

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWPOA No.487 of 2019
Decided on: 8th October, 2026

Ram Kumar Sharma ...Petitioner

versus

State of H.P. ...Respondent

Coram

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

Whether approved for reporting?¹

For the petitioner: Ms. Shweta Joolka, Advocate.

For the respondent: Mr. R.P. Singh, Deputy Advocate General.

Jiya Lal Bhardwaj, Judge (Oral)

The petitioner by way of present petition has prayed for the following substantive reliefs:-

- "a) *To direct the respondent to summon the entire record of the disciplinary proceedings initiated against the petitioner including that of Inquiry Officer before this Hon'ble Court.*
- b) *Quashed the impugned order dated 7-7-2009 and allow the present petition."*

2. Shorn of unnecessary details, the key facts of the case are that disciplinary proceedings were initiated against the petitioner for alleged misconduct on the charge that he being the Senior Assistant HPPWD, in the office of Executive Engineer in the Hamirpur Division, District Hamirpur, H.P., got the name of his son,

¹ *Whether the reporters of Local Papers may be allowed to see the judgment?*

Shri Manoj Kumar, entered in Muster Roll No.153 of 9/91, 209 of 11/91, 231 of 12/91 and 240 of 12/91 as a labourer in connivance with Shri B.S. Thakur, Assistant Engineer, A.K. Sharma and Jagdish Chand Dhiman, Junior Engineers. The petitioner along with the aforesaid employees managed to get fictitious attendance of his son marked for 19 days in September 1991, 5 days in November 1991 and 31 days in December, 1991 and obtained false payment amounting to Rs.1188/- on the basis of these fictitious attendance, whereas at the relevant time, Shri Manoj Kumar, son of the petitioner was undergoing training in the New Education Society, Kallur Polytechnic, Kallur, District Raichur for his 2nd year course of DCE (GL) commencing from July 1991 to December 1991. As per the Muster Roll No.153 of 9/91 at Hamirpur, Manoj Kumar, was shown to have worked as labourer for 19 days, whereas according to the consolidated attendance submitted by the Principal, New Education Society, Kallur Polytechnic, Kallur, District Raichur, he was shown to have attended his classes and course for 18 days in the same month of September 1991. Shri Manoj Kumar was paid Rs.1188/- vide voucher No.10 dated 13.12.1991 for the fictitious attendance of 19 days, which was done by the petitioner with an ulterior motive to obtain undue benefit and pecuniary loss upon the State exchequer.

3. On the basis of the said act of the petitioner, a disciplinary action was proposed against him under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and the following charge was levelled against him:-

"WHEREAS Sh. Ram Kumar, Sr. Assistant (Retd.), HP PWD, was charge sheeted under rule-14 of the Central Civil Service (Classification, Control and Appeal) Rules, 1965 vide this Department Memorandum of even number dated the 13th July, 1995.

AND WHEREAS the Commissioner Departmental Enquiries Himachal Pradesh was appointed as the Inquiring Authority to inquire into the charge leveled against Sh. Ram Kumar Sharma, Sr. Assistant (Retd.) vide order of even number dated 13th September, 1995.

AND WHEREAS the Inquiring Authority has submitted his inquiry report vide his letter No.Conf-EQ-13/95-Vig. CDE through the Vigilance Department vide their letter No.Per(Vig.) F-3(PWD)- 73/93 dated the 11th April, 1996, according to which the charge levelled against Sh. Ram Kumar, Sr. Assistant (Retd.) has not been proved.

AND WHEREAS on careful consideration of the said inquiry report, the Governor, Himachal Pradesh disagrees with the findings of the Inquiring Authority and holds that the conflicting statement of PW-1 and PW-3 show that Sh. Manoj Kumar perhaps did not work at any place. Sh. Ram Kumar Sharma, Sr. Assistant (Retd.) thus violated the provision of Conduct Rules and the charge against him is established. Hence it has been decided to impose the penalty of "Recovery of Loss" upon Sh. Ram Kumar Sharma, Sr. Assistant (Retd.) by taking a lenient view.

NOW, THEREFORE, the Governor, Himachal Pradesh in exercise of the powers conferred under Rule-9 I(b) of CCS (Pension) Central Civil Services Rules, 1972 (read with Rule 14 & 15 of CCS (CCA) Rules, 1965) hereby imposes the penalty of recovery of Rs.1188/- upon Shri Ram Kumar Sharma, Sr. Assistant (Retd.)."

4. The charge sheet was served upon the petitioner, vide Memorandum dated 13.07.1995. The disciplinary proceedings were initiated irrespective of the fact that officer was on the verge of retirement. The petitioner submitted his reply to the charge sheet on 22.07.1995. Thereafter, the enquiry was conducted by the Enquiring Officer and in the enquiry report, it was found that the charges are not proved against the petitioner. However, the Disciplinary Authority vide order dated 11.12.1996, in exercise of powers conferred under Rule 9(1)(b) of the Central Civil Services (Pension) Rules, 1972, imposed penalty of recovery of Rs.1188/- upon the petitioner.

5. It has further been averred in the petition that against the penalty imposed upon the petitioner, he had approached this Court by way of CWP (T) No.4274 of 2008, titled, **Ram Kumar** versus **State of Himachal Pradesh** and this Court vide order dated 24.04.2009 had allowed the petition and the order of penalty was quashed with a direction to respondent No.1 to pass a fresh order by assigning reasons after affording due opportunity of hearing to the petitioner, within a period of three months.

6. Respondent No.1, after passing the aforesaid order by this Court, heard the petitioner and passed an order on 07.07.2009 (Annexure P-3) and upheld the order of penalty of recovery imposed

upon him, taking into account the fact that the entry in Muster Roll and attendance at Kallur District Raichur, is overlapping each other during the month of September 1991 and thus an individual cannot be present at both the places i.e., at Raichur or at Hamirpur during September 1991. The stand taken by the petitioner is totally false and his plea of denial is liable to be rejected on the basis of the clinching evidence of attendance of Shri Manoj Kumar in view of the information supplied by the Principal, NES, Kallur Polytechnic, Kallur, Distt. Raichur. The son, being dependent upon the petitioner, in all probabilities could not have obtained this amount paid to him in view of his presence in the Muster Roll for the month of September 1991. Strong inference is emerging that his son was undergoing training at Raichur and the petitioner being Senior Assistant in the same Division got the name of his son entered in the Muster Roll and received the amount and accordingly, the amount paid to him is liable to be recovered, being amount out of State exchequer. Since the petitioner is a retired Government servant and not in service, as such instead of passing an enhanced penalty, penalty of recovery of Rs.1188/- is justified in the facts of the case.

7. The petitioner feeling aggrieved by the order dated 07.07.2009 passed by respondent No.1, has approached this Court, *inter alia*, on the grounds that the Disciplinary Authority has passed

the order on assumptions and presumptions, inasmuch as the order suffers from illegality and non-compliance of the directions passed by this Court. It has further been averred that the Disciplinary Authority has placed reliance upon the communication made by the Principal that the son of the petitioner had attended classes in the institute for 18 days in September 1991 and 19 days in November 1991 and since in the month of December, there were theory examinations, therefore, no attendance was marked for December 1991. The petitioner has placed on record the information received under the Right to Information Act from the Secretary, Board of Technical Examination, Bangalore dated 20.09.2011, wherein it has been stated that as per the record, Shri Manoj Kumar Sharma had appeared in the first year examination in Civil Engineering Diploma course in the month of May 1991 and further, for the next year's course, i.e., second year, he had only paid his admission and tuition fee on 14.10.1991, which clearly shows that the petitioner between June 1991 and 14.10.1991 was in his native village and had been in employment. No institute would permit or allow a student to attend classes without payment of admission fee. The Enquiry Officer had exonerated the petitioner in the enquiry and the Disciplinary Authority disagreeing with the enquiry report has not mentioned cogent and plausible reasons and, as such, prayed for quashing the

impugned order dated 07.07.2009 (Annexure P-3) passed by respondent No.1.

8. The respondent filed reply and in preliminary submissions averred that neither legal nor any fundamental right of the petitioner has been infringed in any manner by the respondent. The petitioner has no cause of action to maintain the present petition and, as such, it deserves to be dismissed. It has been averred that the enquiry was initiated against the petitioner and a charge sheet was served upon him vide Memorandum dated 13.07.1995 and after receipt of the reply filed by him, the enquiry was conducted by the Enquiring Authority, who submitted his report on 31.12.1995. Thereafter, an order dated 11.12.1996 was passed imposing penalty of recovery of Rs.1188/-. It has further been averred that there is a provision of making an appeal against the order of the Disciplinary Authority within a period of 45 days from the date on which the copy of the order received and since the petitioner has not exhausted all the statutory remedies, this petition is not maintainable.

9. On merits, it has been averred that the Disciplinary Authority has examined the record and report of the Enquiry Officer as well as submissions made by the petitioner and after satisfying itself about the misconduct proved against the petitioner, decided to

impose the penalty. A minor penalty was imposed for recovery of Rs.1188/-, which is after proving the serious misconduct and unbecoming of a public servant.

10. The petitioner filed rejoinder to the reply and controverted the averments made therein.

11. I have heard the learned counsel for the parties and also perused the record carefully.

12. So far as the first objection with respect to maintainability of the petition on the ground that the petitioner is having a remedy of an appeal is concerned, since the matter is pending for the last about 12 years, the petitioner cannot be relegated to avail the remedy of an appeal, as envisaged under Rule 23(1) of the CCS (CCA) Rules, 1965. The writ petition, which was instituted in the year 2014 was admitted by this Court on 13.08.2020 and, therefore, after such a long time, in case the matter is relegated and the petitioner is asked to prefer an appeal, it will lead only to prolong the litigation, more particularly, when the petitioner had retired from service on 31.07.1995. Earlier, the petitioner had challenged the order dated 11.12.1996, by preferring an Original Application before the Himachal Pradesh Administrative Tribunal, which after abolition, was transferred to this Court and was registered as CWP (T) No. 4274 of 2008 and came to be disposed of

on 24.04.2009 with a direction to respondent to decide the matter afresh. If at this juncture, the matter is again disposed of with a direction to the petitioner to avail the remedy of an appeal, the petitioner will remain entangled in litigation in the Courts and may not be able to see the final outcome of the litigation, especially when he is fighting for his honour over a penalty of recovery of Rs.1188/-, which was imposed upon him and, as such, the objection of availability of remedy of an appeal is rejected. Further, once the writ petition was admitted, it has to be decided on merits.

13. As per the order dated 07.07.2009 (Annexure P-3), the respondent has based an order on the information and copy of entry of attendance in the register sent by the Principal, NES Polytechnic, Kallur, in which the son of the petitioner has been shown to remain present in the institute for 3 days during July 1991, 17 days during August 1991, 18 days during September 1991, 20 days during October 1991 and 19 days during November 1991. It is not in dispute that the Enquiry Officer, who conducted the enquiry, had concluded that there is no evidence to sustain the charges and the charges are not proved.

14. The petitioner has placed on record information received by him under RTI dated 21.09.2011 (Annexure P-4), in which, it has been mentioned that the son of the petitioner Manoj

Kumar Sharma had appeared for the first year diploma examination in the month of May, 1991. A judicial notice can be taken of the fact that after appearing in the first year' diploma examination concluded in the month of May 1991, the son of the petitioner may have returned to his native place and thereafter he got the admission in the institute in the month of October, 1991 since he had paid the admission fee on 14.10.1991 (Annexure P-1). If the son of the petitioner had worked during the month of September 1991 for 19 days, it cannot be said that he simultaneously had attended the classes in the institute. In the month of November 1991, he had worked only for 5 days and it can be believed that when the son of the petitioner was on leave, he may have worked for 5 days on the Muster Roll. So far as the son of the petitioner having worked for 31 days during the month of December 1991 is concerned, as per the information, which was received by the respondent from the Principal, NES, Kallur, he has not been shown to have attended the classes, and, therefore, it can be presumed that during this month, he may have worked as a labourer and was paid the money by the competent authority for the work done by him.

15. On the last date of hearing, the respondent was directed to produce the record and when the record was produced today, the learned counsel representing the petitioner vehemently

argued that since the charges have not been proved against the petitioner, the penalty has wrongly been imposed upon him.

16. On the other hand, learned Deputy Advocate General has supported the order and submitted that though as per the report submitted by the Enquiry Officer, the charges were not proved, but as per law, the Disciplinary Authority can differ with the findings returned by the Enquiry Officer. No doubt, it is settled law that the Disciplinary Authority can differ with the findings given by the Enquiry Officer, but the same should be based upon cogent material. However, in the present case, as already noticed above, the penalty has been imposed upon the petitioner solely on the basis of the attendance shown in the consolidated attendance statement issued by the Principal, NES Kallur, Polytechnic Kallur District Raichur along with letter dated 02.09.1993. Neither the Principal of the said college nor any officer has been examined to prove the authenticity of the attendance shown in the consolidated attendance statement. The penalty could not have been imposed upon the petitioner simply on the basis of the photocopy of the consolidated attendance statement sent by the Principal, NES, Kallur, Polytechnic Kallur which is not proved.

17. It is true that for the purpose of adjudicating the claim or imposing the penalty on the delinquent officer, the same

procedure as envisaged for conducting the proceedings under the Criminal Procedure Code, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023) is not to be strictly followed, but at the same time, merely on the basis of the photocopy of some document, it cannot be construed that there is misconduct on the part of the delinquent officer. In the present case, the respondent has passed an order of penalty on the basis of attendance marked in a photocopy of consolidated attendance statement issued by the Principal of the institute, that too, without examining him or any other officer/official to prove the said document.

18. So far as the amount is concerned, it is very meager and further in case the petitioner had to do mischief, he could have claimed the wages of the entire months of July, August, September, October, November and December, 1991. But even as per the memo issued to the petitioner his son had been marked present with effect from 02.09.1991 to 20.09.1991 (19 days), 26.11.1991 to 30.11.1991 (5 days) and 01.12.1991 to 31.12.1991 (31 days), this proves that son of the petitioner had actually worked during these days for which the payment has been made to him and it is wrongly alleged that the petitioner has misconducted himself and his son has wrongly been paid a sum of Rs.1188/-.

19. This Court cannot even ignore the fact that the petitioner, who stood retired on 31.07.1995, is litigating in the Court only for his honour, otherwise in case the petitioner had actually misconducted himself during his service period, he would have not agitated the matter. It was only for this reason that he had not committed any misconduct and as per the observations made hereinabove, this Court is of considered view that the articles of charge framed against him were not proved and, as such, the impugned order dated 07.07.2009 passed by the respondent is not sustainable in the eyes of law and the same is quashed.

20. Consequently, the present petition is allowed and the impugned order dated 07.07.2009 is quashed and set aside. No order as to costs. Pending applications, if any, also stand disposed of.

8th October, 2026
(naveen)

(Jiya Lal Bhardwaj)
Judge