



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

**CWPOA No.373 of 2019**

**Reserved on: 26.02.2026**

**Decided on: 17<sup>th</sup> March, 2026**

---

Ashwani Kumar and another

...Petitioners

versus

State of H.P and another

...Respondents

---

*Coram*

***The Hon'ble Mr.Justice Jiya Lal Bhardwaj, Judge.***

***Whether approved for reporting?<sup>1</sup> Yes.***

**For the petitioners: Mr.Sparsh Bhushan, Advocate.**

**For the respondents: Mr. Hemant Kumar Verma,  
Deputy Advocate General.**

---

**Jiya Lal Bhardwaj, Judge**

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

- "i) *That a writ in the nature of certiorari may very kindly issued and the communication Annexure P-17 dated 24.8.2009 may very kindly be quashed and set aside.*
- ii) *That a writ in the nature of mandamus may very kindly issued directing the respondents to create the posts of Law officers by further directing them to frame Recruitment and Promotions rules for such posts on the analogy of the other departments and more particularly as per directive of the Government vide Annexure P-2 dated 12th July, 2005.*
- iii) *That a writ in the nature of mandamus may very kindly be issued directing the respondents to consider the petitioners for promotion to the post of Law Officer in the interest of justice and fair play."*

---

<sup>1</sup> *Whether the reporters of Local Papers may be allowed to see the judgment?*



2. As per pleadings in the writ petition, petitioner No.1 was initially appointed as Clerk with the respondent-Department on 20.02.1986 and thereafter was promoted to the post of Senior Scale Stenographer on 16.03.1992 and was working on the said post.

3. Petitioner No.2 was initially appointed as Clerk on 01.05.1982 and thereafter was promoted as Senior Assistant. He was working as Senior Assistant in the Legal Cell with respondent No.2.

4. As per pleadings, a communication dated 27.03.1987 was issued by the Financial Commissioner-cum-Secretary (Forests) whereby a proposal was mooted to set-up a Legal Cell in the Office of the Chief Conservator of Forests (Annexure P-1). As per this proposal, two posts of Law Officers (one for CAT and other for SAT/H.P. High Court) and further two posts of Legal Assistants having LLB qualification was shown to be created. As per pleadings, since the problems were faced in almost all the Government Departments, the Principal Secretary (Personnel) to the Government of Himachal Pradesh vide Notification dated 12.07.2005 (Annexure P-2) directed all the Departments to insert Column No.11 in the Recruitment and Promotion Rules for the post of Legal Assistants. As per the proposal, the Senior Assistants/Senior Scale Stenographers



having at least five years of regular service and subject to fulfilling educational qualification prescribed in Column No.7 were made eligible or by promotion from amongst the (clerical cadre, which includes Clerk/Junior Assistants) Steno-typist and Junior Scale Stenographers, subject to fulfilling the educational qualification prescribed in Column No.7 with 10 years regular service or regular combined. It has been mentioned that following the said instructions, almost all the Departments had framed such Rules by inserting the ibid provision and one of such Rule made by the Panchayati Raj Department for the post of Legal Assistants/Legal Officers (Annexure P-3).

5. A meeting of the Secretaries and Heads of the Departments was held on 13.11.2006, in which it was categorically resolved that the major Departments should move for the creation of posts of Legal Adviser/Law Officers, so that the interests are diligently protected in the Courts and the judicial proceedings.

6. It has been averred in the petition that vide communication dated 14.09.2007 (Annexure P-9), detailed comments were called for, relating to conversion of seven posts of HPFS into ADA/Law Officers in the pay-scale of Rs.7000-10640/- against the direct quota of HPFS and also for upgradation/re-designation of the posts of Senior Scale Steno to the post of Law



Officers/Legal Assistants in Forest Department in the scale of Rs.6400-10640/-.

7. As per communication dated 06.11.2007 (Annexure P-10), it was mentioned that in case the post of Law Officer in the Department is created, after framing of R&P Rules on the analogy of other major Departments, there will no extra financial burden on the State, since the officials are already getting more pay than the initial scale of a Law Officer. Various communications have been placed on record regarding creation of posts of Law Officers in the Forest Department and as per communication dated 11.04.2008 (Annexure P-13), it was specifically mentioned that the proposal for creation of posts of Law Officer in the Forest Department has already been sent to A.D. vide office letter dated 06.11.2007 along-with necessary RNS and there is an urgent need of Law Officers in the Forest Departments as the number of Court cases is increasing day-by-day and law is a very specialized field. However, vide communication dated 24.08.2009 (Annexure P-17), request for reversion of the decision as already taken in regard of creation of posts of Law Officers in the Forest Departments on the analogy of the other Departments was examined at Government level and the same was rejected on the ground that a District Attorney has already been



appointed with the respondent Department, who will look after the legal work of the Department.

8. The petitioners have pleaded in the petition that once the respondents had themselves mentioned that there is dire need of creation of posts of the Law Officer in the respondent Department, action on the part of the respondents in rejecting the claim is violative of Article 14 and 16 of the Constitution of India, since in all other big Departments, posts being held by the petitioners have been considered as feeder post to the post of Law Officer. It has been mentioned that the respondents are flouting their own decision which have been taken at various levels and thus prayed for quashing communication dated 24.08.2009 and further sought directions to the respondents to create the posts of Law Officers by framing the Recruitment and Promotion Rules on the analogy of other Departments as per directive of the Government dated 12.07.2005 (Annexure P-2).

9. The respondents filed reply to the petition and submitted that petitioner No.1 was initially appointed as Clerk in the Forest Department on 20.02.1986 and thereafter was promoted to the post of Senior Scale Stenographer on 16.03.19992. So far as petitioner No.2 is concerned, he was initially appointed as Clerk on 01.05.1982 and thereafter was promoted as Senior Assistant. It is



further submitted that petitioner No.2 was thereafter promoted as Superintendent Grade-II and posted in the Divisional Forest Office at Solan as Divisional Superintendent.

10. The Government had taken time to take necessary steps to look after the litigation work in the Forest Department. A Legal Cell was created in the office of the Principal Chief Conservator of Forests and at present, the litigation work in the circle level is being supervised and monitored by the Senior Officers of the rank of Conservator of Forests and the Divisional Forest Officers. It has been mentioned that there are no sanctioned or created posts of Legal Assistants and as such there is no relevance of instructions contained in Annexure P-2. The State Government had examined the matter and proposal was rejected since a District Attorney had already been appointed in the office of the Principal Chief Conservator of Forests, Himachal Pradesh Forest Department at Shimla to look after the legal work of the Department.

11. The petitioners have not filed rejoinder to the reply of the respondents.

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

13. It is not in dispute that there are no Rules in place to consider the category of the petitioners as feeder category for



promotion/appointment either to the post of Legal Assistant or Law Officer. The law is very clear that scope of judicial review in the matters concerning to the constitution, pattern, nomenclature of posts, other conditions of service including avenue of promotions, criteria to be fulfilled, grant of pay-scale, its revision and related issues are not in the domain of the Courts and these pertain to the field of policy and exclusive discretion and jurisdiction of the State. It is not the function of the statutory Tribunals or Courts to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of State. The question of equation of posts and prescribing qualification including the avenue of promotion is a complex matter and should be left to expert body, unless there is cogent material to formally conclude that grave injustice has been caused.

14. The Hon'ble Apex Court has held that the expert job cannot be taken by the Court as enunciated in ***P.U. Joshi and others vs. Accountant General, Ahmedabad and others (2003) 2 SCC 632***. The relevant para 10 of the judgment is reproduced as under:-

*"10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution,*



*pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the*



*authority of the State to amend, alter and bring into force new rules relating to even an existing service."*

15 The aforementioned view has again been reiterated by the Hon'ble Apex Court in various pronouncements and powers of judicial review by the High Courts in the classification of posts, avenues of promotion and determination of pay.

16. Learned counsel for the petitioner has vehemently argued that once respondent No.2 had also recommended that the amendment be carried out in the Recruitment and Promotion Rules and in case the same is done, it will not have any financial implications. No doubt, there are recommendations by respondent No.2, however, unless and until the decision is taken by the competent authority, the recommendations are not binding and thus, the plea raised cannot advance the claim of the petitioners.

17. The Hon'ble Apex Court in ***Union of India vs. Indian Navy Civilian Design Officers Association and another (2023) 19 SCC 482***, wherein it has been held that noting in the file is an opinion of the officer and cannot be treated to be a decision of the Government. The relevant paras 19 and 20 of the judgment are reproduced as under:-

*"19. Much emphasis was placed by the learned Senior Advocate Mr. Khurshid on the noting made by the Officer of*



*the Naval Department in the file recommending pay scale of JDOs equivalent to that of CTOs, however, it may be noted that a noting recorded in the file is merely an expression of opinion by a particular officer, and by no-stretch of imagination such noting could be treated as a decision of the Government.*

*20. The powers of judicial review in the matters involving financial implications are also very limited. The wisdom and advisability of the Courts in the matters concerning the finance, are ordinarily not amenable to judicial review unless a gross case of arbitrariness or unfairness is established by the aggrieved party."*

18. It is settled law that neither the Court can legislate nor has it any competence to issue directions to the legislature to enact the law in a particular manner. Reference in this regard can be made to the judgment of the Hon'ble Apex Court in ***V.K. Naswa vs. Home Secretary, Union of India and others (2012) 2 SCC 542***. The relevant para of the judgment is reproduced as under:-

*"18. Thus, it is crystal clear that the court has a very limited role and in exercise of that, it is not open to have judicial legislation. Neither the court can legislate, nor has it any competence to issue directions to the legislature to enact the law in a particular manner."*

19. In the present case, the State Government had rightly rejected the claim of the petitioners and as already observed above, the scope of interference by this Court is very limited and as such,



requires no interference. It is also not disputed by the petitioners that they do not have the channels of promotion in their respective categories. Once the petitioners have been provided the avenue for promotion, they cannot claim that their categories may also be included for promotion to the posts of Law Officers or Legal Assistants. It is not in dispute that one of the petitioners was promoted to the post of Superintendent Grade-II as pleaded in the reply, since there is no rebuttal to the said fact.

20. Consequently, in view of the aforesaid discussion, the writ petition being devoid of merits is dismissed. However, there is no costs. Pending applications, if any, are also disposed of.

March 17, 2026  
(naveen)

( **Jiya Lal Bhardwaj** )  
**Judge**