



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.2837 of 2019
Decided on: 17.07.2026

Vijay Kumar Sharma and another
...Petitioners
Versus
State of Himachal Pradesh and others
...Respondents

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

For the petitioners: Mr. Hamender Singh Chandel,
Advocate.

For the respondents: Mr. Vishav Deep Sharma,
Additional Advocate General, for
respondents No.1 to 3-State.

Respondents No. 4 to 8 ex-parte.

Mr. S.S. Sood and Mr. B. Nandan
Vasishta, Advocates, for
respondent No.9.

Jiya Lal Bhardwaj, Judge (Oral)

The petitioners by way of present petition have
prayed for the following substantive reliefs:-

- "a) Tentative seniority list of Under Secretaries issued
on 18.7.2011 (Annexure P-5) and thereafter
finalised vide 8.8.2012 Annexure P-8 be quashed
and set aside.
- b) That the respondents No.2 be directed to consider
the date of passing of the departmental

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

examination by the petitioners on 1.10.2008 and not on 11.11.2008 as has been illegally done by the respondents Nos. 2 and 3 the thereafter the respondents No.2 be directed to consider the case of the petitioner No.1 for the vacancy of Under Secretary which fell vacant on 31st October, 2008 against which respondent No.4 has been illegally promoted and the petitioner No.2 may kindly be considered and promoted against the vacancy which fell vacant on 4.11.2008."

2. The precise grouse of the petitioners as highlighted in the petition is that though they had qualified the departmental examination on 01.10.2008, but they were not considered for the vacancies, which had fallen vacant on 04.11.2008, for the reason that the combined notification for declaring the result was issued on 11.11.2008 (Annexure R-3/1). The petitioners have been promoted to the post of Under Secretary in pursuance of the recommendations made by the Departmental Promotion Committee (for short 'DPC') convened on 03.07.2012, as per Notification dated 11.07.2012 (Annexure P-4), but for the vacancies of the year 2009. It has been averred that the petitioners were eligible as per the Recruitment and Promotion Rules (for short 'R&P Rules') to the posts of Under Secretary for the vacancies of the year 2008, since they were holding the posts of Section Officer and eligible as on 04.11.2008 when their result was declared, but their juniors

were promoted only for the reason that they had qualified the departmental examination as on 04.11.2008 and the result of the petitioners was notified on 11.11.2008. ◇

3. One of the Section Officers, whose candidature was though considered by the DPC for promotion to the posts of Under Secretary, but his Annual Confidential Reports (for short 'ACRs') were downgraded by the DPC and the petitioners were promoted on adhoc basis on 18.10.2008 and 05.11.2008 as under Secretaries, had approached this Court by way of CWP No.2297 of 2008-H, titled, **Devinder Kumar Saraswati vs. State of Himachal Pradesh and others**. This main grouse in the aforesaid petition was that the DPC without assigning any reasons downgraded his ACRs, from outstanding to very good, which is illegal and violative of Articles 14 and 16 of the Constitution of India. This Court had allowed the petition on 17.05.2012 holding that though the DPC has the power to downgrade the ACRs but some reasons have to be assigned and since the DPC has not assigned any reasons, the adhoc promotions of the petitioners who were arrayed as respondents No.5 and 6 to the posts of Under Secretary was quashed and set aside and the proceedings of DPC held

on 23.12.2010 was declared null and void and respondents No.1 to 3 were directed to reconvene the DPC and consider the case of the petitioner in the writ petition in view of the observations made in the order along with private respondents with all consequential benefits, within a period of 8 weeks. It was also noticed that while considering the case of the petitioner and the private respondents, respondents No.1 to 3 shall also take into consideration, whether the private respondents have qualified the departmental examination strictly as per the Himachal Pradesh Departmental Examination Rules, 1997. However, in order to avoid any administrative chaos, respondents No.1 to 3 were directed to permit the present incumbents i.e. the petitioners to hold the posts of Under Secretary to discharge their duties for a period of 8 weeks.

4. In sequel to the directions given by this Court, the DPC was again convened on 03.07.2012 and the claim of the petitioners for promotion to the vacancies of the year 2008 was not considered, since they were not eligible as on 04.11.2008 and their result came to be declared on 11.11.2008. Respondents No. 5 to 9 who were junior to the petitioners were considered for the vacancies of the year

2008 for the reason that they were eligible as on 04.11.2008. As per Notification dated 11.07.2012 (Annexure P-4), the petitioners and private respondents were promoted to the posts of Under Secretary (HPSS) in the pay scale of ₹15,600-39,100 + ₹6600/- Grade pay plus Secretariat Allowance of ₹800/- per month on regular basis. The petitioners have been shown to be promoted for the vacancies of the year 2009 w.e.f. 31.12.2009, whereas the private respondents No.4 to 9 were shown to be promoted for the vacancies of the year 2008 w.e.f. 31.12.2008. Respondent No.1 after promotion orders of the petitioners had issued the tentative seniority list of Under Secretary on 18.07.2011 and thereafter the same was finalized on 08.08.2012 (Annexure P-8). However, before finalization of the seniority list, petitioners No.1 & 2 had made representations dated 24.07.2012 (Annexure P-6/1) and dated 23.07.2012 (Annexure P-6/2) respectively. Respondent No.1 after receipt of the representations made by the petitioners rejected the same on the ground that the petitioners had claimed that the result was declared on 01.10.2008 is not correct since it is not a Notification but was part of noting of the file No. HIPA(Exam)-5/74-XXV

which was submitted to the Chairman Board of Departmental Examination (for short 'BODE') and was a consolidated result sheet for approval i.e. draft of the notification submitted for approval of the authorities. The draft document was the result of 26 papers out of 59 papers/exams conducted for different departments, which was approved by Chairman, BODE and other officers i.e. Principal Secretary (Training), Director, HIPA and Secretary, BODE. A perusal of copy supplied by the petitioners shows paper mark of blinding of fictitious Roll Nos. of the candidates, which is put forward to the authorities only at the time of approval of the awards. This also clearly shows that the document dated 01.10.2008 is not a Notification, but an internal document of the file and respondent No.3 has informed that the Notification of the result of departmental examination held in September, 2008 was issued on 11.11.2008 and thus, the representations made by petitioners No.1 & 2 came to be rejected vide order dated 08.08.2012 i.e. Annexure P-7/1 and Annexure P-7/2, respectively.

5. The petitioners have challenged the order of rejection of their representations on the grounds that the

action is illegal inasmuch as the date of passing the departmental examination has wrongly been taken as 11.11.2008, whereas it ought to have been 01.10.2008. It has been averred that as per Rule 12 of the Himachal Pradesh Departmental Examination Rules, 1997, the Secretary will cause the answer books of various papers examined by the examiners appointed under Rule 11(1) and the examiner shall prepare and award list on the prescribed proforma and forward the same to the Secretary along with the answer books. Thereafter, the result will be compiled by the Secretary on receipt of award list and will be placed before the Board for approval with such recommendations as may be deemed necessary. The marks will be conveyed to all the examinees in their result card. However, as per the enactment of the Information Technology Act, 2000 which was an Act to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication and once the information has been provided in writing or any type written or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied and since respondent No.3

had uploaded the result of the petitioners on the official website on 01.10.2008, irrespective of the fact whether the Notification was issued on 11.11.2008, the petitioners ought to have been considered for promotion to the posts of Under Secretary, since they were eligible to be considered for the vacancies, qua which, the DPC was convened, falling as on 04.11.2008. Since respondents No.5 to 9 were admittedly juniors to the petitioners as per the seniority position, as evident from perusal of the final seniority list of Section Officers, HP Secretariat as on 31.03.2006 (pages 63 - 66), the action on the part of the respondents to promote them for the vacancies which had fallen vacant in the year 2009 is illegal, arbitrary and unconstitutional and thus have prayed for quashing the tentative seniority list of Under Secretary issued on 18.07.2011 after issuance of the notification of promotion as per Notification dated 11.07.2012 and have also sought direction to the respondents-State to promote them for the vacancies of the year 2008.

6. Respondents No.1 & 2 filed reply to the petition and supported the decision. It has been averred that the issue has already been adjudicated by this Court in

Devinder Kumar Saraswati's case (supra) and the petitioners were impleaded as respondents No.5 and 6 and they had adequate opportunity to represent their case. In Para No.8 of the judgment, it has been held that the present petitioners have qualified the departmental examination on 11.11.2008 and since they have not challenged the said judgment, present petition is not maintainable. It has further been averred that the result of the petitioners was notified on 11.11.2008 and since they were not eligible as on 31.10.2008 for the vacancies of the year 2008, their candidature has rightly not been considered for promotion to the posts of Under Secretary.

7. Respondent No.3 filed separate reply and averred that the petitioners had appeared in the examination of Financial Administration conducted during September, 2008. The result sheet of 26 papers out of 59 papers/exams for different Departments conducted in the month of September, 2008 were prepared and submitted to the Board of Department Examination for its approval on 01.10.2008. After the approval from the BODE, the final result was declared/published in the Rajpatra and also displayed on the official website of Department on

11.11.2008. It has been admitted that replying respondent had prepared the result sheet of 26 papers out of 59 papers conducting during September, 2008 and submitted the same on 01.10.2008 to the Chairman of BODE for its approval. The Chairman of the BODE granted the approval and thereafter the result was finally declared on 11.11.2008. The result was also published in Rajpatra and copies thereof were also circulated to all the Heads of Departments of the concerned Departments.

8. Respondent No.5 also filed reply to the petition and denied that the result of papers in Financial Administration was declared on 01.10.2008. It has been averred that the uploading of the result of one paper on the website of respondent No.3 does not ipso-facto mean that the result has been declared. Rule-12 of the Himachal Pradesh Departmental Examination Rules, 1997, deals with the examination of answer books, publication of results. The mode of publication of result shall be by way of uploading of the same on the official website of respondent No.3. It has further been averred that the petitioners were not fulfilling the eligibility criteria on 04.11.2008, when the vacancy had occurred and they were rightly not considered for

promotion. The result of the departmental examination was declared only on 11.11.2008 and they had acquired the eligibility only after declaration of the result for promotion to the post of Under Secretary.

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

10. So far as the contention raised by the learned Additional Advocate General representing the respondents-State, that the dispute has already been adjudicated by this Court, when the petition preferred by Devinder Kumar Saraswati was decided, the petitioner cannot challenge the same, is totally untenable in law for the reason that in the petition, which was instituted by the aforementioned person, was only with respect to the factum that the DPC had wrongly downgraded his ACRs from outstanding to very good and that too, without assigning any reasons. No doubt in the said petition, the appointments of the private respondents, who were promoted on adhoc basis, were also quashed, but it was only the result of the fact that petitioner's ACRs was downgraded from outstanding to very good without assigning any reasons. This Court while disposing of the writ petition had categorically given the

directions that the case of Devinder Kumar Saraswati vis-a-vis the case of the private respondents, out of whom the petitioners were the parties in the proceedings, that respondents No.1 to 3 shall also take into consideration whether the private respondents have qualified the departmental examination strictly as per the Himachal Pradesh Departmental Examination Rules, 1997. Since this Court had not adjudicated upon the factum that the petitioners had not qualified the examination as on 01.10.2008, the plea taken by the respondents that the petition is hit by the principle of res-judicata is without any substance and is rejected.

11. The contention raised by the learned counsel representing the petitioners that once the result was declared on 01.10.2008, which was uploaded on the website by respondent No.3, the petitioners should have been considered for the vacancies of the year 2008, deserves to be accepted for the reason that after uploading the result on the website of the respondent No.3, it was made known to the petitioners that they had qualified the departmental examination, which was sine-qua-non for the purpose of considering their candidature for promotion to the posts of

Under Secretary and the respondents-State cannot take their eligibility, when the result was publicly notified on 11.11.2008. Respondent No.3 has nowhere stated that they had not declared the result on 01.10.2008 and uploaded the same on the website. The reason assigned by respondent No.1 while rejecting the claim of the petitioners, vide impugned order dated 08.08.2012, is also not sustainable for the reason that after the enactment of the Information Technology Act, 2000, once the information has been uploaded, the same was made public irrespective of the fact whether the said result was published in the Rajpatra or not is of no consequence. The claim of the petitioners cannot be defeated only for the reason that the Notification was issued on 11.11.2008. Once the petitioners admittedly were senior to respondents No. 5 to 8, who have been promoted for the vacancies of the year 2008, the reason assigned by the respondents in not considering them for the vacancies of 2008 only for the reason that they were not eligible as on 04.11.2008, is totally illegal, arbitrary as well as discriminatory.

12. Not only this, once the DPC was convened on 03.07.2012, the vacancies for the year 2008 ought to have

been calculated for twelve months i.e. from January to December, as per the provisions of para 16.5 of the Handbook on Personnel Matters. However, the DPC had calculated the vacancies, as and when they arose, which procedure is also alien to the practice adopted by the DPC. All this shows that with a view to favour the private respondents No.5 to 8, who despite being juniors to the petitioners have been promoted only for the reason that some of the vacancies had arisen on 04.11.2008. Had the DPC been convened before 11.11.2008, the respondents-State could have ignored the claim of the petitioners, if their stand is accepted though not correct that the petitioners had not qualified the departmental examination, since it was not published, but when the DPC was convened on 03.07.2012, their candidature ought to have been considered earlier to the private respondents No.5 to 8. By not following the correct procedure prescribed in the Handbook on Personnel Matters, the candidature of the petitioners have not correctly been considered by respondent No.2 for the vacancies of the year 2008 and this aspect has not been considered while rejecting the claim of the petitioners, vide orders dated 08.08.2012. Therefore,

the impugned orders passed by the respondent No.2 on 08.08.2012 are unsustainable in law.

13. The learned counsel representing the private respondents has vehemently argued that there is no fault on the part of the private respondents, who have been promoted as per the Notification dated 11.07.2012 for the vacancies of the year, 2008 as Under Secretaries and thereafter they have served in the respondent-Department and therefore, if the petition is allowed, their promotions may not be affected. Since the respondent-Department had not construed the import of the result, which was uploaded on the website of respondent No.3 correctly, at this juncture, the benefits which have been granted to the private respondents after discharging their duties may not be taken back. Since all the private respondents have now retired from service and they had discharged their duties on the posts of Under Secretary and have availed the benefits considering them as appointee for the vacancies of the year 2008, it would not be appropriate to recover the amount from them or re-fix their pension etc. and thus, without disturbing their promotions, the respondents-State is directed to consider the petitioners for the vacancies of

Under Secretary of the year 2008, since they were eligible as on 04.11.2008 with all consequential benefits.

14. The petitioners immediately after issuance of the Notification, whereby they were promoted to the posts of Under Secretary for the vacancies of 2009, had made a representation to the competent authority and even immediately after finalizing the seniority list had approached this Court, they are held entitled to all the benefits flowing from the date when they were otherwise due for promotion in the year 2008 and when respondents No.5 to 9 have been promoted to the posts of Under Secretary.

15. Consequently, the present petition is allowed and the impugned orders, dated 08.08.2012 (Annexures P-7/1 and P-7/2) and final seniority list (Annexure P-8) are quashed and set aside. Respondent No.2 is directed to consider the petitioners for promotion to the posts of Under Secretary for the vacancies of the year 2008, when the private respondents No.5 to 9 have been promoted with all consequential benefits. However, it is made clear that the benefits, which have been drawn by the private respondents shall not be disturbed and further in case there

were no vacancies available for the posts of Under Secretary for the year 2008, the respondents-State is directed to create supernumerary posts, so that the petitioners are accommodated for the vacancies of the year 2008 to the posts of Under Secretary. No order as to costs. Pending applications, if any, also stand disposed of.

17th July, 2026

(Anurag)

**(Jiya Lal Bhardwaj)
Judge**