

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS.7949-7950 OF 2026
(ARISING OUT OF SLP (C) NOS.15579-15580 OF 2023)
THE STATE OF
HIMACHAL PRADESH & ANR. ...APPELLANT(S)

VERSUS

AISHWARYA THAKUR & ORS. ...RESPONDENT(S)

WITH
C.A. NO.....2026
@ SLP(C) No. 21745-21746/2023

WITH
C.A. NO.....2026
@SLP(C) No. 8151-8152/2024

O R D E R

1. Leave granted.
2. The present batch of appeals arises out of a common recruitment process for appointment to the post of Medical Officer on contract basis in the Health and Family Welfare Department, Government of Himachal Pradesh. The said process commenced pursuant to the notice dated 29.11.2021, whereby eligible candidates were invited to appear in walk-in interviews. Since all the appeals arise out of the said process and involve overlapping questions

of fact and law, they have been heard together and are being dealt with by this common judgment.

3. The Civil Appeals arising out of SLP (C) Nos. 15579-15580 of 2023 and SLP (C) Nos. 8151-8152 of 2024 have been preferred by the State of Himachal Pradesh and the Director of Health Services, Himachal Pradesh, against the common judgment and order dated 17.11.2022 passed by the High Court of Himachal Pradesh at Shimla (hereinafter referred to as the “High Court”) in CWP Nos. 1393 and 2606 of 2022, respectively. The said appellants have also challenged the orders passed in review, namely, the order dated 15.03.2023 in Review Petition No. 16 of 2023 arising out of CWP No. 1393 of 2022 and the order dated 02.11.2023 in Review Petition No. 128 of 2023 arising out of CWP No. 2606 of 2022. The Civil Appeals arising out of SLP (C) Nos. 21745-21746 of 2023 have been preferred by Dr. Sonali Sharma and others against the judgment and order dated 31.05.2022 passed in CWP No. 3399 of 2022 and the order dated 15.03.2023 passed in Review Petition No. 15 of 2023. For the sake of convenience, the Civil Appeals arising out of SLP (C) Nos. 15579-15580 of 2023 shall be treated as the lead appeals.
4. The facts giving rise to the present appeals are as follows:
 - 4.1. The Director of Health Services, Himachal Pradesh (hereinafter referred to as the “DHS”), addressed a communication dated 23.11.2021 to the Secretary

(Health), Government of Himachal Pradesh, referring to vacant posts of Medical Officers in the State. Thereafter, by communication dated 26.11.2021, approval was conveyed for conducting walk-in interviews for appointment to the post of Medical Officer on contract basis.

- 4.2. Pursuant thereto, the DHS issued a notice dated 29.11.2021 inviting eligible candidates to appear in walk-in interviews for the post of Medical Officer on contract basis. The notice did not specify the number of posts proposed to be filled. The walk-in interview was held on 07.12.2021. About 450 candidates appeared in the said process. After completion of the interviews, a list of 76 eligible candidates was prepared and forwarded by the DHS to the Secretary (Health) on 31.12.2021.
- 4.3. The candidates who are parties before us, in different capacities, were included in the said list of 76 eligible candidates. However, by order dated 01.02.2022, appointment letters were issued only to the first 43 candidates in the said list. The remaining candidates, whose names appeared after serial number 43, were not offered appointment.
- 4.4. The stand of the State is that, although the earlier communication referred to 81 posts, the correct vacancy position was subsequently clarified.

According to the State, only 24 existing vacancies were available at the relevant time, and appointments were made to 43 candidates by taking into account 19 anticipated vacancies. The State has also relied upon the position that surplus Medical Officers were available and that the subsequent vacancies could not be connected with the process initiated pursuant to the notice dated 29.11.2021.

- 4.5. The candidates, on the other hand, asserted that the recruitment process had been initiated for a larger number of posts. They relied upon the communication dated 23.11.2021, the statement stated to have been made by the Health and Family Welfare Minister in the Himachal Pradesh Vidhan Sabha on 13.12.2021, and the reply furnished under the Right to Information Act, 2005, to contend that sufficient vacancies were available. They further relied upon the subsequent steps taken by the State for filling up 144 posts and thereafter 300 posts of Medical Officers to contend that the restriction of appointments to only 43 candidates was arbitrary.
- 4.6. The first writ petition relevant for the present batch was CWP No. 3399 of 2022, filed by Dr. Sonali Sharma and others. The said writ petition was dismissed by the High Court by order dated 31.05.2022. The High Court proceeded on the basis

that the process initiated pursuant to the notice dated 29.11.2021 had concluded with the appointment of 43 candidates and that the petitioners therein could not claim appointment against the 144 posts which were subsequently sought to be filled.

- 4.7. Thereafter, two other sets of candidates approached the High Court by filing CWP No. 1393 of 2022 and CWP No. 2606 of 2022. By the common judgment and order dated 17.11.2022, the High Court allowed both the writ petitions. The High Court held, in substance, that the State had failed to furnish a justifiable reason for restricting appointments to the first 43 candidates when the material on record indicated that a larger number of posts was available and when further posts of Medical Officers were sought to be filled shortly thereafter. The High Court accordingly directed the State to offer appointment letters to the writ petitioners therein within a period of two weeks. The High Court also distinguished the earlier dismissal of CWP No. 3399 of 2022 by observing that the relief sought therein was different. It further distinguished CWP No. 5701 of 2022, which had been dismissed on 13.09.2022, on the ground that the issue in that case related to the holding of a written test for filling up the posts.

- 4.8. Review Petition No. 15 of 2023 filed by Dr. Sonali Sharma and others against the order dated 31.05.2022 was dismissed on 15.03.2023. Review Petition No. 16 of 2023 filed by the State in relation to CWP No. 1393 of 2022 was also dismissed on 15.03.2023. Review Petition No. 128 of 2023 filed by the State in relation to CWP No. 2606 of 2022 was dismissed on 02.11.2023.
- 4.9. Being aggrieved by the judgment dated 17.11.2022 and the respective review orders, the State and the DHS have approached this Court in the appeals arising out of SLP (C) Nos. 15579-15580 of 2023 and SLP (C) Nos. 8151-8152 of 2024. Moreover, being aggrieved by the dismissal of their writ petition and review petition, Dr. Sonali Sharma and others have approached this Court in the appeals arising out of SLP (C) Nos. 21745-21746 of 2023. While issuing notice in the State appeals, this Court stayed the operation of the impugned orders of the High Court, while clarifying that status quo shall be maintained with respect to such persons to whom appointment letters had already been issued pursuant to the impugned order and who had joined.
5. We have heard learned counsel for the parties and have perused the material placed on record.

6. The principal submission advanced on behalf of the State and the DHS is that mere inclusion in the list of 76 eligible candidates did not confer an indefeasible right to appointment. It is submitted that the notice dated 29.11.2021 did not specify the number of posts to be filled and that the appointments were made only against the vacancies which were available at the relevant time. According to the State, only 24 existing vacancies were available and, by taking into account 19 anticipated vacancies, 43 candidates were appointed. It is further submitted that the subsequent creation or filling up of 144 posts and thereafter 300 posts could not be treated as part of the earlier process initiated pursuant to the notice dated 29.11.2021.
7. On the other hand, the candidates who were not appointed submit that the State had initiated the process for a larger number of posts and, having prepared a list of 76 eligible candidates, could not arbitrarily restrict appointments to only 43 candidates. They rely upon the contemporaneous material referring to 81 posts, the statement stated to have been made in the Himachal Pradesh Vidhan Sabha, the information obtained under the Right to Information Act, 2005, and the subsequent steps taken by the State for filling up further posts of Medical Officers. The candidates in the appeals arising out of SLP (C) Nos. 21745-21746 of 2023 further submit that they stand on the same footing

as the candidates who were granted relief by the High Court under the common judgment dated 17.11.2022.

8. Therefore, the question is whether, in the facts of the present case, the State was justified in restricting appointments to 43 candidates from the list of 76 eligible candidates prepared pursuant to the walk-in interview held on 07.12.2021, or whether the remaining eligible candidates were also entitled to be considered for appointment in the same process. The answer to the aforesaid question would also determine the manner in which the appeal filed by Dr. Sonali Sharma and others is to be disposed of, since their claim also arises from the same list of 76 eligible candidates prepared pursuant to the walk-in interview dated 07.12.2021.

Prevalent legal position

9. Before turning to the facts of the present case, it is necessary to clarify the governing legal position in such matters. It is true that mere inclusion of a candidate in a select list, merit list or eligibility list does not, by itself, confer an indefeasible right to appointment. The same has been upheld by the decision of the Constitution Bench of Court in ***Shankarsan Dash v. Union of India, (1991) 3 SCC 47***, wherein it was held as follows:

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subash Chander Marwaha [(1974) 3 SCC 220 : 1973 SCC (L&S) 488 : (1974) 1 SCR 165], Neelima Shangla v. State of Haryana [(1986) 4 SCC 268 : 1986 SCC (L&S) 759], or Jatinder Kumar v. State of Punjab [(1985) 1 SCC 122 : 1985 SCC (L&S) 174 : (1985) 1 SCR 899].”

10. The aforesaid portion contains two distinct limbs. The first is that a selected candidate cannot claim appointment as a matter of right merely because his or her name appears in a list. The second, which is equally important, is that the State does not thereby acquire a licence to act arbitrarily. The absence of an indefeasible right in the candidate does not mean the absence of a constitutional

obligation on the State. The decision not to proceed with appointments, or to stop appointments at a particular stage, must be bona fide, rational and founded on appropriate reasons.

11. The same principle was reiterated by this Court in ***Dinesh Kumar Kashyap and Others v. South East Central Railway and Others*, (2019) 12 SCC 798**, in the following terms:

“6. Our country is governed by the rule of law. Arbitrariness is an anathema to the rule of law. When an employer invites applications for filling up a large number of posts, a large number of unemployed youth apply for the same. They spend time in filling the form and pay the application fees. Thereafter, they spend time to prepare for the examination. They spend time and money to travel to the place where written test is held. If they qualify the written test they have to again travel to appear for the interview and medical examination, etc. Those who are successful and declared to be passed have a reasonable expectation that they will be appointed. No doubt, as pointed out above, this is not a vested right. However, the State must give some justifiable, non-arbitrary reason for not filling up the post. When the employer is the State it is bound to act according to Article 14 of the Constitution. It cannot without any rhyme or reason decide not to fill up the post. It must give some plausible reason for not filling up the posts. The courts would normally not question the justification but the justification must be reasonable and should not be an arbitrary, capricious or whimsical exercise of discretion

vested in the State. It is in the light of these principles that we need to examine the contentions of SECR.”

12. The law, therefore, does not proceed on a rigid or one-sided footing. It does not say that every candidate included in a list must necessarily be appointed. Equally, it does not say that the State may, after undertaking a recruitment process and preparing a list, stop the process without any reasonable explanation. The governing test is one of fairness, bona fides and non-arbitrariness.
13. The aforesaid position must also be read with the broader constitutional obligation of the State in matters of public employment. In ***Bhola Nath v. State of Jharkhand, 2026 INSC 99***, this Court emphasized that the State, being a model employer, is saddled with a heightened obligation to act with fairness, probity and candour. The State does not shed its constitutional character when it acts as an employer. Its decisions in the field of employment must therefore be tested not merely by administrative convenience, but also by the standards of fairness and non-arbitrariness flowing from Article 14 of the Constitution of India.
14. This principle is of significance in the present case. The doctrine that a selected candidate has no indefeasible right to appointment cannot be converted into a shield against judicial scrutiny. It only means that appointment

does not follow automatically from inclusion in a list. It does not mean that the State may invite candidates, conduct a process, prepare a list, make appointments from that list up to a particular point, and thereafter stop without a coherent and justifiable explanation.

15. Article 14 of the Constitution of India is not confined only to cases of direct discrimination. It strikes equally at arbitrary State action. If the State treats similarly situated candidates differently, the distinction must rest on a rational basis. If the State stops a recruitment process midway, the reason must be bona fide and capable of being explained. Administrative expressions such as vacancy position, surplus staff, cadre adjustment or policy decision cannot by themselves immunise the action from constitutional scrutiny. The Court is entitled to examine whether such explanation is real and reasonable, or merely a formal answer to an otherwise arbitrary course of action.
16. The distinction, therefore, is between a right to appointment and a right to fair treatment. A candidate included in a list may not be able to demand appointment as a matter of course. However, such candidate is certainly entitled to insist that the discretion of the State be exercised in a fair, reasoned and non-arbitrary manner. The absence of a vested right to appointment cannot be equated with an absence of constitutional protection. The

former concerns the final relief which may be claimed by a candidate. The latter concerns the standard by which State action must be judged.

17. The prevailing principle, therefore, is that the State's discretion in matters of public employment is wide, but not unguided. Decisions relating to the number of posts to be filled, the assessment of vacancies, and the continuation or closure of a recruitment process ordinarily belong to the executive domain. Yet, when such decisions are questioned on the ground of arbitrariness, the State must be able to demonstrate a coherent, bona fide and non-discriminatory basis for its action. It is in the light of this legal position that the facts of the present case are required to be examined.

Application to the present facts

18. We may now examine the present case in the light of the aforesaid legal position. In this backdrop, the contemporaneous record assumes significance. The communication dated 26.11.2021 issued by the Secretary (Health), Government of Himachal Pradesh, conveyed approval for holding the walk-in interview in the following terms:

"I am directed to refer to your office letter No. HFW-H(1) B (3) 173/74 dated 23.11.2021 on the subject cited above and to convey the approval

of the Government to conduct Walk-in-Interview for the appointment of Medical Officers, subject to the condition that, each candidate will be recommended by the selection committee for appointment, against the vacant post.”

19. Pursuant to the aforesaid approval, the notice dated 29.11.2021 was issued by the Director of Health Services, Himachal Pradesh. The notice reads thus:

*“HEALTH AND FAMILY WELFARE
DEPARTMENT*

HIMACHAL PRADESH

*No.HFW-H(1)B(3)173/74
Shimla-9, the 29/11/2021*

Dated

NOTICE

Walk in interview is being held in Health & Family Welfare Directorate, Shimla-9 on every Tuesday w.e.f.07.12.2021 onwards for the post of Medical Officers on contract basis as per the approval of the Government vide letter number Health-A-B(6)5/2021-Loose dated 26/11/2021.

*Director Health Services
Himachal Pradesh.”*

20. While it is true that the notice did not specify the exact number of posts. However, it is equally material that the notice did not confine the process to 43 posts either. The process was initiated for appointment of Medical Officers on contract basis against vacant posts, and it was preceded by the communication dated 23.11.2021 which,

as noticed by the High Court, referred to 81 vacant posts of Medical Officers.

21. The walk-in interview was thereafter held on 07.12.2021. The communication dated 31.12.2021 forwarded by the Director of Health Services to the Secretary (Health) records the outcome of the process in the following terms:

“In continuation of this Directorate letter of even number dated 8.12.2021 on the subject cited above and to submit that walk-in-interview for the post of Medical Officers on contract basis had been fixed on 7.12.2021 at SH&FW TC Parimahal and 405 Medical Officers have appeared ... in the said interview in which 76 Medical Officers found eligible as per the list submitted by the committees constituted for the purpose...”

22. Thus, the process did not end in an informal or incomplete exercise. A walk-in interview was actually conducted. A large number of candidates participated. The Selection Committees found 76 candidates eligible. Once such a list had been prepared, the State was required to adopt a fair and consistent course in making appointments from that list.

23. The State has sought to justify the restriction of appointments to 43 candidates by relying upon the communication dated 08.12.2021 and by stating that only 24 vacancies were available, which later stood reduced to

23 on account of one appointment made pursuant to an order of the High Court, and that 20 anticipated vacancies were also taken into account. The stand, therefore, is that 43 appointments exhausted the vacancies available for the said process.

24. The difficulty with this explanation is that it does not stand alone in the record. Soon thereafter, by communication dated 12.04.2022, the Government itself conveyed approval for creation and filling up of 144 posts of Medical Officers. The relevant portion of the communication dated 12.04.2022 reads as follows:

“I am directed to refer to the subject cited above and to convey the approval of the Government for creation and filling up of 144 posts of Medical Officer (68 for M3C and 76 of Model PHCs) on contract basis through Walk-in-Interview after completing all codal formalities in this behalf.”

25. We are conscious that the subsequent creation or filling up of 144 posts cannot automatically be treated as part of the earlier process initiated by the notice dated 29.11.2021. Subsequent vacancies ordinarily cannot be filled from an earlier list unless the rules, the advertisement or the nature of the process so permits. However, the subsequent material is relevant for a limited but important purpose. It tests the credibility and consistency of the State’s explanation that no real requirement existed beyond 43 appointments.

26. The same conclusion is reinforced by the later decision of the State to fill up 300 posts of Medical Officers. The High Court noticed that these steps were taken within a short period after the State had declined to appoint candidates beyond serial number 43 from the list of 76 eligible candidates. The proximity of these developments could not have been ignored while examining whether the State had acted with fairness and coherence.
27. The State also relied upon the availability of surplus Medical Officers in Medical Colleges. The High Court, however, noticed that the State was unable to show that Medical Officers in the Health Department and Medical Officers posted in Medical Colleges formed one cadre. In the absence of such material, the plea of surplus Medical Officers could not constitute a complete answer to the claim of candidates who had participated in the recruitment process for the Health and Family Welfare Department.
28. The State has also submitted that some of the candidates participated in the later written examination conducted through Atal Medical and Research University, Mandi, on 04.09.2022 and were not selected. However, the said examination was part of a subsequent recruitment process. The issue before us concerns the legality of restricting appointments in the earlier process initiated by the notice dated 29.11.2021 and culminating in the list of

76 eligible candidates. The subsequent participation of some candidates in a later process does not furnish a complete answer to the question whether the earlier process was curtailed fairly and for valid reasons.

29. The factual position, therefore, is that the process was initiated after reference to a larger requirement, the notice did not restrict the recruitment to 43 posts, 76 candidates were found eligible by the Selection Committees, appointments were issued only up to serial number 43, and within a short period the State proceeded to take steps for filling up further posts of Medical Officers. In these circumstances, the explanation offered by the State for stopping the process at 43 appointments does not satisfy the standard of fairness and non-arbitrariness required under Article 14 of the Constitution.

Appropriate relief and operative directions

30. Having held that the State was not justified in restricting the process to 43 appointments, the relief must be moulded in a manner which is fair, uniform and confined to the candidates who are before this Court in the present batch of appeals.
31. The recruitment process resulted in one common list of 76 eligible candidates pursuant to the walk-in interview held on 07.12.2021. However, we do not consider it appropriate

to extend relief to all persons included in the said list, including those who have not approached this Court. Therefore, the benefit of the present judgment shall, therefore, be confined to such candidates who are parties before this Court in the present batch of appeals and whose names are included in the list of 76 eligible candidates.

32. This would include the writ petitioners in CWP Nos. 1393 and 2606 of 2022, who are respondents in the State appeals, and the appellants in the appeals arising out of SLP (C) Nos. 21745-21746 of 2023, namely, Dr. Sonali Sharma and others, to the extent they are before this Court and continue to pursue relief. The benefit of this judgment shall not extend to any candidate who is not before this Court or who has chosen not to pursue relief in these proceedings.
33. The State of Himachal Pradesh and the Director of Health Services, Himachal Pradesh, shall issue fresh appointment orders to such candidates, subject to verification of eligibility, educational qualifications, registration, documents, medical fitness, character antecedents and other formal requirements applicable to appointment to the post of Medical Officer on contract basis. The said exercise shall be completed within a period of eight weeks from the date of this judgment.

34. The inter se seniority of all candidates appointed pursuant to the present judgment, including the respondents in the State appeals and the appellants in the appeals arising out of SLP (C) Nos. 21745-21746 of 2023, shall be governed by their respective position in the original list of 76 eligible candidates prepared pursuant to the walk-in interview held on 07.12.2021. No candidate shall claim seniority or any other service advantage merely on the basis of earlier joining pursuant to the judgment dated 17.11.2022 passed by the High Court.
35. It is clarified that all such appointments shall operate prospectively from the date of issuance of fresh appointment orders pursuant to this judgment. No candidate shall be entitled to claim back wages, retrospective seniority or any other monetary benefit for the period prior to such fresh appointment merely on the basis of inclusion in the list of 76 eligible candidates or on the basis of any order passed by the High Court. However, salary or remuneration already paid to any candidate for actual service rendered pursuant to the orders of the High Court shall not be recovered.
36. Consequently, the judgment and order dated 17.11.2022 passed by the High Court in CWP Nos. 1393 and 2606 of 2022 is sustained in substance, but the relief granted therein stands modified in the above terms. The judgment and order dated 31.05.2022 passed in CWP No. 3399 of

2022 and the order dated 15.03.2023 passed in Review Petition No. 15 of 2023 are set aside to the extent they deny similar treatment to Dr. Sonali Sharma and others. The orders passed in the review petitions arising out of CWP Nos. 1393 and 2606 of 2022 shall stand merged in the present judgment.

37. The appeals are disposed of in the above terms.

38. Pending application(s), if any, shall stand disposed of. There shall be no order as to costs.

.....J.

[VIKRAM NATH]

.....J.

[SANDEEP MEHTA]

.....J.

[VIJAY BISHNOI]

**NEW DELHI;
MAY 12, 2026.**