

IN THE HIGH COURT OF HIMACHAL PRADESH  
AT SHIMLA

**CWPOA No.6630 of 2020**

**Reserved on: 06.06.2025**

**Decided on: 14.10.2025**

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Hans Raj Sharma

...Petitioner

*Versus*

State of Himachal Pradesh and Another ...Respondents

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**Coram:**

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

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

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For the petitioner: Mr. Amrick Singh, Advocate.

For the respondents: Mr. Gobind Korla, Additional  
Advocate General for respondent  
No.1/State.

Ms. Vandana Misra, Advocate, for  
respondent No.2/University.

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**Ranjan Sharma, Judge**

Petitioner, Hans Raj Sharma, a retired  
Laboratory Attendant (Class-IV) has come up before  
this Court, seeking the following reliefs:

- (i) *That the respondent may kindly be directed to convert the posting of applicant from Laboratory Attendant to clerk from the date of his initial appointment i.e. 1988.*
- (ii) *Respondents be further directed to grant all consequential benefits such as increment, pay scale and promotion from due date*

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

*arising out of the service rendered by the applicant as clerk in pursuant to various office order issued by the respondent University.”*

**FACTUAL MATRIX:**

**2.** Grievance is that on 19.05.1988 [Annexure R-1], the petitioner was appointed as Store-Mate (Class-IV) and he had joined on 20.05.1988 but respondents have made the petitioner to perform duties of a Clerical nature, which is borne out from Certificate dated 31.08.1995 **(Annexure A-1)** issued by Dean, College of Horticulture of University. It is averred that even after being promoted as a Laboratory Attendant (Class-III) on 19.07.2007 **(Annexure A-3)** in the pay scale of Rs 3120-5160, once Respondent-University has made the petitioner to perform the work of a Clerk, since his initial appointment and even after his promotion as such therefore, the petitioner may be converted as Clerk [Class-III] from the date of initial appointment as Storekeeper [Class-IV] in May 1988 and even after

being promoted as Laboratory Attendant [Class-III] on 19.07.2007 till day for all intents and purposes. In-addition, it is also prayed that the benefit of Fundamental Rule 49 and all service benefits i.e. pay scale, increments, seniority, ACP etc. for having worked as Clerk from date of initial appointment i.e. May, 1988.

**STAND OF RESPONDENT-UNIVERSITY IN REPLY-AFFIDAVIT:**

**3.** Upon issuance of notice, in O.A. No. 1494 of 2019, by the erstwhile Himachal Pradesh State Administrative Tribunal on 10.04.2019, the Respondents did not file reply. After abolition of Tribunal, the Original Application stood transferred to this Court and was renumbered as CWPOA No .6630 of 2020. Instant matter was listed on 17.10.2023, when Respondent-University was granted last chance to file the reply and accordingly, the Respondents-University filed the Reply-Affidavit dated 05.12.2024 of Registrar, Dr. Y.S. Parmar University

of Horticulture and Forestry, Nauni, District Solan, Himachal Pradesh.

**3(i).** Reply-Affidavit indicates that petitioner was appointed as Store Mate [Class-IV] on 19.5.1988. Reply-affidavit indicates that the Respondent-University framed the Recruitment & Promotion Rules for post of Clerk on 16.11.2010 to which a corrigendum was issued on 26.11.2020 [Annexure R-1], providing that 70% posts of Clerks were to be filled by direct recruitment and 20% by promotion from amongst Class-IV officials possessing 10+2 qualification through “*competitive examination*” from amongst persons possessing minimum 5 years regular service including service rendered as daily waged/contract or *ad hoc* basis, if any, in the grade and 10% posts were to be filled by promotion from Class-IV Officials, who have passed 10+2 examination or its equivalent from a recognized Board of School Education /University and possess five years regular

service or regular combined with continuous *ad hoc* service in the grade. Para 4 of the Reply-Affidavit indicates that petitioner has filed an Original Application No 6711 of 2018, before the Learned Tribunal which was decided in terms of the judgment dated 26.11.2018, whereby, the petitioner has prayed for grant of higher pay scale as Laboratory Attendant (Class-III). Para 6 (A)(i) of the reply on merits specifically reveals that the *petitioner has never performed the work of a Clerk under the respondent-University.*

**3(ii).** So far as the reliance placed on experience certificate [**Annexure A-1** annexed with writ petition is concerned, the respondent-University specifically mentioned in the reply-affidavit that in terms of Statute 5.5, the experience certificate can only be issued by appointing authority and not by the Dean, as has been done in the instant case. It is averred that the experience certificate was obtained

by the petitioner from an incompetent authority has been produced before this Court, solely to seek undue advantage of the same.

**3(iii).** Para 6(xi) of Reply-affidavit further indicates that the provision of Fundamental Rule 49, is neither attracted nor applicable in the instant case, for the reason that the petitioner was never been assigned the higher responsibility of the post of Clerk by the respondent-University. Para 6(xii) of Reply-affidavit, indicates that the petitioner cannot be treated or converted as Clerk, de hors the mandate of the Recruitment and Promotion Rules of Clerks dated 16.11.2010 (**Annexure R-2**).

In backdrop of the above submissions, the respondent-University has prayed for dismissal of the writ petition.

**REBUTTAL BY PETITIONER:**

**4.** Petitioner filed a rejoinder dated 20.12.2024, reiterating the averments made in the writ petition.

In Para 3 of Rejoinder, the petitioner has stated that the respondent-University had not issued any formal orders, indicating that the petitioner had worked as a Clerk. However, it is stated that the denial of status of Clerk by converting the petitioner from Store Mate to Clerk from the date of his initial appointment in May, 1988, is arbitrary, discriminatory and violative of the principles of natural Justice.

**5.** Heard, Mr. Amrik Singh, Learned Counsel for petitioner, Mr. Gobind Korla, Learned Additional Advocate General for the respondent-State as well as Ms. Vandana Misra, Advocate, for respondent-University.

**ANALYSIS:**

**6.** Taking into account the entirety of the facts and circumstances and the material on record, this Court is of the considered view, that the prayer of the petitioner for converting him from

the post of Store Mate (Class-IV) to the post of Clerk (Class-III) from date of his initial appointment as Store Mate, since his initial appointment on 19.05.1988 and till his promotion as Laboratory Attendant (Class-III), on 19.07.2007 **(Annexure A-3)** even thereafter by treating the petitioner as Clerk from the date of his initial appointment, does not stand the test of judicial scrutiny, for *the following reasons:-*

**6(i).** Petitioner was appointed as a Store-Mate (Class-IV) on 19.05.1988 and he joined as such on 20.05.1988. Petitioner has based his case on the basis of experience certificate dated 31.08.1995 **(Annexure A-1)** to assert that though the petitioner was a Store Mate (Class-IV) and even the respondent -University in terms of the experience certificate, has extracted the work of a Clerk and therefore, the petitioner should be converted and treated as Clerk for all purposes.

Above contention of Learned Counsel for the petitioner is devoid of any merit, *for the reason* that the assertion of the claim by the petitioner is based on alleged experience certificate dated 31.08.1995 **(Annexure A-1)**, but in view of Clause 5.5 of University Statute, it is specifically averred that experience certificate **(Annexure A-1)**, cannot be considered to be valid in law *for the reason*, that the experience certificate could only be issued by the appointing authority and not by Dean College/University of Horticulture as has been done in instant case. In these circumstances, once the very genesis of experience certificate **(Annexure A-1)** is in dispute and the petitioner has not placed on record any material to show that the petitioner was asked to perform the work of a Clerk or had in fact worked as a Clerk, by placing corroborative material on record to show that the aforesaid experience certificate was infact

issued after due approval of competent authority i.e. Registrar of Respondent-University in terms of Statute 5.5, therefore, in absence of any assertion and material on record by the petitioner, this Court is not inclined to accede to the prayer that the petitioner had in-fact worked as Clerk and therefore, he deserves to be converted from Store Mate (Class-IV) and then as Laboratory Attendant (Class-III) to Clerk (Class-III) in the instant case.

**6(ii).** Case of the petitioner needs to be examined from another angle also. Perusal of the Recruitment and Promotion Rules for the post of Clerk dated 16.11.2010 (**Annexure R-2**), specifically reveal that as per Rule 13 of the Rules, 70% posts of Clerks are to be filled up by direct recruitment. In addition, 20% of posts are to be filled up by promotion from amongst Class-IV officials possessing 10+2 qualification through *“competitive examination to be conducted by the Registrar”* and possessing

5 years regular service including service rendered on daily wages, contract or *adhoc* basis, if any in the grade. Pertinently, even as per 20% quota under Rule 13(ii) read with Rule 14(ii) of the Recruitment and Promotion Rules, the petitioner has not placed any material on record to show that competitive examination under 20% quota was conducted by the respondents, in which, petitioner has been either wrongly or illegally not considered or has been ousted for promotion under this quota. In absence of anything on record, the claim of the petitioner for promotion to the post of Clerk under the 20% quota, does not have any foundation and the same is misconceived and is out-rightly rejected.

**6(iii).** Now, coming to the claim of petitioner for promotion to the post of Clerk under 10% quota under Rule 13((iii) meant for Class-IV officials, who have passed 10+2 examination or its equivalent and

possess 5 years regular service or regular combined with continuous *adhoc* service, if any in the grade. Based on this, Learned Counsel for the petitioner contends that the petitioner is a graduate and still he has not been considered for promotion under Rule 13(iii) read with Rule 14(i) of the Recruitment and Promotion Rules.

Above contention of Learned Counsel for the petitioner is misconceived *for the reason* that merely because the petitioner is a graduate and has completed the requisite 5 years of service as Class-IV i.e. Store Mate, therefore, he does not have any vested right of promotion. Merely because the petitioner possesses higher education qualification of Graduation will not give automatic right of promotion ignoring the Recruitment and Promotion Rules, whereby, the post of Clerk is to be filled up by different sources including direct recruitment, limited competitive quota and promotional quota

and in case of the promotional quota post of Clerk is to be filled up on the basis of seniority-cum-fitness being a non-selection post as per Rule 5 of Rules dated 06.11.2010 **(Annexure R-2)** which is to be filled up on the basis of seniority-cum-fitness and mere eligibility will not confer a right of automatic promotion. Eligibility only entitles the petitioner for consideration, which is subject to the decision of the Respondent-University to fill up the promotional post by convening DPC in accordance with norms. Further, upon query by this Court, Learned Counsel for the petitioner has not been able to point out that any junior incumbent to the petitioner under 10% promotion quota, has been promoted over and above him either by ignoring or by erroneously ousting the petitioner under the said quota. In absence of any such material, the plea of petitioner for promotion as Clerk under 10% quota under Rule 13(iii)

read with Rule 14(i), is not tenable and, therefore, the same is without merit and is turned down.

**7.** Now coming to the claim of petitioner, for *converting him* from Store Mate (Class-IV) to post of Clerk (Class-III), the same is misconceived *for the reason* that the post of Clerk (Class-III), is to be filled up by direct recruitment and by promotion in terms of Recruitment and Promotion Rules for the post of Clerk dated 06.11.2010 **(Annexure R-2)**. Plea of petitioner for converting him from Store Mate to Clerk cannot be granted de hors the mandate of Recruitment and Promotion Rules 2010 **(Annexure R-2)**. Once the Recruitment and Promotion Rules for post of Clerk(s), mandates that the post of Clerk is to be filled up from specified categories and that too by adopting specified yardsticks for each quota, then, the claim of the petitioner for converting him from Store Mate (Class-IV) to Clerk (Class-III), cannot be

permitted dehors the Rules, so as to render the rules inoperative, nugatory and otiose. In these circumstances, the plea of the petitioner also is without merit.

**7(i).** Learned Counsel for Respondent-University has placed on record a copy of the order dated 26.11.2018, passed by State Administrative Tribunal in O.A. No.6711 of 2018 to assert that petitioner has claimed the benefit of the revised pay scale as Laboratory Attendant (Class-III) w.e.f. 01.01.2006.

The aforesaid admission, on the part of the petitioner, negates the plea, that the petitioner had worked as Clerk. Moreover, once the petitioner has himself admitted that he was in a Laboratory Staff, i.e. Laboratory Attendant (Class-III), then, the plea of the petitioner seeking converting of his nomenclature from the post of Store Mate to Clerk is not tenable, in view of his own admission, as referred to above.

**7(ii).** Now adverting to the claim of the petitioner for higher pay in terms of Fundamental Rule 49, this Court is of the considered view, that Fundamental Rule 49 is neither attracted nor applicable *for the reason* that the Fundamental Rule 49 presupposes admissibility of higher pay, in case a person is appointed to another post. In the instant case, the petitioner has not placed on record any appointment orders authorizing him to work as a Clerk (Class-III) and once an order of appointment is a *sine-qua-non* for invoking provision of Fundamental Rule 49 so as to entitle an employee for pay and allowances of the higher post. In instant case, once no “formal appointment order or such like order” has been placed on record authorizing the petitioner to work as Clerk. Further, the benefit of FR 49 is not admissible when, the two posts are in identical pay scales and that being so, once the posts of Laboratory

Attendant (Class-III) and the post of Clerk (Class-III) carry identical pay scales, then, the claim under FR 49 is not admissible to the petitioner and in these circumstances, this Court does not find any merit in the contention of Learned Counsel for the petitioner and the same are rejected.

**7(iii).** At this stage, Learned Counsel for the petitioner places reliance on the judgment passed in CWPOA No.358 of 2019, titled as **Savita & Others vs. State of H.P. & Others**, decided on 14.09.2020, to assert that the benefit of Fundamental Rule 49 may be extended to the petitioner.

*Firstly*, the aforesaid judgment in the case of **Savita [supra]**, is distinguishable on facts ; and *secondly*, the aforesaid judgment was rendered in the context that the petitioner in aforesaid case by virtue of the office orders, originating from transfer, was held to be working on the higher post and in these circumstances, benefit of Fundamental

Rule and admissible pay & allowances accruing therefrom were directed to be extended to the petitioner in the case of **Savita [supra]** as referred to above. In the instant case, once the two posts i.e. post of Laboratory Attendant and the post of Clerk, both were Class-III category posts, carrying the identical pay scale of Rs 3120-5160, as revised from time to time then, the claim of the petitioner for pay under FR 49 is not tenable.

**CONCLUSION:**

**8.** Claim of the petitioner for converting or treating the petitioner as Clerk (Class-III) from the date of his initial appointment as Store Mate (Class-IV) w.e.f. 20.05.1988 till his promotion as Laboratory Attendant 19.07.2007 is not tenable, when, the petitioner has not raised any claim for converting or treating him as Clerk or for wages of Clerk during the period from 1988 till 2007 before the Competent Authority or before a judicial

forum. In these circumstances, the claim now sought to be raised for the first time in April, 2019 patently suffers from delay and laches. Moreover, in absence of any “formal appointment order or any like order” authorizing the petitioner to work as Clerk the claim for FR 49. Further claim for FR 49 is not tenable when, the two posts carry the identical pay scales, as in the instant case. Even the alleged experience certificate cannot be of any assistance, when the alleged experience certificate was issued by an incompetent authority, dehors the provision of Clause 5.5 of University Statute. Besides this, the benefit of conversion from the post of Store Mate/Laboratory Attendant in the cadre of Clerk cannot be granted dehors the Recruitment and Promotion Rules i.e. Annexure R-1, so as to render the existing norms redundant, nugatory and otiose. The claim of the petitioner for treating-converting him as Clerk and

for giving the service benefits as Clerk cannot be granted by doing violence to the Statutory Rules. Claim for converting or treating him as Clerk [Class-III] from the date of initial appointment as Store Mate [Class-IV] on 20.05.1988 onwards till his promotion as Laboratory Attendant [Class-III] on 19.07.2007 suffers from gross delay and latches and this plea is barred by principle of acquiescence for the reason that the petitioner has not raised any claim from 1988 to 2007 either before the competent authority or before a judicial forum. Moreover, in an earlier round of litigation [OA No. 6711 of 2018 dated 26.11.2018] the petitioner has claimed the revised pay benefits as Laboratory Attendant (Classs-III) but without having raised a claim for the post of Clerk (Class-III) therefore, in the totality of facts and circumstances, the claim for converting or treating him as Clerk [Class-III] and for pay as Clerk under FR 49 is not tenable,

in facts of instant case.

**DIRECTIONS:**

**9.** In view the above discussion and for the reasons recorded here-in-above, the instant petition is *dismissed, in following terms:-*

- (i) Claim of the petitioner, for appointing or promoting or converting him from post of Store Mate (Class-IV) to post of Clerk (Class-III) from the date of his initial appointment as Store Mate in May, 1988, is dismissed;
- (ii) Consequent upon rejection of claim for appointing or promoting or converting him as Clerk and consequential prayer(s) for grant of increment, pay scale as Clerk is without merit and the same is accordingly rejected;
- (iii). Parties to bear their respective costs.

In aforesaid terms, the instant writ petition, as well as all pending miscellaneous application(s), if any, shall stand disposed of accordingly.

**(Ranjan Sharma)**  
**Judge**

**October 14, 2025**  
(yashwant/tm)