

**IN THE HIGH COURT OF HIMACHAL PRADESH AT  
SHIMLA**

**LPA No. 480 of 2011 a/w CWP  
No. 8191 of 2013, LPAs No.  
4031 and 4041 of 2013, CWP  
No. 9459 of 2014 and Ex.  
Petitions No. 21 and 22 of 2016**

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**Reserved on : 26.10.2020**

**Decided on : 30.10.2020**

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**1. LPA No. 480 of 2011  
State of H.P. and others**

**...Appellants**

**Versus**

**Mandeep Kumar**

**...Respondent**

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**2. CWP No. 8191 of 2013  
Sandeepika Sharma and others**

**....Petitioners**

**Versus**

**State of H.P. and others**

**...Respondents**

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**3. LPA No. 4031 of 2013**

**State of H.P. and others**

**...Appellants**

**Versus**

**Neeraj Gupta and others**

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**...Respondents**

**4. LPA No. 4041 of 2013**

**State of H.P. and another**

**...Appellants**

**Versus**

**Kuldeep Kumar and others**

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**..Respondents**

**5. CWP No. 9459 of 2014**

**Sushma Kumari and others**

**..Appellants**

**Versus**

**State of H.P. and others**

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**...Respondents**

**6. Exe. Petition No. 21 of 2016**

**Raj Kumar**

**..Petitioner**

**Versus**

**State of H.P. and others**

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**...Respondents**

**7. Exe. Pet. No. 22 of 2016**

**Ashok Kumar**

**...Petitioner**

**Versus**

**State of H.P. and others**

**..Respondents**

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**Coram**

**Hon'ble Mr. Justice Sureshwar Thakur, Judge.**

**Hon'ble Mr. Justice Chander Bhusan Barowalia, Judge.**  
**Whether approved for reporting?**

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**For the Appellants:** Mr. Hemant Vaid, Addl.AG with Mr. J.S. Guleria Dy. A.G. in all the LPAs and for respondents-State in CWPs No. 8191 of 2013, 9459 of 2014 and Ex. Petitions No. 21 and 22 of 2016.

Mr. Tarun K. Sharma, Ms. Ranjana Parmar, Sr. Advocate with Mr. Karan Singh Parmar, Advocate and Mr. Goldy Kumar, Advocate, for the petitioner(s), respectively in CWP No. 8191 of 2013, CWP No. 9459 of 2014 and Ex. Petitions No. 21 and 22 of 2016.

**For the respondents :**Ms. Ranjana Parmar, Senior Advocate with Mr. Karan Singh Parmar, for respondents No. 1 to 6, 8, 10 to 17 in LPA No. 480 of 2011, Mr. G.R. Palsra, Advocate, for respondents No. 1, 3 and 4 in LPA No. 4031 of 2013, Mr. Bhuvnesh Sharma, Advocate, for respondents No. 1 to 15 in LPA No. 4041 of 2013 and Mr.Vikrant Thakur, Advocate, for proforma respondent No. 17 in LPA No. 4041 of 2013.

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**Sureshwar Thakur, Judge**

Since a common question of law, appertaining to the legality, of, the action, of, the employer concerned, to, dehors any prescription, becoming borne, in, the apposite Recruitment and Promotion Rules, hence cast a condition qua, only after successful completion, of, the requisite

period, of, training, the letter(s), of, appointment, being amenable, for becoming validly issued, vis-à-vis, the employees concerned, (a) or, in other words, the legality, of, the action, of, the employer concerned, to, postpone the implementation(s), of, selection, of, selectees concerned, or, to defer the completest efficacious operation, of, the appointment letter(s), vis-à-vis, the posts concerned, upto, the stage of completion(s), of, apposite period(s), of, training(s) by the employees, (b) is, rather involved, in, LPAs No. 480 of 2011, 4031 of 2013 and 4041 of 2013, and, in CWP No. 8191 of 2013, besides in CWP No. 9459 of 2014, and, also in Execution Petitions No. 21 of 2016 and 22 of 2016, (c) thereupon all the afore LPAs concerned, and also, the, CWPs concerned, are, amenable for, obviously, a common verdict, being pronounced thereon. Conspicuously, also, the outcome, of, the LPAs concerned shall determine the fate, of, the connected therewith CWPs.

2. A challenge becomes cast, to, the verdict pronounced by the learned Single Judge of this Court, on, 21.2.2011, upon(s) CWP-T Nos 2145 of 2008, 2182 of 2008, and, upon CWP-T 2267 of 2008. A reading, of, the relevant Recruitment and Promotion Rules, appertaining

to the induction(s) into service, of, the employees concerned, hence as Gram Vikas Adhikari, does not unveil, vis-à-vis, any contemplation, becoming borne therein, rather necessitating the undergoing(s), of, training(s), by, the selectee(s) nor also any preemptory mandate becomes borne therein, hence making interdiction, against the employer, to defer the issuance, of, the appointment letter(s), to, the selectees concerned, only after theirs' successfully completing, the, apposite period, of, training. Bearing in mind the afore, and also the un-contested factum, qua the selection, of, the candidates concerned, against the advertised posts, occurring, through the aegis, of, a validly constituted selecting agency concerned, (a) besides, when no material becomes placed, on record, hence making visible portrayals, qua theirs occurring any shortcoming, in the adoption(s), of, the mandatory procedure(s), rather by the selecting agency concerned, nor any cogent material pronouncing qua any other taint, direly affecting the selection, of, the candidates concerned, against the advertised post(s), (b) thereupon, the selection, of, the candidates concerned, cannot come, to be faulted, on any score.

3. In aftermath, the silence or reticence in the apposite Recruitment and Promotion Rules, qua the purported preemptory necessity, of, the selected candidates, undergoing the apposite period, of, training, rather, as, a purported indispensable condition precedent, for, the appointment letter(s), becoming issued to them, (a) nor also, when there is any consonant therewith amendment, visibly made to the Recruitment and Promotion Rules, and, importantly, in contemporaneity, vis-à-vis, the issuance, of, the advertisement notice, in pursuance whereof, the selection(s) were made, (b) thereupon, with trite expostulation(s), of, Rule(s) becoming borne in a catena, of, judgment(s), rendered by the Hon'ble Apex Court, and, theirs' declaring qua the Recruitment and Promotion Rules, prevailing or superseding, upon, contra therewith instruction(s)/notification(s), as become issued by the Government, (c) unless, the latter are made in exercise, of, the powers, falling within the ambit, of, the proviso to Article 309, of, Constitution of India, hence for necessarily overcoming some snags or for condoning any ill effects, of, the apposite reticences, in the apposite Recruitment and Promotion Rules, and, emphatically qua the relevant facet. (d) Conspicuously may be qua only educational

qualification(s), the age of the recruitees or may be qua assignment, of, reservations, vis-à-vis, the apposite categories. However, since the Recruitment and Promotion Rules, make trite preemptory mandate(s), for inductions into service, of, aspirants concerned, hence happening through, the relevant recruitment agency, and, also their canonizing qua the mode of recruitment, being through an advertisement being issued/published rather, by the employer concerned, and significantly also, none, of, the afore reticence(s) hence curable through a notification made under the proviso, to, Article 309, of, the Constitution, of, India, rather existing, in the apposite Recruitment, and, Promotional Rules, (d) hence the diktat of the Rules, cannot be whittled down, by any subsequent thereto notification, issued by the Government, rather casting a mandate, for, undergoing(s), of, training(s), by the selectees concerned, as a pre-condition, for, appointment letter(s), being issued to them. In vindicating, and in countenancing, the, afore purported condition precedent, though apparently, not borne in the apposite Recruitment, and, Promotion Rules, would tantamount to this Court, proceeding to breach the inviolable norm(s), appertaining to the realm, of, service jurisprudence, (e) inasmuch as, even upon the apposite

selection(s), if validly made, and thereupon(s) rather leveraging, in the selectees concerned, a valuable right, to, in contemporaneity therewith, if found otherwise fit, and, eligible, in all respects, to insist, upon, appointment letters being issued to them, by the employer concerned, rather reiteratedly uncalled, for, wants' thereof, hence legally interdicted ill consequences, becoming visited upon them. Even otherwise, the, imparting, of, trainings, is, necessarily, to, happen only thereafter, as, also happens, vis-à-vis, successful selectees, appearing in UPSC, and, HPPSC examination(s).

4. Be that as it may, the reason(s), for, deferment, of, issuance, of, appointment letter(s), as become(s) cast, in the grounds of appeal, taken in the LPAs, is, grooved in the factum, of, an enforcement inquiry, rather pending, against the selection(s) made, against the advertised post(s), of, the selectee(s) concerned, (a) and, only after its conclusion, the respondent(s) becoming facilitated to issue the appointment letters, to the selectees concerned. However, the afore ground, cannot weigh, at all, as an obstacle, with this Court, to, in its exercising hence its writ jurisdiction, its, hence determining upon perusal, of, the relevant Recruitment and Promotion Rules, the



legitimacy, of, the stance(s) canvassed, before this Court, by the employer concerned, nor the afore purported reason, can baulk this Court, to determine, from all the relevant factual, as well as legal parameters, as available on record, the legality or otherwise, of, the afore stand adopted by the Employer. If so, the pendency, of, the enforcement inquiry against the selection(s) concerned, does not, obstruct this Court, to, from the relevant material, as becomes alluded hereinabove, and, its making pointed bespeaking(s) in negation, of, the stance adopted by the Employer, (b) rather to, therethrough obviously hence validate the espousal(s) made before this Court, by the counsels, appearing for the employees/selectees concerned. The afore ground may work only, upon, the enforcement inquiry appertaining, to, pervasive forgeries being committed, in, the awarding(s), of, marks or the latter spurring, from, extraneous consideration(s), and, the afore inquiry concluding against, the selecting agency concerned. However, for want of apposite material hence suggestive, vis-à-vis, the enforcement inquiry, appertaining, to, the afore taints, (c) thereupon, the selections become unstained (d) and thereupon the

respondents could not withhold the, issuance, of, appointment letters, to, the selectees hence on any ground.

5. It appears, that, in the garb of the afore untenable insistence(s) qua undergoing(s), of, training(s) by the selectees concerned, the employers concerned, intend to deprive the selectees, of, their legitimate claims towards salaries, as become validly bestowable, upon them, in contemporaneity, vis-à-vis, theirs selection(s), hence becoming declared suitable, in all respects, rather occur, (a) and, also appear(s) to deprive the selectees concerned, to, despite their valid selection(s), hence occurring, in 2002, vis-à-vis, their claims, on their respective superannuation(s), rather the benefits, of, pension(s), under, the relevant thereto Rules.

6. In summa, the instant LPAs No. 480 of 2011, 4031 of 2013 and 4041 of 2013 are dismissed, whereas, CWPs No. 8191 of 2013 and 9459 of 2014 are allowed, and, the verdict pronounced by the learned Single Judge in CWP(T) No. 2145 of 2008, CWP-T No. 2182 of 2008 and CWP-T No. 2267 of 2008, is, affirmed and upheld, and, obviously the relief(s), claimed in the Civil Writ Petitions No. 8191, of 2013 and 9459 of 2014, are also allowed. Execution

petitions No. 21 of 2016 and 22 of 2016, are also allowed, and the respondents, are, directed to forthwith implement the verdict pronounced by this Court. Also, the pending application(s), if any, are also accordingly disposed of.

**(Sureshwar Thakur)**  
**Judge**

**(Chander Bhusan Barowalia)**  
**Judge**

**30<sup>TH</sup> October, 2020**  
Kalpana