

**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA**

**CWP No. 4241 of 2023
Reserved on 29.5.2025
Pronounced on:06.06.2025**

Yashwant Mandhotra

.....Petitioner.

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? Yes.

For the petitioner: Mr. K.B. Khajuria, Advocate.

For the respondents: Mr. Rajiv Jiwan, Senior Advocate with Mr.
Nitin Thakur, Advocate, for respondent
No.1.
Respondents No. 2 to 4 ex parte.

G.S. Sandhawalia, Chief Justice.

The petitioner seeks declaration that the final result for the posts of Translator, whereby he was disqualified and not selected due to the requisite length of service in the Registry of the High Court on 26.06.2023 (Annexure P-9) at the stage of interview, be quashed and set aside and seeks further declaration to declare him as

eligible to the post of Translator with the further direction for re-drawing the final result for the posts of Translator.

2. In sum and substance, the case of the petitioner is that the services rendered by him from 30.12.2016 to 01.06.2018, which he had rendered as a Clerk on the Establishment of the Civil and Sessions Division, Kullu be also considered for the purpose of making him eligible for the post of Translator, for which post, the Rules provided the length of five years service from the eligible Class-III and Class-IV employees of the Registry.

3. It is his case that during the process of recruitment, he had filed a representation on 01.02.2023 (Annexure P-6) for reconsideration regarding his fulfillment of the eligibility criteria and therefore, the Grievance Committee as such of this Court had accepted his representation. The same having been approved by the Hon'ble the Acting Chief Justice on 05.04.2023, which was duly communicated to him on 18.04.2023 (Annexure P-7) making him eligible to appear in the limited competitive examination and had made him eligible as such. Therefore, the said order could not as such be nullified by respondent

No.1, on the Administrative side while rejecting his case at the time of interview and holding him ineligible.

4. The learned counsel for the petitioner accordingly has referred to various Annexures in support of the above proposition and the fact that there was estoppel as such and the order passed declaring him ineligible is liable to be quashed.

5. The learned counsel appearing for the High Court, on the other hand, argued that the Himachal Pradesh High Court Officers and the Members of Staff (Recruitment, Promotion, Conditions of Service, Conduct & Appeal) Rules, 2015 (hereinafter referred to as “the 2015 Rules”) provides that 5 years service for the post of Translator in the feeder cadre is required. Therefore, the petitioner having joined the High Court on transfer on 02.06.2018 did not have requisite 5 years’ service on the cut of date on 20.09.2022, and thus had no vested right to be selected for the post of Translator. It is submitted that there was also principle of estoppel against the petitioner as he had been absorbed in this Court, subject to the fact that services rendered by him in the District Judiciary would be forfeited and he would not be entitled to any claim for seniority in future of the said

service. He had only rendered 4 years' service and merely because representation was accepted and he had been given a right to participate in the recruitment process, would not make him eligible and there was no estoppel against the Rules or the Statute.

6. The background of the case as such is that vide circular dated 04.08.2022 (Annexure P-4), the posts of Translators were sought to be filled up 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.

7. The petitioner submitted his application (Annexure P-5) for consideration showing his initial date of joining as 30.12.2016, at the District level and submitting that keeping in view his length of service and qualification, he be allowed to appear in the examination/test for the above mentioned post. It is pertinent to mention herein that the petitioner initially was never on the Establishment

of this Registry and had not been appointed as such but was appointed as Copyist on the Establishment of Civil and Sessions Division Kullu on 30.12.2016 (Annexure P-1). His seniority was to be governed by Rule 15 of the Himachal Pradesh Subordinate Court's Staff (Recruitment, Promotion and Conditions of Services) Rules, 2012. He was put on probation for a period of two years. It was only on 02.06.2018 (Annexure P-2) he was brought on transfer to this Court along with another employee with the conditions that said employees will forfeit their seniority in the respective establishment and would not claim any seniority in future and would complete their remaining probation period at their respective places of transfer.

8. It appears that the case of the petitioner was rejected on 30.01.2023 at the initial stage before the departmental examination could be held and resultantly, he filed representation dated 01.02.2023 (Annexure P-6) that he fulfills all the eligibility criteria having requisite five years service in the feeder cadre and pleaded that there was no such requirement while applying for the post of Translator on the Establishment of this Registry. He accordingly cited a case whereby one Saurabh Kumar J.O.A. (IT) in Civil and

Sessions Division, Solan who was employee on contract basis had been given the benefit of transfer and appointment that his services rendered as such on contract basis had to be counted as per order dated 26.06.2019 (Annexure P-10) for service benefits.

REASONS FOR DISMISSAL.

9. Apparently, the matter as such was put up before the Grievance Committee of this Registry which would be clear from the documents placed on record by way of rejoinder (sic-replication) and the Grievance Committee on 23.03.2023 while dealing with his case recommended that he had rendered requisite service and is eligible to appear in the limited competitive examination for the post of Translator mainly keeping in view the fact that Saurabh Kumar had been granted such benefits. Resultantly, the Grievance Committee while noting that there was no such stipulation in the order dated 02.06.2018, that his past service be not counted for service benefits, had accepted the said representation and made him eligible. The matter then was put up before the then Acting Chief Justice, who accepted the recommendation of the Grievance Committee on 05.04.2023. Further, it is pertinent to notice that the

recommendation as such was made *de hors* the Rules in question and without examining that the order dated 02.06.2018, which provided that there was forfeiture of seniority of the earlier establishment and that the candidates received on transfer would not claim seniority in future .

10. The benefit of contractual service given to Saurabh Kumar before his transfer and appointment in the Registry of this High Court, vide order dated 26.06.2019 (Annexure P-10) was also conditional and was only for the purpose of service benefits except seniority. The said order reads as under:-

"OFFICE ORDER

In partial modification of Office Order No. HHC/Admn.2 (21)/82-VI-32593-602 dated 6.12.2018, it is hereby ordered that the service rendered by Mr. Saurabh Kumar, Junior Office Assistant (I.T) on contract basis, in the Civil and Sessions Division, Solan, before his transfer and appointment in this Registry be counted for the service benefits, except seniority.

BY ORDER

REGISTRAR GENERAL

DATED 26.06.2019"

11. Thus, even the petitioner cannot draw any subsistence from the said order as by counting the period

from 30.12.2016 to 01.06.2018 would impliedly mean that the seniority had to be counted from the said period which would again adversely affect a large number of employees who have been appointed before the petitioner, in this Court.

12. On the strength of the said concession granted to him, he sat in the written test on 15.06.2023, result of which was declared and he got 56 marks out of 90 marks (Annexure P-8). However, he was called for interview on 26.06.2023 and when the result was declared, he was made ineligible on account of the fact that he was not having requisite length of service. In the intervening period, objections had been received from the other employees of the Registry on 22.6.2023, regarding consideration of his case as such which had been kept pending by the Hon'ble the then Chief Justice, since the process was underway.

13. Aggrieved by the rejection of his candidature, at the time of interview, he filed representation dated 30.06.2023 (Annexure P-11) making a case therein that five years service did not exclude the service undergone in the District Judiciary and raised objection to the candidates, who had objected to his appearance in the interview on the

ground that they had objected since they had got lesser marks than him. Thereafter the present writ petition came to be filed.

14. It is settled principle of law that the petitioner has right of consideration for a post, that too, within the ambit of the Rules. The Rules in question which are relevant as such are as under:

"Definitions (2) (1) xxx xxx xxx

(i) to (ix) xxx xxx xxx

(x) 'Member of the Establishment' means a person appointed in accordance with these Rules or the Rules or Orders in force prior to the commencement of these Rules but does not include the offices drawn from Himachal Pradesh Judicial Service, Editor and Assistant Editor, I.L.R. (H.P. Series), Law Clerk, Programmer and Assistant Programmers.

(xi) 'Members of the Staff' means and includes the employees/officials working on the Establishment of the High Court, other than officers and also includes all Class-III and Class IV employees.

(3) & (4) xxx xxx xxxx

"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."*

15. Similarly, Rule 8 of the 2015 Rules, 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. The same reads as under:-

"8. Eligibility. *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 Schedules-III and IV."*

16. 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:

SI No.	Nomenclature of Posts	No. of posts	Mode of Appointment	Qualification	Experience/ length of Service	Scale/Pay Grade and pay plus secretariat pay (in Rs.)
2	Translators	8	(a)50% of the posts by selection 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 Translator.	Graduation with 50% marks in English and also have studied Hindi as a subject at the Graduation level	Five years	Rs.10300-34800+Rs. 4400/-Grade pay+ Rs.900 Secretariat Pay.
			(b) Failing (a) above, then by direct recruitment by competitive examination as per Schedule-IV.	-Do-	--	
			(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.			

17. Thus the requisite experience is five years as an employee of the Registry (Establishment of the High Court) which was a requirement and which was well known to the petitioner. In spite of knowing that the Rule as such was against him, the petitioner chose to apply for the post of Translator not having requisite five years of service on the establishment of this Registry and a member of the staff and in the service of the establishment for the requisite period.

18. As noticed, the petitioner bases his claim on the ground that he had joined service on 30.12.2016 which was incorrect as he had joined only as a Clerk in the Civil and Sessions Division at Kullu at that point of time and was governed by 2012 Rules. He only came on the establishment of this Registry (Establishment of this Court) on transfer on 02.06.2018 on the following conditions:

"OFFICE ORDER.

Hon'ble the Acting Chief Justice has been pleased to order to transfer Ms. Kiran Sharma, Clerk of the Registry to the Civil and Sessions Division, Kullu and Shri Yashwant Mandhotra, Copyist in the Civil and Sessions Division, Kullu to the High Court of Himachal Pradesh as Clerk subject to the following conditions:-

- i. That Ms. Kiran and Sh. Yashwant Mandhotra shall forfeit their seniority in their respective establishments and they shall not lay any claim for seniority in future.*
- ii. Both the officials shall complete their remaining probation period at their respective places of transfer.*
- iii. No TA/DA shall be payable to them for joining the new appointment.*

*BY order
Registrar General
Dated 02.06.2018”*

19. A bare reading of the above quoted Office Order would go on to show that it was subject to forfeiture of seniority in the respective establishment which was at Kullu and not to lay any claim of seniority in future and was equally estopped as such at subsequent point of time for consideration of the earlier period of service rendered from 30.12.2016 to 01.06.2018. Therefore, on the cut of date, on 20.09.2022 as per the circular dated 04.08.2022 (Annexure P-4) he was not having requisite five years service as per Rules. He was thus estopped as such to even claim consideration for the said post and to file representation dated 01.02.2023 which was examined by the Grievance Committee which apparently failed to consider the terms and conditions of his transfer. Thus benefit as such to the petitioner was given without examining the Rules in its true

perspective and held him eligible to appear in the competitive examination which was against the terms of the statutory provisions.

20. The said proceedings were accepted by the then Hon'ble the Acting Chief Justice. However, the matter did not rest there since when the matter came up for personal interviews, after the petitioner had qualified, respondent No.3 Radha Devi had filed representation that one of the candidates was not having requisite service. The matter was then placed before the then Chief Justice that the earlier order be reviewed that if such relaxation was known to the other incumbents in the feeder cadre, they would also have appeared in the test. Since the process of recruitment was on, it was ordered on 26.06.2024 as per record, which has now been appended with the replication also that the recruitment process was ordered to go on. Thereafter, apparently, during the recruitment process, petitioner was declared ineligible. The matter was thereafter again put up before the then Chief Justice and the representation of the objectors were accepted and the person objected to was disqualified and others were declared as qualified by

opening the sealed cover. The relevant part of the noting dated 27.6.2024 reads as under:-

“B. The representations of objectors are accepted and persons objected to are disqualified. Let the others be considered for appointment by opening the sealed cover.”

21. A perusal of the above Rule 8 would go on to show that there is bar for appointment on the establishment of this Court on the post unless one possesses all the necessary qualifications and fulfills all the requirements for the appointment as per the Schedule and Rules. Schedule-II thus having specified that the length of service would be for 5 years of the persons who were to sit in the limited competitive examination from amongst the eligible persons for the posts which was to be filled up. Not having the said requisite length of service, as noticed above, on the establishment of this Registry, as per the Rules 2 (x), 2 (xi) 2 (xx), 8 and the Schedule of 2015 Rules, the petitioner cannot as such claim that his service as such in the Civil and Sessions Division Kullu is liable to be counted for the purpose of length of service.

22. The petitioner had only right of consideration. The post was being filled up by selection, on the basis of

limited competitive examination. There are different considerations as such whereby if the posts are not filled by way of limited competitive examination, then the posts had to be filled up by direct recruitment by a competitive examination in which case there is no such requirement of five years service. But that is not the case of the petitioner herein.

23. The Apex Court in ***Commissioner of Municipal Administration and another versus M.C.Sheela Evanjalin 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."

24. It is thus apparent that the eligibility of the petitioner had to be seen on the cut of date, that is, 20.09.2022 and it is settled principle that the cut of date is sacrosanct. The eligibility as such was not there in the terms of service of 5 years on the establishment of this Court and the petitioner could not have been considered for appointment *de hors* the Rules and against the Statute as

his right of consideration was also within the ambit of the Rules. It is also settled principle that the mandamus can only be issued if there is legal right as such in favour of the persons seeking mandamus and therefore, the enforcement of the Rule can be asked for by approaching the Court. In the presence of the Rule to the contrary, the petitioner cannot as such make a prayer that he be treated as eligible for the post of Translator as the Writ Court is bound by the Rule as such.

25. It is also a matter of record that apparently the matter was re-considered by the then Chief Justice on 27.06.2023 and the objections as such of the private respondents and other objectors were also accepted and the rejection of which was done on 26.06.2023 (Annexure P-9) as such was in other way upheld and thus impliedly over ruling the earlier recommendation dated 22.03.2023 of the Grievance Committee and the acceptance of the same on 05.04.2023 by the then Acting Chief Justice.

26. In such circumstances, we are of the considered opinion that the petitioner cannot be permitted as such to holdout that respondent No.1 is estopped from disqualifying him and making him ineligible on the principle of estoppel.

More so, since he himself is estopped from seeking any benefit as such of his earlier service with the Civil and Sessions Division at Kullu and is bound by the terms of his transfer and absorption on the Establishment of this Registry, on 02.06.2018.

27. Once the condition provided that earlier seniority would be forfeited, the claim for seniority in future could not have been made. If such a course is provided it would amount to making ineligible's as eligible and the said post being filled up by a person who would not be eligible at the time of cut of date leading to heart burning. Even all the four posts may not have been filled up, but since the right of other employees, who would have gained eligibility during the intervening period would be adversely affected and they would not be able to seek consideration as and when the fresh advertisement is issued for filling up the said posts. If the case of the petitioner is accepted, it would be in a manner to take away the vested rights as such of other aspirants which cannot thus be permitted in view of the provisions of Articles 14 and 16 of the Constitution of India.

28. Resultantly, we do not find any ground to allow the present writ petition and the same is thus dismissed along with pending applications if any.

(G.S. Sandhawalia)
Chief Justice

(Ranjan Sharma)
Judge

June 06, 2025.
(cm Thakur)