IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA
CWPOA No.318 of 2019
Decided on 30th September 2026

Purshottam Singh **…Petitioner**

Vs.

State of Himachal Pradesh and another **…Respondents**

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge

Hon'ble Mr. Justice Yogesh Jaswal, Judge

[1]Whether approved for reporting? Yes

For the petitioner	**:**	**Mr. Ajay Kumar Dhiman, Advocate.**
For the respondents	**:**	**Mr. Ramakant Sharma, Additional Advocate General and Mr. Rajat Chauhan, Assistant Advocate General.**

Ajay Mohan Goel, Judge *(Oral)*

By way of this writ petition, the petitioner has, inter alia, prayed for the following reliefs:-

> *"a) Issue a writ of certiorari and quash the notification dated 26.10.2009 Annexure P-2.*
>
> *b) That the respondents may kindly be directed not to fill the post of District Controller Food Civil Supply & Consumer Affairs till the final disposal of this writ petition."*

2. The case of the petitioner is that he is working as a Technical Assistant and is eligible for promotion to the post of District Controller, Food, Civil Supplies and Consumer Affairs. His grievance is that he has been deprived of the adequate chances of promotion, which were earlier existing in terms of notification dated 09.06.1977, Annexure P-1, by virtue of the impugned notification, Annexure P-2, dated 26.10.2009.

High Court of H.P.

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3. Learned counsel for the petitioner submitted that in terms of the impugned notification, fresh Recruitment and Promotion Rules have been promulgated by the Department by repealing the earlier Rules. In terms of the new Rules, to fill up the 12 posts of District Controller, Food, Civil Supplies and Consumer Affairs, the method of recruitment, as is mentioned, is that 25% of the posts are to be filled in by way of direct recruitment and 75% by promotion. He further submitted that in terms of Annexure P-2, 75% posts to be filled in by way of promotion, have been further bifurcated amongst three feeder categories and, in terms thereof, 50% of the promotional posts are to be filled in by way of promotion from amongst Food and Civil Supplies Officers with three years regular or regular combined with ad-hoc service; 20% by promotion from amongst Superintendent Grade-II, who possess three years regular or regular combined with ad-hoc service; and only 5% by promotion from amongst Technical Assistant, who possess three years regular service or regular combined with ad hoc service.

High Court of H.P.

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4. By referring to the Roster, which is mentioned in Annexure P-2, he submitted that the post which comes to the share of Technical Assistant by rotation, is only on the 19th position, which as per the petitioner, is completely arbitrary.

5. Learned counsel argued that the act of the respondents of reserving 50% posts and 20% posts, respectively in favour of the feeder categories of Food and Civil Supplies Officers and Superintendent Grade-II is totally discriminatory *vis-a-vis* the Technical Assistant for whom only 5% promotional quota has been provided. He submitted that there is no qualitative difference between any of the three feeder categories and, therefore, the impugned order is liable to be quashed. No other point was urged.

6. On the other hand, learned Additional Advocate General argued that the present petition is completely misconceived. He drew the attention of the Court to the reply filed by the State and submitted that the new promotion Rules stand framed after taking into consideration the cadre strength of the feeder category.

High Court of H.P.

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7. By referring to para-4 of the reply, learned Additional Advocate General submitted that the cadre strength of the Food and Civil Supplies Officers is 17, that of Superintendent Grade-II is 15 and that of Technical Assistant is only 1. He submitted that it is in light of the respective cadre strength of the feeder categories that proportionate promotional quota has been awarded to all. He submitted that this has been done by the Department to ensure that each of the feeder categories gets an opportunity of promotion and further, it has also taken into consideration in fact that the feeder category which has more cadre strength, should get a larger proportion for promotion, compared to the feeder category which has less strength. Learned Additional Advocate General also submitted that it is settled law that the conditions of service, including avenues of promotion and criteria to be fulfilled for such promotion, pertains to the field of Policy, which is exclusively within the discretion and jurisdiction of the State, subject to the limitations or restrictions envisaged in the Constitution of India. Ordinarily, the Courts do not interfere with the exercise of the said Policy prerogative of the employer. He submitted that in

High Court of H.P.

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the present case, the petitioner has not been able to demonstrate or substantiate that the act of the respondents is either arbitrary, discriminatory or that the Rules have been tailor-made to suit a few. Accordingly, the submitted that the present petition is completely misconceived.

8. Having heard learned counsel for the petitioner as also learned Additional Advocate General and having perused the impugned Recruitment and Promotion Rules as well as the pleadings on record, we concur with the submissions made by the learned Additional Advocate General.

9. It is settled law that right of promotion is not a fundamental right. An employee only has a fundamental right to be considered for promotion. Of course, the right of consideration accrues only when there is a vacancy available and the employer initiates the process of promotion to the post in issue. (***See: Ajit Singh and others versus State of Punjab and others, (1999) 7 Supreme Court Cases 209***).

10. In the present case, the grievance of the petitioner is that in terms of the impugned Recruitment and Promotion Rules for promotion to the post of District Controller, Food, Civil

High Court of H.P.

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Supplies and Consumer Affairs, the criteria which has been formulated to fill 75% promotional quota, only 5% has been reserved for Technical Assistant, i.e., the feeder category to which the petitioner belongs. His further grievance is that in terms of the Roster, the post comes to the category of Technical Assistant at the 19th point and is virtually at the fag end of the Roster Point and, therefore, a Technical Assistant, in this manner hardly gets an opportunity of promotion.

11. Hon'ble Supreme Court of India in ***P.U. Joshi and others versus Accountant General Ahmedabad and others, 2003 (2) Supreme Court Cases 632***, has been pleased to hold as under:-

> *"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/substruction the*

High Court of H.P.

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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."

12. It is evident from the judgment of the Hon'ble Supreme Court and as was also urged by the learned Additional Advocate General that the prescription of qualifications and other conditions of service, including avenues of promotion and criteria to be fulfilled for such promotion, pertain to the field of policy, which is within the exclusive discretion and jurisdiction of the State and ordinarily, until and unless the act of the State is found to be arbitrary, the Courts do not interfere with the said policy discretion of the State.

High Court of HP

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13. Coming to the facts of this case, the promotional posts of District Controller, Food, Civil Supplies & Consumer Affairs, in terms of Annexure P-2 is filled in both by way of direct recruitment as also by way of promotion. 25% of the posts are to be filled in by way of direct recruitment and 75% by way of promotion. The promotional quota of 75% is further distributed amongst the three feeder categories i.e., the category of Food and Civil Supplies Officers which gets 50% quota, the category of Superintendent Grade-II which gets 20% quota and the category of Technical Assistant which gets 5% quota.

14. In para-4 of the reply that is the reply filed by the Department, it is categorically mentioned therein that the cadre strength of the Food and Civil Supplies Officers is 17, that of Superintendent Grade- II is 15 and that of Technical Assistant is 1. There is no rejoinder filed to the reply of the State by the petitioner denying this factual averment made in the reply by the Department.

15. That being the case, obviously, there has to be a proportional representation of the three feeder categories for

High Court of H.P.

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promotion which has to be in accordance with their respective cadre strength. That being the case, in light of the fact that the feeder category of Technical Assistant, that is the category to which the petitioner belongs, only has got 1 cadre post, there is no arbitrariness in reserving 5% of the posts for this particular category by way of promotion.

16. Obviously, a larger share has to be given to the feeder categories which have more cadre strength and this is exactly what has been done in the Rules by the Department. It is not the case of the petitioner that a feeder category which has lesser cadre strength than that of Technical Assistant has been given more share as far as promotional avenues are concerned.

17. As far as the other contention of the petitioner that in terms of the roster prepared, the Technical Assistant gets only the 19th post, we do not find any discrepancy in this also for the reason that when there is a quota given for the three feeder categories in the ratio of 50:20:5 for promotion to the post of District Controller, Food, Civil Supplies & Consumer Affairs and 25% posts are to be filled by way of direct

High Court of H.P.

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recruitment also, obviously, the Roster has to be fixed in this particular manner only and this is exactly what has been done by the Department.

18. In fact, a perusal of the Roster demonstrates that after the first two posts, which go to the share of Food and Civil Supplies Officers by way of promotion, the third post goes to Superintendent Grade-II and thereafter, the post goes to the direct recruitment and this continues up to post No.18, whereafter, the post No.19 is given to the category of Technical Assistant. It could not be pointed out before us on behalf of the petitioner that the working out of this Roster was contrary to any other notification or regulation etc., promulgated by the State.

19. Accordingly, in light of the above discussions, as we do not find any merit in the present petition, the same is dismissed. Pending miscellaneous applications, if any, also stand disposed of.

(Ajay Mohan Goel)
Judge

(Yogesh Jaswal)
Judge

September 30, 2026
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High Court of H.P.

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