

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. : 5254 of 2013

Reserved on : 01.04.2025

Decided on : 08.04.2025

Deepak Pathania.

....Petitioner.

Versus

Central University of Himachal Pradesh and Anr.

.....Respondents.

Coram

The Hon'ble Mr. Justice Satyen Vaidya, Judge.

Whether approved for reporting?¹

For the petitioner : Mr. Nitin Thakur, Advocate.

For the respondents : Mr. Balram Sharma, Deputy
Solicitor General of India, for
respondent No. 1.

: Mr. Lalit K. Sharma, Advocate,
for respondent No.2.

Satyen Vaidya, Judge

By way of instant petition, petitioner has
prayed for following substantive reliefs:-

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

- i) *Issue a writ of mandamus directing the respondent authorities to place on record the appointment letter of the private respondent whereby the private respondent has been appointed as an Associate Professor in the department of Environmental Sciences in the respondent/University.*
- ii) *Issue a writ of certiorari to quash the appointment of the private respondent whereby the private respondent has been appointed as an Associate Professor in the department of Environmental Sciences in the respondent/University.*
- iii) *Issue a writ of mandamus directing the respondent authorities not to give effect to the appointment of the private respondent whereby the private respondent has been appointed as an Associate Professor in the department of Environmental Sciences in the respondent university.*
- iv) *Issue a writ of mandamus directing the respondent authorities to appoint the present petitioner against the newly created post of Associate Professor in the department of Environmental Sciences in the respondent University.*

2. The case as set-up by the petitioner is that respondent No.1/University invited applications for

appointment to the post of Associate Professor, *vide* advertisement dated 13.06.2011. Petitioner also applied for the post of Associate Professor in the department of Environmental Sciences. Two posts of Associate Professors in the said department had been advertised. Petitioner was shortlisted and interviewed also. A select list was prepared, two incumbents from general category were appointed as Associate Professors in the department of Environmental Sciences in respondent No.1/University. Petitioner was placed at serial No. 1 of the waiting list and private respondent was placed at serial No. 2. Later, petitioner came to know that private respondent had also been appointed as Associate Professor in the department of Environmental Sciences. In this backdrop, petitioner has challenged the appointment of private respondent on the ground that his appointment was against non-existent post. Since, only two vacancies were advertised and there was no advertisement for the third post, if at all the additional post was to be

created in the department of Environmental Sciences, petitioner being at serial No. 1 of the waiting panel was entitled to be appointed against the same.

3. Respondent No.1/University has filed its reply. It has been submitted that the University had advertised total 36 posts of Associate Professors in different disciplines *vide* two separate advertisements dated 15.12.2010 and 13.06.2011. Two posts in the department of Environmental Sciences were also included in the aforesaid advertisements. The University follows the reservation policy of Government of India. 15% posts were to be reserved for Scheduled Caste category candidates and 7.5% for Scheduled Tribe category candidates. The University had implemented the reservation cadre-wise taking the University as a unit and not department or discipline-wise. This, according to respondent No.1/University, was done in accordance with the guidelines circulated by UGC on 25.08.2006, to ensure the effective implementation of the reservation policy.

4. It has also been submitted by respondent No.1/University that S/Sh. Deepak Pant and Anupam Sharma were appointed against two posts of Associate Professors in the department of Environmental Sciences. Both of them were from general category. It was admitted that petitioner and private respondent were placed at serial Nos. 1 and 2, respectively, in the waiting panel. Subsequently, the private respondent submitted two representations dated 18.04.2012 and 25.04.2012, seeking claim to one of the posts of Associate Professors in the department of Environmental Sciences on the premise that by strict implementation of reservation policy, one of the vacancies in the department of Environmental Sciences was to fall in the share of Scheduled Tribe category. The private respondent being candidate belonging to said category was entitled to be appointed.

5. It has further been submitted that the representation of the private respondent were considered by the Executive Council of University and

after finding substance in his contention, it was decided to transfer one post of Associate Professor from another department/discipline to the department of Environmental Sciences on supernumerary basis and in lieu, to transfer one post of Assistant Professor from the department of Environmental Sciences to another department. Respondent No.1/University has also submitted that the directions were also issued by the National Commission for Scheduled Tribes and in such circumstances, the private respondent was appointed against a supernumerary post. This exercise, according to respondent No.1-University had to be undertaken as both the selected incumbents from general category had already joined.

6. I have heard learned counsel for the parties and have also gone through the record of the case carefully.

7. On 28.04.2022, this Court passed the following order:-

“When the case was taken up for consideration today, Dr. Lalit Kumar Sharma, learned counsel for respondent No.2 has informed the Court that the matter in fact stands rendered infructuous, for the reason that now respondent No.2 is no more in the service of respondent No.1 and further as per his instructions, even the petitioner is gainfully employed somewhere else.

Learned counsel for the petitioner submits that the matter be taken up after one week to enable him to have instructions in this regard.

As prayed for, list on 09.05.2022.”

8. In sequel to aforesaid order, learned counsel for the petitioner submitted on 13.07.2023 that he has been instructed by the petitioner to contest the petition. Later on 20.09.2024, this Court required respondent No. 1/University to reveal as to whether the post of Associate Professor in the department of Environmental Sciences in the University was still available. In response, it was disclosed that though one post of Associate Professor in the department of Environmental Sciences was available but the same belonged to Scheduled Caste category.

9. As noticed above, respondent No. 2 has already left the respondent No.1/University, meaning thereby that the post he had occupied stood abolished as the same was only supernumerary. Even otherwise, the petitioner on one hand has challenged the appointment of private respondent on the ground that he was appointed against non-existent post as there was no vacancy, on the other, petitioner is seeking claim to the same post. Once, according to the petitioner, the appointment of private respondent was illegally made on non-existent post, the petitioner cannot be allowed to claim any right on such post. He cannot claim a negative parity.

10. Even otherwise, about twelve years have elapsed since the filing of the petition by the petitioner. There must be lots of change in the cadre of Associate Professors in the University in general and in the department of Environmental Sciences in particular. Nothing has been adduced on record by the petitioner during the pendency of the petition.

11. In result, I find no merit in this petition and the same is dismissed.

12. Accordingly, the instant petition is disposed of, so also the pending application(s), if any.

8th April, 2025
(*sushma*)

(Satyen Vaidya)
Judge