the writ petition and the High Court was in error in rejecting it on the ground that the appellant was not entitled to maintain the writ petition."

23. A perusal of the judgment passed by the Hon'ble Supreme Court reveals that the adverse remarks expunged had adverse effect upon the promotional prospects of other employees. However, in the present case, the petitioner had not laid challenge to the expungement of the adverse remarks against respondent No.7. Here the petitioner has raised challenge that the accepting authority had graded respondent No.7 as 'Outstanding', which cannot be done. However, a perusal of the ACRs placed on record by the petitioner himself, respondent No.6 had assigned the reasons while grading respondent No.7 as 'Outstanding', keeping in view the performance made by her. As already discussed above, respondent No.7 was graded as 'Very Good' by the reporting authority as well as by the reviewing authority for the ACRs of the year 2008-2009, 2009-2010, 2012-2013 which were graded as 'Outstanding' by the accepting authority and have given reasons. For the ACRs for the year 2010-2011, respondent was in the Gulf country and for the year 2011-2012, she was given 'Good' by the reporting authority, 'Very Good' by the reviewing authority and 'Outstanding' by the accepting authority. In one of the ACRs for the year 2007-2008, respondent No.7 was given 'Good' by the reporting authority as well as reviewing authority, but the accepting authority had graded her 'Very Good' which shows that respondent No.7 was given the grading on the basis of her performance and the documents attached with the performa filled up by her.

24. Learned senior counsel for the petitioner had vehemently argued that the petition is maintainable and he has locus standi to maintain the petition and placed reliance upon the judgments of the Hon'ble Supreme Court in **Chandra Gupta IFS vs. Secretary Government of India, Ministry of Environment & Forests and others**, (1995) 1 SCC 23, **Rafivddin Sidhqvi vs. State of Rajasthan**, RLW 1996(1) Rajasthan 505, **Indu Kant Srivastava vs. State of UP and others**, (2019) SCC Online Allahabad 3117, **G. Devapalan Nair vs.**

Government of Kerala and others, (1990) SCC Online Ker 629, **Ghulam Qadir vs. Special Tribunal & Ors.**, (2002) 1 SCC 33, **Tashi Delek Gaming Solutions Ltd. & Anr. vs. State of Karnataka**, (2006) 1 SCC 442, **Amanulla & Anr. vs. State of Bihar & Ors.**, (2016) 6 SCC

699. The ratio laid down in the aforementioned judgments is not applicable to the present case. It is a matter between the employer and a concerned employee regarding ACRs. No one has a right to say that the ACRs of his colleague shall be assessed as 'Poor', 'Average', 'Satisfactory', 'Good' 'Very Good' or 'Outstanding'. This very issue was raised by an employee before this Court in CWP No.1608 of 2019, titled, **Surender Kumar vs. State of Himachal Pradesh and others**, and the Division Bench had held that another employee has no locus standi to challenge the ACRs of his colleague and upheld the order passed by the H.P. Administrative Tribunal, which had dismissed the original application preferred by the employee challenging the ACRs of his colleague. The relevant paragraphs of the judgment read as under:-

"11. *The impugned order of the Tribunal rejecting his application on the ground of locus standi, is challenged by the petitioner primarily on two grounds namely (a) that by virtue of the law laid down by the Supreme Court, a co-employee has a right to challenge the expunction of the adverse entries made in the ACRs of another employee and (b) that in any case in a writ petition filed by the petitioner in CWP No. 1896 of 2017, challenging the order of the Tribunal, liberty was given to him to challenge the proceedings of the Appellate Authority.*

12. *Let us take the first ground of attack. Relying upon the judgment of the Supreme Court in Lakhi Ram vs. State of Haryana & others, (1981) 2 SCC 674, it is contended by the learned counsel for the petitioner that a co-employee who has better chances of promotion in the event of the entries in the ACRs of his colleague remaining as such, has a locus standi to challenge the modification of the entries. Let us take a look at the judgment in Lakhi Ram (supra).*

13. *The judgment of the Supreme Court in Lakhi Ram (supra) is actually a brief order running to two paragraphs. Therefore, the first paragraph which contains the portion purportedly in favour of the writ petitioner can be extracted as follows:*

"The only ground on which the writ petition filed by the appellant has been dismissed by the High Court is that the appellant has no locus standi to maintain the writ petition. The appellant filed the writ petition challenging the action of the government expunging the adverse remarks made in the annual confidential report of respondent 6. The High Court took the view that the appellant was not entitled to complain against the expungement of adverse remarks made in the confidential report of another officer. But this view is, in our opinion, erroneous because the effect of expungement of adverse remarks in the confidential report of respondent 6 is to prejudice the chances of promotion of the appellant and if the appellant is able to show that the expungement of the remarks was illegal and invalid, the adverse remarks would continue to remain in the confidential report of respondent 6 and that would improve the chances of promotion of the appellant vis-a-vis respondent 6. The appellant was, therefore, clearly entitled to show that the government acted beyond the scope of its power in expunging the adverse remarks in the confidential report of respondent 6 and that the expungement of adverse remarks should be cancelled. The appellant had, in the circumstances, locus standi to maintain the

writ petition and the High Court was in error in rejecting it on the ground that the appellant was not entitled to maintain the writ petition."

14. It may be seen from the portion extracted above that the Supreme Court pronounced an opinion about adverse remarks and the expunction of the same and the adverse effect of such expunction upon the promotional prospects of other employees. The case did not deal with the situation like the one in hand. In the situation on hand, the Reporting Officer recorded "Very Good" for all the three years in question but the Reviewing Officer reported "Good" for all the three years. By virtue of the liberty granted by this Court to the 3rd respondent to file a representation and the direction issued by this Court, the Additional Chief Secretary (Housing), who appeared to be an Appellate Authority, came to the conclusion that the entry recorded by the Reviewing Officer without any reason was not correct. Therefore, the Appellate Authority has restored the entries as originally suggested by the Reporting Officer and cancelled the entry made by the Reviewing Officer. This is not a case where the 3rd respondent suffered an adverse entry in the ACR and the same was expunged so as to enable the petitioner to take advantage of the order passed by the Supreme Court in *Lakhi Ram* (supra).

15. As fairly pointed out by the learned counsel for the petitioner himself, the decision in *Lakhi Ram* (supra) was also considered by a three number Bench of the Supreme Court in *Chandra Gupta, I.F.S. vs. Secretary, Govt. of India, Ministry of Environment & Forests & others*, (1995) 1 SCC 23.

16. In paragraph-14 of the said judgment the Supreme Court referred to the opinion expressed by a two number Bench in *Lakhi Ram* (supra) to the effect that an officer whose chances of promotion are prejudiced by the Government's action, expunging the adverse remarks has locus standi to maintain a writ petition challenging the expunction.

17. After having extracted the opinion rendered in *Lakhi Ram* (supra) in paragraph-14 of the judgment in *Chandra Gupta* (supra), the Supreme Court formulated a short question that arose for consideration in *Chandra Gupta* (supra) in para-20. No question was raised in paragraph-20 about the locus of a person or about the view expressed in *Lakhi Ram* (supra).

18. However, in paragraph-24 of its decision in *Chandra Gupta* (supra), the Supreme Court extracted the operative portion of the judgment in *Lakhi Ram* (supra). What the Supreme Court said thereafter in paragraph-25 is what is important. In paragraph-25, the Supreme Court indicated after extracting the judgment in *Lakhi Ram* (supra) that what is required to be carefully noted is that the Court was considering the effect of expungement of adverse remarks which was likely to prejudice the chances of promotion. The Court went on to say that it is well settled that no employee has a right or vested right to chances of promotion. A series of judgments of the Supreme Court were cited in paragraph-27 of the judgment in *Chandra Gupta* (supra) to the effect that mere chances of promotion will not give rise to a right or vested right to promotion.

19. Therefore, it is clear that the decision in *Lakhi Ram* (supra), was not taken to be a final word in *Chandra Gupta* (supra).

20. Paragraph – 25 of the judgment in *Chandra Gupta* (supra), is to the clear effect that cases of expunction of adverse remarks [even if *Lakhi Ram* (supra) is taken to be laying down the correct position of law] will stand on a different footing than cases of this nature where there were no adverse remarks. Hence the first contention with regard to the locus standi raised by the learned counsel for the petitioner cannot be accepted.

21. Primarily the entries in the ACRs of an employee are matters of both subjective and objective opinion by the Reporting Officer, confirmed or modified by the Reviewing

Officer, subject however to the remedies available under the relevant Rules or the Notifications. It is actually a matter between an employer and the concerned employee. No other employee can challenge the entries so made in the ACRs of any other person. In case of adverse remarks, a co-employee merely takes advantage of the entries made in the ACRs of his colleague. But no one has a right to say whether another employee's performance shall be assessed as 'Poor', 'Average', 'Satisfactory', 'Good', 'Very Good' or 'Excellent'.

22. We can look it at from another angle. Let us take a hypothetical case where the Reviewing Officer has agreed with the Reporting Officer and has also recorded "Very Good" in the ACR of the 3rd respondent. In such an event, would it have been possible for the petitioner to come up with a challenge to this entry? No. Certainly he cannot.

23. Therefore, we are of the considered view that the opinion rendered by the Tribunal that the petitioner has no locus standi is perfectly in order."

25. From the above judgment, only one inference can be drawn that co-employee cannot challenge the ACRs of his colleague and thus, the petitioner has no locus standi to file the petition.

26. Learned counsel for the petitioner had vehemently argued that since the respondents have failed to produce the original record, adverse inference has to be drawn against respondents No.6 & 7. He placed reliance upon the judgment of the Hon'ble Supreme Court in **Maharana Pratap Singh vs. State of Bihar & Ors.**, (2025) SCC Online SC 890, **Municipal Corporation Faridabad vs. Siri Niwas**, (2004) 8 SCC 195 and **Surendranagar District Panchayat vs. Dahyabhai Amarsinh**, (2005) 8 SCC 750. No doubt, the respondents have not produced the original record and stated that the same has been misplaced, but the same cannot be construed that the ACRs of respondent No.7 has been manipulated, especially when the petitioner himself has placed on record the ACRs of respondent No.7. The allegations by the petitioner are that the ACRs have been rewritten in connivance with respondent No.6, which cannot be accepted, that too, while adjudicating the claim under Article 226 of the Constitution of India.

27. Learned senior counsel for the petitioner had vehemently argued that where there is a right, there is a remedy. No doubt, the petitioner had right to upgrade his ACRs, but he cannot question the ACRs of other employee and at the most, he can claim that he ought to have also been graded as 'Outstanding' instead of 'Very Good'. It is not known that why did the petitioner not place any material on record to seek gradation of the ACRs as 'Outstanding'. He placed reliance upon the judgment in **M/s Shiv Shankar Dal Mills and others vs State of Haryana & Ors.**, (1980) 2 SCC 437 and in **Bhagubhai Dhanabhai Khalasi and another vs. State of Gujarat and others**, (2007) 4 SCC 241. However, the ratio laid down in the said judgments is not attracted to the facts of the case at hand.

28. Learned senior counsel for the petitioner had placed reliance upon the judgments of the Hon'ble Supreme Court to contend that the delay and laches cannot come in the way while imparting substantial justice between the parties. He placed reliance upon the judgments of the Hon'ble Supreme Court in

Joginder Nath & Ors. vs. Union of India & Ors., (1975) 3 SCC 459, **G P Doval vs. Chief Secretary, Govt. of U.P.**, (1984) 4 SCC 329, **Ram Chandra Shankar Deodhar & Ors. vs. State of Maharashtra & Ors.**, (1974) (1) SCC 317 and **Shiba Shankar Mahapatra & Ors. vs. State of Orissa & Ors.**, AIR 2010 SC 706. However, in the present case, once Dr. Dinesh Sharma was having information in the year 2017, it cannot be believed that the petitioner was not aware about the ACRs of respondent No.7 and, therefore, the plea raised by the petitioner that he was unaware about the fact that respondent No.7 has been promoted on the basis of the 'Outstanding' grading, cannot be believed and the petition is hit by the principle of delay and laches.

29. Learned counsel for the petitioner had also placed reliance upon the judgments of the Hon'ble Supreme Court to contend that little bit difference in the facts of the case makes a lot of difference. The judgments referred are **Bharat Petroleum Corporation Ltd. vs. NR Vairamani**, AIR 2004 SC 4778, **Ambica Quarry Works vs. State of Gujarat & Ors.**, (1987) 1 SCC 213 and **Bhav Nagar University vs. Palitana Sugar Mills Pvt. Ltd.**, (2003) 2 SCC 111. No doubt, it is true that the little bit difference of the facts of the case makes a lot of difference, but in the present case, since the petitioner has not asked for upgrading his ACRs as 'Outstanding' and has harped upon the fact that respondent No.6 has wrongly graded the ACRs of respondent No.7 without assigning any reason, the said plea cannot be accepted, especially when respondent No.6 while grading respondent No.7 as 'Outstanding' had given the reasons as evident from perusal of the ACRs placed on record by the petitioner.

30. Learned senior counsel for the petitioner had also placed reliance upon the judgments in **Dr. Shah Faesal & Ors. vs. Union of India & Anr.**, (2020) 4 SCC 1 and **National Insurance Company Ltd. vs. Pranay Sethi and others**, (2017) 16 SCC 680, to contend that the Court in such like cases can mould the relief and since the petitioner was senior to respondent No.7, he ought to have been promoted earlier to him. However, one of the most vital fact which had not been disputed by the petitioner is that the petitioner and respondent No.7 had appeared for the post advertised by the HP Public Service Commission for appointment as Assistant Professor in Radiology and in the said test, the petitioner was not selected and respondent No.7 was selected and she was at serial No.1. However, keeping in view the fact that respondent No.7 was already recommended for promotion to the post of Assistant Professor in Radiology as per the proceedings of the DPC convened on 28.11.2015, she was offered the appointment on a promotional post rather than offering her appointment as direct candidate. In place of respondent No.7, Dr. Sushma Makhaik who was at serial No.2 and first in the waiting list, was offered appointment to the post of Assistant Professor in Radiobiology. Therefore, the petitioner cannot say that respondent No.7 was not more meritorious than him and the plea taken by the petitioner that her ACRs have been grading as 'Outstanding' without any reason is also without any substance.

31. The learned senior counsel representing respondent No.7 had vehemently argued that the petitioner had approached the Court very late and as such, his petition deserves to be dismissed on the ground of delay and laches since the petitioner had laid challenge to the promotion of respondent No.7 after about 5 years of her promotion to the post of Assistant Professor and there is no logical explanation. The right which had accrued in favour of respondent No.7 cannot be taken out.

32. Learned senior counsel for respondent No.7 further contended that the High Court cannot sit in an appeal while evaluating the recommendations made by the DPC as per the law laid down by the Hon'ble Supreme Court in **H.S. Sidhu v. Devendra Bapna**, (2016) 1 SCC 495. He also placed reliance upon the judgment of this Court in CWP No.5996 of 2023, title, **Alka Kainthla vs. State of HP & Ors.** Learned senior counsel had also placed reliance upon the judgment of the Division Bench of this Court with respect to the locus standi of the petitioner to lay challenge to the ACRs of respondent No.7 in **Surender Kumar's case (supra)**, wherein this Court after taking note of the judgment passed by the Hon'ble Supreme Court had held that the petitioner had no locus standi to lay challenge to the entries made in the ACR.

33. After going through the judgments pressed in service by the learned senior counsel for respondent No.7, I am in full agreement with his submissions. It is settled law settled that the High Court while entertaining a writ petition under Article 226 of the Constitution of India, cannot substitute the view taken by the DPC while making recommendations to a particular post and the Court can interfere only if some material, which was not available was not considered or the reasoning given while making promotions are perverse. However, in the present case, the DPC on the basis of the ACRs of respondent No.7 had made recommendation for promotion being 'Outstanding' and as already held above, since the petitioner cannot lay challenge to the ACRs of an employee, the writ petition is not maintainable.

34. This Court while entertaining the writ petition cannot make a roving inquiry to go into the allegations made by the petitioner that respondent No.7 was hand in glove with respondent No.6, especially when no cogent material has been placed on record to substantiate the said allegations. A perusal of the contents of the petition also reveals that it seems that respondent No.6 was hand in glove with respondent No.7. The averments had been made on assumptions and the same cannot be accepted until and unless some supporting material was placed on record.

35. Learned senior counsel for the petitioner had vehemently argued that directions be issued to respondents-State to hold an inquiry as to how and under what circumstances, respondent No.6 had personally heard and representation made by respondent No.7 had been accepted. Since no material has been placed on record by the petitioner that the material supplied by respondent No.7 was after filling up the proforma for the ACRs, this Court cannot venture to go into

that question and ask the respondents-State straight to hold an inquiry into the matter.

36. A duty is cast upon the Court, while adjudicating the claim on the basis of malafide to scrutinize the material placed on record. In the present case, no material has been placed on record by the petitioner to hold that respondent No.6 was hand in glove with respondent No.7 and thus, this Court is not inclined to give directions to hold the inquiry only at the asking of the litigant.

37. In the present case, it is not the case of the petitioner that respondent No.7 has been graded from 'Good' to 'Outstanding'. Once respondent No.7 has been graded as 'Outstanding', keeping in view the 'Very Good' given in the rating by the reporting authority as well as by the reviewing authority, no interference is called for by this Court at the instance of the petitioner who has no locus to challenge the ACRs of his colleagues. Further the petitioner had not given cogent reasons or plausible explanation in the petition that why did he not pay for grading his ACRs. The plea taken by the petitioner that he came to know in the month of September, 2020 from Dr. Dinesh Sharma regarding his supersession who supplied the information to him cannot be accepted, especially when the information was available with Dr. Dinesh Sharma in the year 2017. The petitioner has not placed on record the affidavit of Dr. Dinesh Sharma, which can lead to an inference that he had met him in the month of September, 2020.

38. Consequently, the petition is dismissed on the ground of locus standi, as well as on the ground of delay and laches. However, no order as to costs. Pending applications, if any, also stand disposed of.