

IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA

CWP No. 6750 of 2025

Reserved on: 13.8.2025

Date of decision: 23.9.2025

Dr. Sunil Dutt

...Petitioner.

Versus

State of H.P. & others.

...Respondents.

Coram

Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Hon'ble Mr. Justice Sushil Kukreja, Judge.

Whether approved for reporting?¹ Yes

For the Petitioner.

Mr.Chandernarayan Singh and Dr.Nidhi Singh, Advocates.

For the Respondents:

Mr.Anup Rattan, Advocate General with Mr.Raj Negi, Deputy Advocate General, for respondents No. 1 to 5.

Mr.Vikrant Thakur, Advocate, for respondent No. 6.

Mr.Balram Shrama, Deputy Solicitor General of India with Mr.Rajeev Sharma, Advocate, for respondent No. 8.

Vivek Singh Thakur, Judge

Petitioner, by way of present petition, has assailed omission and commission on the part of respondents-State, whereby petitioner has been considered ineligible to be considered for promotion to the post of Assistant Professor in Medical College and has recommended promotion

¹***Whether the reporters of the local papers may be allowed to see the Judgment? Yes***

of respondent No. 7 as Assistant Professor ignoring the seniority of the petitioner.

2. Admitted facts related to the petitioner are that, he completed his MBBS in the year 2006, internship on 15.10.2007 and thereafter worked as House Surgeon in ICU in Department of Anesthesiology at IGMC Shimla w.e.f. 1.12.2007 to 19.2.2008. Petitioner remained as Registrar in Department of Urology, IGMC Shimla w.e.f. 1.3.2008 to 31.8.2008.

3. Petitioner served as Medical Officer in Department of Health and Family Welfare at CHC Choori, District Chamba, H.P. w.e.f. 1.9.2008 to 31.8.2013. Thereafter on 1.9.2013, petitioner joined as Junior Resident in the Department of Anesthesiology for doing Post Graduate Diploma in Anesthesiology from IGMC, Shimla and completed the Diploma in July/August, 2015.

4. Thereafter he served as Medical Officer (Specialist) in Regional Hospital, Chamba w.e.f. 1.9.2015 to 18.1.2017. On 19.1.2017 petitioner joined as Senior Resident in Department of Anesthesiology at Pt. Jawahar Lal Nehru Government Medical College, Chamba, District Chamba, H.P. and remained as such till 8.3.2022.

5. Thereafter petitioner as General Duty Officer (GDO) completed his MD Anesthesiology from Dr. Rajendra Prasad Government Medical College Tanda at Kangra in the year 2024, and thereafter he

joined as Medical Officer (Specialist) in Pt. Jawahar Lal Nehru Government Medical College Chamba on 16.3.2024.

6. On 10.4.2025 petitioner joined as Senior Resident in the same Department in the same College and at the time of filing petition he was serving as such.

7. Petitioner is claiming his entitlement for promotion to the post of Assistant Professor in terms of Himachal Pradesh Medical Education Service Rules, 1999 (for short 'Service Rules, 1999'), wherein 50% appointment to the post of Assistant Professor has been provided by way of promotion from inservice candidates, i.e. General Duty Officers and 50% by direct recruitment in the manner specified in Service Rules, 1999.

8. Rule 3 of Service Rules, 1999 provides that the character, i.e. designation, grade etc., of various posts included in the service and their pay scale shall be as indicated in the Annexure-1 to these rules, subject to any additions, reduction that may be made by or under the orders of the Himachal Pradesh Government, from time to time. Annexure-1 provides method of recruitment to the post of Assistant Professor to the mode of 50% by promotion as under:-

9	10	11
Age: Not Applicable	(i) 50% by promotion failing which by direct recruitment.	By promotion from amongst the Lecturers who possess three years regular service or regular combined with continuous ad hoc (rendered upto 31-3-98)

E.Q. : Yes (ii) 50% by direct service, if any, in the grade recruitment in the manner in the concerned speciality specified in Appendix-B failing which by appointment (by selection from amongst the members of H.P. Civil Medical Service (General Wing) having recognised post-graduation degree or its equivalent qualifications in the concerned specialty and possess at least three years teaching experience as Lecturer/Registrar/Demonstrator/Tutor/Sr. Resident/Chief Resident in the concerned speciality after doing Post-graduation in the concerned speciality failing which by direct recruitment.

9. Appendix-B specifies essential qualifications to the post of Assistant Professor, as mentioned in Part-A of Annexure-II is as under:-

“3. Assistant Professor Essential qualification.--(i) A recognised medical qualification included in the first or second Schedule or Part-II of the third Schedule (other than Licentiate qualifications) to the Indian Medical Council Act, 1956. Holders of Educational Qualification included in Part-II of the Third Schedule should also fulfill the conditions stipulated in sub-Section (3) of Section 13 of Indian Medical Council Act, 1956.

(ii) A post-graduate degree in the concerned speciality mentioned in Par-A of Annexure-II or its equivalent qualifications.

(iii) Atleast 3 years teaching experience as Lecturer/Registrar/Demonstrator/Resident after doing post-graduation in the

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concerned speciality in any recognized Medical College.”

10. The aforesaid provision provides that post-graduation degree in concerned speciality mentioned in Part-A of Annexure-II is an essential qualification for the appointment to the post of Assistant Professor (Anesthesiology). Part-A of Annexure-II provides following post graduate degrees:-

“Annexure-II

LIST OF POST GRADUATE QUALIFICATIONS

Sl. No.	Subject	Part-A	Part-B
1	2	3	4
13	Anesthesiology	M.D. or M.S. (Anesthesiology) F.F.A.R.G. (By examination with Anesthesiology as a special subject, Specialty Board of Anesthesiology (U.S.A.)	D.A. R.P.S. (Eng.) D.A.

11. To substantiate claim of the petitioner, learned counsel for the petitioner has also placed reliance upon Minimum Qualification for Teachers in Medical Institutions Regulations 1998, framed by Medical Council of India, amended vide notification dated 12.2.2020 (Annexure P-3), wherein essential academic qualification and teaching & research experience to the post of Senior Resident has been prescribed as under:-

“Posts	Academic Qualification	Teaching & Research
Exp.		

Senior
Resident

A post graduate
qualification MD/MS/DNB/
Diploma in the concerned
subject and as per these
Regulations.

Senior Resident is one
who is doing his/her
residency in the
concerned post graduate
subject after obtaining
PG degree/ Diploma
(MD/MS/DNB/ Dip.) and
is below 45 years of age.

12. Petitioner has also placed reliance on the definition of “Senior Resident” provided in Notification dated 24.12.2021 (Annexure P-4), notified by the Government of Himachal Pradesh by framing ‘Policy for Residency in the Government Medical Colleges in the State of Himachal Pradesh’. in short “Resident Doctor Policy”, wherein in clause 3 definition of ‘Senior Resident’ has been given as under:-

“3.1 ‘Senior Resident’ or ‘Tutor Specialist’ shall mean the doctors who have completed their Post Graduation in any clinical and non-clinical speciality as recognized by National Medical Commission (NMC).”

13. Learned counsel for the petitioner has also placed reliance on clause 7.1 of Resident Doctor Policy providing essential qualification/eligibility for clinical subjects, which reads as under:-

“7.1 Essential Qualification(s)/Eligibility:

For Clinical Subjects:

Post Graduate (MD/MS/MDS) or DNB in the concerned specialty from a University/Institution recognized/permitted by the NMC/Dental Council of India (DCI); failing which the PG Diploma (MD/MS/MDS) in the concerned specialty recognized/permitted by the NMC/DCI.”

14. Respondent-State has placed reliance upon ‘Teachers Eligibility Qualifications in Medical Institutions Regulations, 2022’, notified vide Notification dated 14.2.2022 (Annexure R-1) by National Medical

Commission (Postgraduate Medical Education Board), wherein eligibility for appointment to the post of Assistant Professor has been provided as under:-

“Assistant Professor	M/D/MS/DNB in the concerned subject	Special training for three years in the respective new broad specialty subject in a teaching Institution/Centre of Excellence with dedicated service in that specialty.
	OR	
	<u>During Transition period</u>	
	MD/MS/DNB in Broad specialty as provided in Table 4.A	

15. It is case of the petitioner that in view of eligibility prescribed for appointment/posting as Senior Resident in Regulations 1998, as amended in 2020 and definition provided for ‘Senior Resident’ in Resident Doctors Policy, petitioner was eligible to be appointed as Senior Resident after completion of his Post Graduation Diploma in Anesthesiology and further that on appointment as Senior Resident after completing Post Graduation Diploma in Anesthesiology, after completion of 3 years service as such, petitioner was eligible to be appointed as Assistant Professor in Anesthesiology as provided in Service Rules 1999.

16. To substantiate claim of petitioner, learned counsel for the petitioner has submitted that condition of 3 years teaching experience as Senior Resident in the concerned speciality (in present case Anesthesiology) after doing Post Graduation, has been prescribed in Service Rules, 1999 and for this purpose in the Rules, the word “Post Graduation” only has been mentioned, but without specifying that it must

be Post Graduate Degree only. According to him, condition of 3 years teaching experience after doing “Post Graduation” also includes that teaching experience as Senior Resident acquired after completing Post Graduate Diploma in Anesthesiology and thus the same has also to be taken into consideration for determining the eligibility of petitioner fulfilling the condition of 3 years teaching experience as Senior Resident.

17. According to learned counsel for the petitioner after completing Post Graduate Diploma, petitioner was eligible to be appointed as Senior Resident and, therefore, there is no illegality, irregularity or shortcoming in the appointment of the petitioner as Senior Resident after completion of Diploma in Anesthesiology, therefore, for no specific mention of Post Graduate ‘Degree’ and only mention of Post Graduation in the provisions of Service Rules related to teaching experience, 3 years teaching experience gained by the petitioner after Post Graduate Diploma fulfills the essential eligibility of the petitioner to consider him to the post of Assistant Professor, after completing Post Graduate Degree in the year 2024.

18. It has been submitted on behalf of petitioner that though petitioner has gained teaching experience before completing the Post Graduate Degree in Anesthesiology, but after completion of Post Graduate Diploma in Anesthesiology and because 3 years teaching experience has to be gained after Post Graduation, thus it does not disentitle the petitioner from considering him for his promotion for the post of

Assistant Professor Anesthesiology for gaining teaching experience after Post Graduate Diploma though prior to completion of Post Graduate Degree in Anesthesiology. It has been submitted that the word “after Post Graduation” means that teaching experience can be gained either after passing Post Graduate Degree or passing Post Graduate Diploma. According to learned counsel for the petitioner before gaining teaching experience incumbent must possess either Post Graduate Degree or Post Graduate Diploma in the concerned subject.

19. Learned counsel for the petitioner has also submitted that in view of order dated 1.2.2017, passed in ***Civil Appeal No. 4415 of 2011, titled as Manish Sharma Vs. Director, Department of Medical Education and Research***, petitioner is entitled to be considered eligible.

20. Learned Advocate General has contended that Rules provide minimum qualification of Post Graduate Degree or its equivalent in the concern speciality with 3 years teaching experience after doing Post Graduation in the concerned specialty with further submission that when minimum qualification has been prescribed as Post Graduation Degree to the post of Assistant Professor, then 3 years teaching experience must have been gained after completion of Post Graduation Degree, as narrated in Service Rules, 1999 and, therefore, it has been submitted that at the time of meeting of Departmental Promotion Committee (DPC), though petitioner had completed his Post Graduation Degree, but his teaching experience was gained prior to completion of

said Degree and, therefore, candidature of petitioner was rightly rejected by Departmental Promotion Committee by considering him ineligible for appointment to the post of Assistant Professor (Anesthesiology).

21. From essential qualification provided in Annexure-1 as well as Sr. No. 3 in Appendix-B, it is undoubtedly clear that only those candidates were entitled for promotion amongst the members of H.P. Civil Medical Service (General Wing) (GDO), who were having recognized Post Graduate Degree or equivalent qualification in the concerned speciality and possessing at least three years teaching experience as Lecturer/Registrar/ Demonstrator/Tutor/Senior Resident/Chief Resident in the concerned specialty after doing Post Graduation in the concerned specialty.

22. Plea raised on behalf of petitioner that word 'Post Graduate' used in the aforesaid provision includes Post Graduate Diploma also, is misconceived. The provisions of Rules are to be read in its entirety and not picking and choosing one portion thereof in isolation of other part of the Rules providing minimum essential qualification.

23. Bare reading of the provisions includes that prescribed essential qualification is Post Graduation Degree or its equivalent qualification with condition that such candidate must possess 3 years teaching experience after doing Post Graduation. The word 'after doing Post Graduation' relates to the minimum essential qualification, i.e. Post Graduation Degree in concerned speciality or its equivalent. In case,

there would have been intention to include teaching experience after doing Post Graduation Diploma, then it would have been mentioned specifically in the Rules that teaching experience can be gained after doing either Post Graduation Degree or Diploma. There is no reference of Post Graduation Diploma in the essential qualification, therefore, meaning of words 'after doing Post Graduation' has to be construed as "after doing Post Graduation Degree". In absence of reference of "Diploma" in the essential qualification at any place, the Post Graduation Diploma cannot be imported for interpreting the word 'after doing Post Graduation' as Post Graduation Degree or Diploma or to say that these words include Post Graduation Diploma also in addition to Post Graduation Degree referred in earlier part of Rules providing essential qualification as Post Graduation Degree.

24. In Civil Appeal No. 4415 of 2011 (**Manish Sharma's case**) the question considered by the Apex Court was that "whether the Post-Graduate Diploma possessed by the appellant was equivalent to the prescribed qualification of a Post-Graduate Degree in Anesthesiology" and it was observed by the Court that said question was required to be decided by the competent authority in terms of Rules and the appeal was disposed of by the Apex Court directing the respondent-competent Authority to take a decision in terms of applicable Rules, whether two years Post Graduate Diploma possessed by Manish Sharma was equivalent to Post Graduate Degree in Anesthesiology or not. The Apex

Court had not decided the issue on merit, but had left it open to be decided by Competent Authority. There is nothing on record to say that Competent Authority had decided that Post Graduate Degree and Post Graduate Diploma are one and the same thing.

25. In view of above observations, we are of the considered opinion that respondents as well as Departmental Promotion Committee had rightly arrived at conclusion that at the time of conducting the meeting of DPC, petitioner was not eligible to be appointed as Assistant Professor Anesthesiology for want of essential qualification provided under the relevant Rules.

Accordingly, petition is dismissed alongwith pending application(s) if any. Interim order passed also stand vacated.

***(Vivek Singh Thakur),
Judge.***

***(Sushil Kukreja),
Judge.***

***23rd September, 2025
(Keshav)***