

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

**CWPOA No.1233 of 2019**

**Decided on: 06.04.2026**

Lekh Ram Mehta

.....Petitioner

Versus

State of H.P and another

...Respondents

*Coram*

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

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

**For the petitioner: Dr. Lalit K. Sharma, Advocate.**

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

**Jiya Lal Bhardwaj, Judge(Oral)**

The petitioner has filed the instant petition,  
praying therein for the following substantive reliefs:-

- "i. That the respondent may be directed to grant the promotion to the petitioner to the post of Superintendent Grade-I from 6<sup>th</sup> November, 2007 and grant all the consequential benefits with 12% interest per annum.*
- ii. That the letter dated 30/07/2011 Annexure P-9 issued by Respondent no. 1 may kindly be set aside and quash and the respondent may be directed to grant the officiating allowance to the petitioner w.e.f. 06/11/2007 to 30/11/2010 of the post of Supt. Grade I with all consequential benefits alongwith 12% interest may kindly be released to the petitioner."*

2. The facts, which emerge from the pleadings, are  
that the petitioner was appointed as Clerk with the

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

respondents-Department on 26.06.1973 and was promoted as Senior Assistant on 14.10.1993. Later on, he was promoted as Superintendent Grade-II in September, 2007 and joined his duties as such on 01.10.2007. As per Recruitment and Promotion Rules, the petitioner was eligible for promotion to the post of Superintendent Grade-I, as he had completed the requisite service of nine years' combined with as Senior Assistant and there were three vacancies of Superintendent Grade-I lying vacant with the respondents-Department, but with a view to save the Department from the financial implications, he was not promoted inspite of the dire necessity and urgency of the said post in the Department. However, vide office order dated 06.11.2007, the petitioner, who was working as Superintendent Grade-II, was asked to look-after the work of Medical-IV (Budget Branch) and thus assigned him the duties of a higher responsibility including the statutory duties. However, despite assurance to give him officiating allowance of the said post and promotion, nothing was done by the respondents.

3. It has further been averred in the petition that the petitioner had discharged the duties on the post of Superintendent Grade-I beyond the permissible limit of three

months and he was not paid any officiating allowance despite representation dated 12.01.2010, requesting therein to grant him the said benefit of the post of Superintendent Grade-I. The petitioner has also placed on record communication dated 30.03.2010 issued by respondent No.2, specifically mentioning therein that the petitioner has been assigned the duties/work of the vacant post of Superintendent Grade-I in Medical-IV/II Branches as such and, therefore, he may be granted the benefit of officiating allowance under FR-49 w.e.f. 06.11.2007 for looking after the work of higher post. However, the request made by the petitioner came to be rejected vide communication dated 30.07.2011 (Annexure P-9) on the ground that orders of officiating were not issued in consonance with the instructions of the Finance Department issued vide No.Fin(C)-A(3)-8/88 dated 29<sup>th</sup> August, 1988 and 4<sup>th</sup> December, 1989.

4. The petitioner has laid challenge to the said impugned order on the ground that once the petitioner had discharged the duties and responsibilities of the higher post, which was lying vacant, he is entitled to the remuneration of the post of Superintendent Grade-I, in view of FR-49. The action on the part of the respondents is illegal, unjust and

arbitrary inasmuch as the respondents have exploited the helpless condition of the petitioner, which is against Articles 14, 16 and 21 of the Constitution of India. Three posts of Superintendent Grade-I were available and the petitioner was eligible to be considered for promotion and thus, the action on the part of the respondents, is arbitrary and illegal. He has made a prayer seeking promotion to the post of Superintendent Grade-I and also for grant of officiating allowance of the post of Superintendent Grade-I w.e.f. 06.11.2007 to 30.11.2010.

5. The respondents filed reply to the petition and not disputed the issuance of office order dated 06.11.2007. However, it has been averred that the petitioner was assigned the duties with different branch as an internal arrangement only and the said office order nowhere reflected/reflects that the petitioner was ever assigned the duties of Superintendent Grade-I, or he was ever given any kind of assurance in any way and manner as has been pleaded in the writ petition. It has been averred that the petitioner was promoted as Superintendent Grade-II in October, 2007 only and could have never been given any assurance of promotion to the next higher post of Superintendent Grade-I, over and above the

R&P Rules in the year 2007 itself, which Rules specifically provide for a minimum period of three years of working as Superintendent Grade-II for becoming eligible to the next promotion as Superintendent Grade-I. The plea raised by the petitioner that vide office order dated 06.11.2007, he was assigned the duties of Superintendent Grade-I with certain assurances on officiating basis is not sustainable and perusal of order itself depicts that no such assurance was ever given to him in any way or manner. The representation made by the petitioner has rightly been rejected, since his case was not covered under the relevant provisions.

6. The petitioner has placed on record copy of office memorandum dated 29.08.1988, instructions dated 30.09.2010 and a judgment passed by a Co-ordinate Bench of this Court in CWPOA No.5378 of 2019, titled, ***Bishan Singh Chandel vs. Himachal Pradesh University and another.***

7. I have heard Dr.Lalit Kumar Sharma, learned counsel for the petitioner and Mr.Hemant Kumar Verma, learned Deputy Advocate General for the respondents-State. The record of the case has also been perused carefully.

8. It is not in dispute that the petitioner vide office order dated 06.11.2007 was assigned the work of Medical-IV

(Budget branch) (Annexure P-1). It is also not in dispute that as per Notification dated 02.09.2000 (Annexure P-2), there were 10 posts of Superintendent Grade-I to be filled-up 100 % by promotion and the eligibility criteria is from the feeder cadre of Superintendent Grade-II and Personal Assistants, who possess three years regular service on regular combined with continues adhoc (rendered upto 31.03.1998) service, if any, in their respective grades, failing which, by promotion from amongst the Superintendent Grade-II and Personal Assistants, who possess nine years regular service or regular combined with continuous adhoc (rendered upto 31.03.1998) service, if any, as Superintendent Grade-II and Senior Assistant and as Personal Assistant and Senior Scale Stenographer combined.

9. It is also not in dispute that respondent No.2 had written on 30.03.2010 to respondent No.1, specifically mentioning therein that the petitioner has been assigned the duties/work on the vacant post of Superintendent Grade-I in Medical-IV (Budget branch), as such, it was recommended that he may be granted the benefit of officiating allowance underFR-49 w.e.f. 06.11.2007. The respondents have not

disputed that the petitioner had discharged the duties on the vacant post of Superintendent Grade-I till 31.05.2010.

10. The only plea taken by the respondents is that the petitioner is not entitled to officiating allowance of Superintendent Grade-I, since the order of officiating were not issued in consonance with the instructions of the Finance Department dated 29.08.1988 and 04.12.1989. Since the petitioner has discharged the duties on the post of Superintendent Grade-I, irrespective of the fact that whether his orders of officiating were not issued in consonance with the instructions, he cannot be denied of the said benefits, especially when the post of Superintendent Grade-I was lying vacant when the petitioner was assigned the duties of the higher post and responsibility, in addition to his own duties. After passing of office order dated 06.11.2007, it was for respondent No.2 to have got the approval from respondent No.1, if any, required and in case there is any lapse on the part of respondent No.1 in not granting the approval, the petitioner, who admittedly has discharged the duties on the post of Superintendent Grade-I, in addition to his own duties, is entitled to the benefit of FR-49, as per pronouncement of Hon'ble Apex Court in ***Syed Abdul Qadir and others vs.***

**State of Bihar and others, (2009) 3 SCC 475** wherein it has succinctly dealt with the issue that even if the person was not assured to pay the additional benefits of the post, he is entitled to the said benefits. The relevant paras of the judgment read as under:-

*“39. Rule 22(I)(a)(1) provides that when a government servant is promoted or appointed to a higher post and the higher post he is promoted to carries duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees one hundred only, whichever is more.*

*40. According to FR 22(I)(a)(2) the benefit of an additional increment, which is available to a government servant under FR 22(1)(a)(1) would not be available to the government servant if the higher post he is promoted or appointed to does not carry duties and responsibilities of greater importance than those attaching to the post held by him.”*

11. The instructions, which have been placed on record by the petitioner, relating to FR-49 dated 04.12.1989, the reference of which has been noticed in the rejection order, reveals that when an officer is required to discharge all the duties of the other post including the statutory functions,

then, steps should have been taken to process the case for getting the approval of the competent authority and formal orders appointing the officer to the additional post should be issued on appointment. In case the respondents have not taken the measures to grant approval, the petitioner, who admittedly, has discharged the duties on the post of Superintendent Grade-I, in addition to his own duties, as is evident from the rejection order w.e.f. 06.11.2007 to 31.05.2010, he cannot be denied the said benefit, even if the office order does not specifically mention the duties to be discharged by the petitioner. Once the respondents have not denied the factum that the petitioner has discharged the duties and responsibilities of the post of Superintendent Grade-I, in addition to his own duties, he cannot be denied the benefit of FR-49, as per the law laid down by the Hon'ble Apex Court in the judgment cited supra.

12. A Coordinate Bench of this Court in CWPOA No.5378 of 2019, titled, ***Bishan Singh Chandel*** vs. ***Himachal Pradesh University and another***, decided on 5<sup>th</sup>May, 2021, has also dealt with the similar issue on the principle of claim of pay-scale to the higher post and the relevant paras of the judgment read as under:-

**“4 (ii) (a).** While refusing to exercise in petitioner’s favour, the discretionary power to relax the period of service required for promotion to the post of Planning & Development Officer, the respondent-University had given him additional charge of the same post keeping in view the work requirement. The decision in this regard as contained in Note No.261 dated 12.11.2014 reads as under:-

“1. There is no justification to promote Sh. Bishan Singh Chandel, Deputy Registrar (Estate) to the post of Planning & Development Officer. However, keeping in view the requirement of work, he is given the additional charge of the said post without any financial benefits till further orders.”

This was followed by an order dated 12.11.2014, whereunder petitioner was to look after the work of Planning & Development Officer in addition to his own duties without any financial benefits till further orders:-

“Shri Bishan Singh Chandel, Deputy Registrar, Estate Office will look after the work of Planning & Development Officer with immediate effect in addition to his own duties without any financial benefits till further orders.”

It is an admitted fact that the petitioner worked as Planning & Development Officer w.e.f. 12.11.2014 till his superannuation on 31.03.2015. In support of petitioner’s claim of pay of this post, reliance has been placed upon a decision rendered in CWP(T) No.7099 of 2008.

**4(ii)(b).In CWP(T) No.7099 of 2008, titled Shiv Dayal Kataria Versus Himachal Pradesh**

**University**, a Co-ordinate Bench of this Court while taking note of the fact that the petitioner therein had worked as Superintending Engineer in the respondent-University, held him entitled for financial benefits attached to the post. Paras 8 and 9 of the judgment read as under:-

“8. Now, the Court has to advert to the second limb of argument of Mr. Dilip Sharma. According to him, his client was permitted to discharge the duties of Superintending Engineer. This order was passed by the Registrar of the respondent-University on 03.03.1994, whereby the petitioner was invested with the powers of Superintending Engineer and was to function as overall Incharge of the three engineering wings (Construction, Design & Architectural) of the respondent-University. He made representation seeking benefit of the services, he had rendered as Superintending Engineer on 09.09.1997. The Vice-Chancellor on 11.09.1997 as per his endorsement stated as follows:

“Allowed if it is on record that Sh. S.D. Kataria has performed the duties of S.E. for more than 3 years.”

9. It is not denied by the respondents in the reply that the petitioner has not worked as Superintending Engineer. The objection raised by the respondent-University is that firstly it was made clear to the petitioner that he will not get any financial benefits as per office order dated 03.03.1994 and secondly, the Vice-Chancellor had no jurisdiction/authority under the Himachal Pradesh University Ordinances to pass orders on 11.09.1997. According to the respondent-University, the competent authority in the case of category-B is the Executive Council of the University and not the Vice-Chancellor. It is true that to take a decision with regard to appointment, suspension, removal from office, fixing of salary, control or any other kind of matter, as far as employees of categories ‘A’ and ‘B’ are concerned, the competent authority was the Executive Council. The petitioner was also informed on 03.03.1994 that he will not be entitled to any financial benefits. However, fact of the matter is that petitioner has worked for more than three years as Superintending Engineer and an endorsement was also made by the Vice Chancellor on 11.09.1997 in favour of the petitioner. An employee cannot be deprived of his right to get higher salary if he discharges the duties of higher office. In this case, the

*petitioner was permitted to work as Superintending Engineer. Superintending Engineer is a higher post and the post of Executive Engineer is in feeder category. **A person, who performs the duties of higher office, must get the salary of the same post. He cannot waive of his fundamental/legal right to get the higher salary, even if an endorsement was made in the office order that the petitioner will not get the monetary benefits. Petitioner is also entitled to get the salary of the post of Superintending Engineer on the well recognized principle of "equal pay for equal work".** The Executive Council no doubt is the competent authority to take decisions with regard to 'A' and 'B' categories of employees, governing their conditions of service, but once the endorsement has been made by the Vice-Chancellor, the matter was required to be taken before the Executive Council. The respondent-University in its own wisdom has not taken up the matter with the Executive Council. **The petitioner was permitted to discharge the duties of the post of Superintending Engineer. The Court has also taken note of the fact that even though the post of Superintending Engineer was not available, however, the petitioner was still invested with the powers as were exercised by the Superintending Engineer of H.P.P.W.D. In view of this, the petitioner cannot be denied the salary of the post of Superintending Engineer for working more than three years as Superintending Engineer.***

*LPA No.100 of 2010, preferred by the respondent-University against the above judgment, was dismissed vide judgment dated 27.10.2015. Learned Standing Counsel for the respondent has not disputed the fact that the above judgment has since attained finality and stands implemented. The ratio of the above judgment applies to the facts of the instant case as well. Here also the petitioner had admittedly discharged the duties of the higher post of Planning & Development Officer w.e.f. 12.11.2014 till his superannuation on 31.03.2015. This was pursuant to an order passed by the respondent in*

*terms of the decision taken by the Competent Authority. The post of Planning & Development Officer lying vacant w.e.f. 21.07.2014, was a higher post in line of promotion from the post of Deputy Registrar substantively held by the petitioner. Therefore, following the dictum of Shiv Dayal Kataria's case, supra, in the facts and attending circumstances of the case, petitioner deserves to be granted the pay scale attached to the said post.*

*No other point was urged by either of the parties.*

*In view of above discussion, petitioner's claim for retrospective promotion to the post of Planning & Development Officer w.e.f. 01.09.2014 is held to be not tenable. However, respondent-University is directed to release the pay and allowances alongwith consequential benefits to the petitioner for discharging the duties of Planning & Development Officer w.e.f. 12.11.2014 to 31.03.2015, within a period of six weeks from today."*

13. The plea taken by the respondents that there was no specific order to perform the duties of Superintendent Grade-I, cannot be countenanced, in view of the fact that respondent No.2, with whom the petitioner was working, had written vide communication dated 30.03.2010 that the petitioner has been assigned the duties/work of the vacant post of Superintendent Grade-I. Had it been the case of the

respondents that the post of Superintendent Grade-I was not vacant, the said plea could have been accepted. Once the respondents have extracted the work from the petitioner of the post of Superintendent Grade-I, in addition to his own duties, the impugned order cannot sustain. The petitioner, in addition to his own duties, has discharged the duties and responsibilities of a higher post and thus, as per provisions of FR-49, he is entitled to get the benefits.

14. The relief prayed for by the petitioner to grant him promotion to the post of Superintendent Grade-I cannot be countenanced for the reason that the petitioner had only right to be considered for promotion. Once the petitioner has now retired from service, this Court cannot pass orders to convene the DPC for making his promotion. However, another relief claimed by him to grant him the officiating allowance for the post of Superintendent Grade-I is allowed for the reason that once as he has discharged the duties and responsibilities of a higher post of Superintendent Grade-I, he is entitled to the said relief.

15. Consequently, the present petition is allowed and the impugned order dated 30.07.2011, passed by respondent No.1 is quashed and set aside with a direction to the

respondents to grant the petitioner, the pay and allowances of the post of Superintendent Grade-I along-with consequential benefits w.e.f. 06.11.2007 to 31.05.2010, within a period of three months from today. In case the amount of arrears is not defrayed to the petitioner within three months from today, it shall carry interest @6% per annum w.e.f. 30.07.2011, when the claim of the petitioner was rejected till its payment.

16. The writ petition is disposed of in the aforesaid terms, so also the pending applications, if any.

6<sup>th</sup> April, 2026  
(naveen)

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