

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWPOA No. 6529 of 2020

Reserved on : 29.05.2025

Date of Decision: June 06, 2025

Sahil KumarPetitioner.

Versus

HPSEBL and others ..Respondents.

Coram:

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

The Hon'ble Mr. Justice Ranjan Sharma, Judge.

Whether approved for reporting?¹ Yes

For the Petitioner: Mr.Arun Kaushal, Advocate.

For the Respondents: Ms.Sunita Sharma, Senior Advocate, with Mr.Dhananjay Sharma and Mr.Surender Kumar, Advocates, for respondent No.1.

Mr.Rohit Chauhan, Advocate, vice Mr.Arun Sehgal, Advocate, for respondent No.2.

Mr.Narender Kumar, Advocate, for respondents No.3 and 4.

Vivek Singh Thakur, J.

Petitioner had approached the H.P. State Administrative Tribunal on 25.03.2019 by filing Original Application No.1183 of 2019, being aggrieved by omissions and commissions on the part of respondent-Board, whereby 2.5 marks as Below Poverty Line (BPL) candidate were not awarded to the petitioner, resulting into his non selection to the post of Junior T-Mate/Junior Helper (Power House) E/Junior Helper (Sub-Station).

¹ Whether reporters of the local papers may be allowed to see the judgment?

2. On abolition of erstwhile Tribunal, petition was transferred to this High Court and registered as present petition CWPOA No.6529 of 2020.

3. Respondent-Board vide Advertisement No.1 of 2018, dated 17.07.2018 (Annexure A-1) had advertised 605 posts of Junior T-Mate, 145 posts of Junior Helper (Sub-Station) and 49 posts of Junior Helper (Power House)(Electrical) on fixed contractual remuneration of ₹7175/- per month to be filled strictly as per Recruitment and Promotion Rules (hereinafter referred to as 'R & P Rules') . The desirous candidates were not required to submit separate applications for these posts, however, order of preference to the post was to be indicated in single application and the candidates were to be placed in respective cadre on the basis of their merit and preference. The Application was to be submitted on or before 18.08.2018 till 5.00 p.m. However, candidates residing in District Lahaul and Spiti, District Kinnaur, Sub-Tehsil Pangi and Bharmaur Sub-Division of District Chamba and Sub-Division Dodra Kwar of District Shimla, H.P., were permitted to submit applications on or before 24.08.2018 till 5.00 p.m.

4. As per mode of selection published in the Advertisement, selection process was of total 100 marks. Maximum 60% marks were to be awarded on pro-rata basis as per marks obtained in Matriculation; 25% marks were provided for technical qualifications mentioned in the Advertisement; and remaining 15% marks were to be awarded on the basis of

evaluation criteria as detailed in Notification on the basis of 9 certificates.

5. In view of nature of grievance of the petitioner narrated in the petition in instruction No. 4(iii)(6) of Advertisement prescribing evaluation criteria is relevant and which reads is as under:-

"6.	BPL family having family annual income (from all sources) below Rs.40,000/- or as prescribed by the Govt. from time to time	2.5(two & half)	Concerned BDO by taking the authenticated entries in the "Pariwar Register" as the basis of such certificate or concerned Panchayat Secretary / Sahayak and countersigned by concerned Gram Panchayat Pardhan."
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6. It is undisputed that in furtherance to the Advertisement petitioner had submitted his application vide Diary No.7143 dated 03.08.2018 in General (BPL) category by giving order of preference Junior T-Mate/Junior Helper (Sub-Station) and Junior Helper (Power House)(Electrical) and had uploaded certificates alongwith application, including BPL certificate issued by Panchayat Secretary/Panchayat Assistant of Gram Panchayat Jandaur, Development Block Pragpur, District Kangra, H.P., duly countersigned by Pardhan of the said Gram Panchayat. BPL Certificate was issued on 24.07.2018 and it was valid up to 24.01.2019.

7. It is also an admitted fact that process of recruitment was completed and result of the same was declared on 10.01.2019 and offer of appointment was made to the successful candidates by allotting joining stations to them.

8. On the basis of evaluation, petitioner was awarded 70.73 marks but without awarding 2.5 marks of BPL certificate. Whereas, private respondents were selected by awarding BPL certificate marks and respondent No.3-Jai Parkash had secured 72.86 marks and respondent No.4-Abhishek Thakur had obtained 69.50 marks and both of them were selected in General (Unreserved) category. Respondent No.2-Satish Kumar had obtained 72.63 marks and was selected in General (BPL) category.

9. Though respondent No.4 was selected in General (Unreserved) category, but 2.5 marks of BPL certificate were also awarded to respondent No.4.

10. In reply filed on behalf of respondents No.3 and 4, an objection has been taken in the General (BPL) category that they are not last selected persons and marks of respondent No.3, who has been selected in General (BPL) category are more than the last person selected in the said category. Further that selected candidates below in merit than respondents No.3 and 4 have not been arrayed as party.

11. As per reply of respondent-Board, cutoff marks in merit list of General (BPL) category was 72.63 marks.

12. It is also an admitted fact that petitioner had filed representation/application requesting grant of 2.5 marks to him for BPL certificate. To consider the said representation alongwith other representations of some other candidates, a Committee was constituted and as per minutes of meeting dated 19.03.2019

of the Committee, it was found that in application of the petitioner only BPL certificate was found attached and income certificate was not found attached and, therefore, petitioner was not found eligible for 2.5 marks of BPL certificate without income certificate as per instructions No.4(iii)(6) of Advertisement.

13. In aforesaid facts only defence, against claim of the petitioner, raised by respondent-Board is that petitioner though had submitted certificate of BPL family, but without mention of annual family income therein, and he failed to submit income certificate indicating annual income of his family from all sources below ₹40,000/-.

14. According to respondent-Board, marks of BPL certificate were available only on production of income certificate indicating that income of the family was below ₹40,000/- as published in Advertisement as well as detailed in the instructions of the State issued in this regard.

15. Plea of non joining of necessary party raised by respondents No.3 and 4, is misconceived because as per reply of respondent-Board, last person selected in General (BPL) category had secured 72.63 marks. Respondent No.2-Satish Kumar is a candidate, who secured 72.63 marks in General (BPL) category and he has been arrayed as respondent No.2.

16. Therefore, last person selected in the category of General (BPL) has been arrayed as party respondent No.2. Respondent No.3 have been arrayed as party for securing 72.86 marks for the reason that in case of awarding 2.5 marks to the

petitioner for BPL certificate, total marks obtained by the petitioner would be 73.23, which shall be higher than the marks secured by respondent No.3 in General (BPL) category.

17. Joining of respondent No.3 as a party may be mis-joinder as for accepting plea of petitioner to grant 2.5 marks for BPL certificate, respondent No.3 may not be affected despite the fact that he would be, in such a situation, a candidate securing marks lessor than the petitioner, but belonging to category of General (unreserved) whereas category of petitioner is General (BPL).

18. The last person in the category of General (BPL) is Satish Kumar having secured 72.68 marks and, therefore, in case of awarding 2.5 marks to the petitioner, it shall be respondent No.2, who shall be ousted.

19. Respondent No.4 has been selected in General (Unreserved) category and he has secured marks lessor than the petitioner even if marks of the petitioner are counted without BPL certificate. He has been arrayed as party with plea that petitioner, who had applied in the category of General (BPL) candidate, for not finding place in the merit by discarding his BPL certificate, was entitled to be considered as a candidate of General (Unreserved) category particularly for not considering his BPL certificate. If plea of the petitioner is accepted, then respondent No.4 shall be affected.

20. The issue with respect to change of category has not been contested during course of arguments and, therefore, we

are not entering into or deciding the said question, but are considering the claim of the petitioner on the basis of category mentioned by him in the application form, i.e. General (BPL).

21. It is also apt to record that it has also been advertised and published that category once mentioned will not be changed later.

22. In case of vertical reservation persons, securing marks morethan General category candidates, are included in the selected list of General Category candidates, but the same principle is not applicable for horizontal reservation. But without going into question whether candidate of General BPL is entitled for jumping in category of General (unreserved) like in cases of vertical reservation or candidates applying in the category of General BPL can be considered against General (Unreserved) posts or not, we are considering claim of the petitioner in General (BPL) category especially with respect to his entitlement to 2.5 marks for placing on record BPL certificate in terms of conditions advertised and published in Advertisement in consonance with instructions of the State Government adopted by the respondent-Board.

23. In present case, last selected candidates from General (Unreserved) category and General (BPL) category have been arrayed as parties alongwith respondent No.3. Therefore, in present case, affected candidates as well as candidate in representative capacity have been arrayed as parties, thus, objection in this regard is not sustainable.

24. From aforesaid facts, it is apparent that there is no non-joinder of necessary party though there may be mis-joinder of parties.

25. Other plea raised on behalf of the respondents that all selected candidates have not been arrayed as parties, is not sustainable as in service jurisprudence it is not essential to implead each and every person, who could be affected, but if someone of such affected employees is impleaded then the interest of all is represented and protected and it is well settled that impleadment of few affected employees would be sufficient compliance of principle of joinder of parties and they could defend interest of all affected persons in the representative capacity.

26. Non joinder of selected parties cannot be held to be fatal every time. It depends on given facts and circumstances of the case. Moreover, in present petition, challenge has not been laid to particular qualification of any individual candidate, rather there is a challenge to the scrutiny/evaluation of marks of the petitioner by ignoring the BPL certificate submitted by him alongwith application form with contention that 2.5 marks for BPL category have not been awarded to him wrongly despite the fact that he was entitled for 2.5 marks for BPL category and, therefore, it was not necessary to join all selected and likely to be affected candidates especially when candidate of the General (BPL) category has already been arrayed party respondent No.2.

27. It is also well settled that if non selected candidate challenges the selection, he is under legal obligation to implead the selected candidates as they are necessary parties, but at the same time when petitioner does not raise any challenge to a particular qualification of any individual candidate, rather challenge is with respect to evaluation of certificate and erroneous scrutiny leading to ouster of the petitioner from the select list, therefore all selected candidates are not necessary to be impleaded. However, joining of affected candidate likely to be going to be affected or some of candidates, who are likely to be going to be affected, may be sufficient to be arrayed as parties in representative character.(See: *Ajay Kumar Shukla and others vs. Arvind Rai and others*, (2022) 12 SCC 579; *Mukul Kumar Tyagi vs. State of Uttar Pradesh and others*, (2020) 4 SCC 86; and *Poonam vs. State of Uttar Pradesh and others*, (2016) 2 SCC 779).

28. Learned counsel for respondent No.2 has submitted that respondent No.2 is a candidate appointed through proper procedure as Junior Helper in the year 2019 and during pendency of litigation, he continued to serve as such and there is no fault on his part in procuring offer of appointment and at this juncture of his service career and life, ouster him from service would cause grave hardship to him as well as his family members who are dependent upon him. Therefore, he has requested to direct the respondent-Board to create another post for adjusting the petitioner against such post since 2019 and in alternative,

supernumerary post for such period until the substantive post is available to adjust the petitioner or respondent No.2 be directed to be created by respondent-Board.

29. As per condition/ instructions No.4(iii)(6) of the Advertisement, 2.5 marks were to be awarded to a candidate belonging to BPL family having annual income, from all sources, below ₹40,000/- or as may be prescribed by the Government from time to time. The certificate in this regard, as per Advertisement, should have been issued by the concerned Block Development Officer (BDO) by taking authenticated entry in the Pariwar Register, or by concerned Panchayat Secretary/Sahayak and countersigned by concerned Gram Panchayat Pradhan.

30. In present case, certificate, duly signed and issued by Panchayat Secretary/Sahayak and countersigned by concerned Gram Panchayat Pradhan, was submitted by the petitioner alongwith application form. The only reason for not awarding 2.5 marks is that neither it was mentioned in the BPL certificate that family annual income was below ₹40,000/- nor any income certificate was submitted by the petitioner indicating/certifying that annual income of his family was below ₹40,000/-.

31. No absurd plea more than the plea taken by the respondent-Board can be there with regard to aforesaid condition. Condition categorically provides that candidate must be from BPL family having annual income below ₹40,000/- or as prescribed by the Government time to time. No doubt, at the

relevant point of time, prescribed family income for issuance of BPL certificate was ₹40,000/-, but it does not mean that to substantiate the income of family, a separate certificate of annual income of family was required to be produced or such family income was to be indicated in the BPL certificate. It is obvious that for the criteria of income, for issuance of BPL certificate at the relevant point of time was that income should be below ₹40,000/-, and issuance of BPL certificate by the competent Authority and possession thereof with validity during the relevant period, was sufficient to construe that annual family income of the petitioner was less than ₹40,000/-. It was not the business of anybody except certificate issuing Authority to assess or validate or verify the annual income of the family eligible for issuance of BPL family certificate.

32. The words, in condition “or as prescribed by the Government time to time” ,are sufficient to indicate that limitation of annual income of ₹40,000/- was changeable and the certificate of BPL family can be issued only to such family which fulfills the criteria family income limit prescribed by the Government time to time. Fulfilling the condition of criteria of income limit prescribed for issuance of BPL certificate is inherent in the BPL category issued by competent authority.

33. Therefore, despite having valid certificate of BPL family, petitioner has been wrongly denied award of 2.5 marks to him. Thus, it is held that petitioner is entitled for 2.5 marks in addition to the marks awarded to him during evaluation and, as

such, he has to be considered to have secured 70.73 plus 2.5=73.23 marks, which are higher than the last selected candidate in the General BPL and, thus, petitioner is entitled for offer of appointment to the job applied for by him for which selection was completed by the respondent-Board.

34. The selection process was completed in the year 2019 and petitioner approached the Court immediately thereafter. Therefore, there is no delay and laches and lapse on the part of the petitioner for initiating prosecution to claim his appointment to the post in question. However, matter remained pending either before erstwhile Tribunal or before this Court for a considerable long time and we are in the year 2025.

35. As discussed supra, petitioner is definitely entitled for appointment from the date from which other selected candidates, in pursuance to the same selection process, were appointed alongwith all benefits, including monetary and seniority. However, it shall not be appropriate to oust the last selected candidate after more than six years of his selection especially when the said candidate has no role in the mistake committed by the respondent-Board and he cannot be said to have obtained job by misleading or misrepresenting or influencing the concerned Authority/Agency.

36. In ordinary circumstances, we would have ordered ouster of respondent No.2, to offer appointment to the petitioner, however, for the submissions made by learned counsel for respondent No.2 and peculiar facts and circumstances of present

case, we are of the opinion that at this juncture, respondent No.2 also deserves to be accommodated.

37. In this regard, it would be appropriate to refer following paragraph of the judgment of Supreme Court in *Chandan Banerjee and others vs. Krishna Prosad Ghosh and others, (2022) 15 SCC 453:-*

“41. *Oxford English Dictionary* defines the term “supernumerary” as “present in excess of the normal or requisite number”, or “not belonging to a regular staff but engaged for extra work” *The concise Oxford English Dictionary [Judy Pearsall (Edn.,1999)]*. A “supernumerary post” is defined as “a post exceeding the usual stated or prescribed number” P. Ramanatha Aiyar, *The Law Lexicon, The Encyclopaedic Law Dictionary, p. 1838* [Justice Y.V. Chandrachud (former Chief Justice, Supreme Court of India)(Ed.), 1997].”

38. The Supreme Court in *Union of India and others vs. Parul Debnath and others, (2009) 14 SCC 173*, has held as under:-

“45. On the question of creation of supernumerary posts, it may be indicated that while it is no doubt true that creation of posts is the prerogative of the executive, in order to meet certain special exigencies such a course of action has been resorted to by this Court and in our view this is one such case where such a direction does not need any intervention.(See: *R.R. Inamdar vs. State of Karnataka and others, (2020) 19 SCC 543.*”

38. In situation like present case, it shall be appropriate to direct the respondent-Board to create supernumerary post for last selected candidate in the General (BPL) category since his

initial appointment till the date vacancy was and is available in the past or in future with all benefits of service.

39. Petitioner was always available and willing for joining and performing job, but he has been kept away from the work by the Authorities for no fault on his part. It is not case where non selection of the petitioner was for any fault on the part of the petitioner. Therefore, no work no pay principle is not applicable in present case, as held by the Supreme Court in *Union of India and others vs. K.V. Jankiraman and others, (1991) 4 SCC 109*. Hence, petitioner shall be entitled for monetary benefits on actual basis from the due date. However, balancing equity as the respondent-Board has also paid to respondent No.2, we are not awarding any interest on the arrears, but subject to condition that non payment of arrears within stipulated period shall definitely invite interest thereon @ 6% per month from the due date till realization, payable by the respondent-Board to the petitioner.

40. Accordingly, respondent-Board is directed to offer appointment to the petitioner to the post in reference on or before 15.07.2025 and in case petitioner joins after completing all codal formalities, then, he shall also be entitled for all service benefits, including monetary and seniority benefits from the due date from which other selected candidates from the same process were appointed. Arrears to the petitioner shall be paid by the respondent-Board without interest either in installments or in one go on or before 31.03.2026 failing which petitioner shall

be entitled to 6% interest per month from due date till realization. Other consequential benefits, if any, shall also be extended to the petitioner within three months of his joining. In case petitioner does not join or declines to accept offer of appointment then, he would not be entitled for any other service benefits including arrears of monetary benefits since 2019 onwards.

41. Petition is allowed and disposed of, so also pending application(s), if any, in aforesaid terms.

(Vivek Singh Thakur),
Judge.

(Ranjan Sharma)
Judge.

June 06, 2025
(Purohit)