

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

**CWPOA No.4091 of 2019**

**Decided on: 06<sup>th</sup> August, 2026**

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Rajesh Kumar Sharma

**...Petitioner**

**Versus**

Himurja and another

**...Respondents**

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*Coram*

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

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

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For the petitioner:

Mr. Prem P. Chauhan, Advocate.

For the respondents:

Mr. Ankit Kaloti, Advocate, for respondent No.1.

Mr. Vishav Deep Sharma, Additional Advocate General, for respondent No.2-State.

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**Jiya Lal Bhardwaj, Judge** *(Oral)*

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

*“(a) to issue a writ of mandamus, appropriate writ, order or direction in nature thereof, directing the respondents Society to grant/sanction study leave to the petitioner for pursuing three years’ B.Tech course wef 24/04/2009 to 23/04/2012 with all the consequential benefits;*

*(b) to issue a writ of mandamus, appropriate writ, order or direction in nature thereof, directing the respondents Society to release the due and admissible retiral benefits of the*

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

*petitioner w.e.f. 23/04/2012 alongwith interest thereon @18% pa;"*

2. The facts as emerge from the pleadings are that the petitioner was initially appointed as Junior Engineer with the respondent-Society in the month of April, 1991, on daily wage basis, and thereafter he was regularized on the said post w.e.f. August, 1991. He was promoted as Project Officer on 04.11.2000. The petitioner wanted to pursue three years' course of B.Tech. from Punjab College of Engineering & Technology, Lalru, Mandi under lateral entry scheme and thus, made an application to the respondent-Society, to grant him permission for admission in the aforementioned institute. His prayer was allowed vide office order dated 11.05.2008 (Annexure P-1). Thereafter, he applied for grant of study leave, however, vide letter dated 04.08.2008 (Annexure P-2), the petitioner was directed to send a copy of selection letter and a proper receipt of the institution on the prescribed format, bearing receipt No. along with study tour program and leave application on the prescribed form, so that the leave case and study tour program could be considered

accordingly.

3. In response to the above communication, the petitioner submitted a representation dated 18.09.2008 (Annexure P-3) along with the requisite documents. When nothing was heard from the respondent-Society, the petitioner again wrote a letter on 21.11.2008 (Annexure P-5) and vide office order dated 26.11.2008 (Annexure P-6), 151 days' earned leave w.e.f. 24.11.2008 to 23.04.2009 or till the study leave is sanctioned, whichever is earlier, was granted to the petitioner with permission to prefix 23.11.2008, being Sunday.

4. It is apt to note that as per communication dated 27.10.2008 (Annexure P-7), respondent No.2 had conveyed respondent No.1 that the matter regarding permission to the petitioner for admission in Engineering Institute had been approved by respondent No.1, at its own level without consulting the Department and, therefore, the study leave too should be sanctioned at his own level. It was specifically observed that the matter was not examined under Rule 50-51

of the Central Civil Services (Leave) Rules, 1972 (in short “CCS (Leave) Rules”) before sending the same to the Department. Thereafter respondent No.1, again vide communication dated 22.07.2009 (Annexure P-8), sought the approval from respondent No.2 for grant of study leave in favour of the petitioner, a copy of which was also forwarded to the petitioner.

5. It has also been averred that nothing was heard by the petitioner and he again submitted a representation to respondent No.1 on 03.08.2009 (Annexure P-9) requesting to consider his request for grant of study leave. Thereafter, as per office order dated 24.08.2009 (Annexure P-10), respondent No.1 in continuation of the earlier communication dated 26.11.2008 granted the ex-post facto sanction of 13 days' earned leave w.e.f. 24.04.2009 to 06.05.2009, 86 days' commuted leave w.e.f. 07.05.2009 to 31.07.2009 and 153 days' extra-ordinary leave (without pay) w.e.f. 01.08.2009 to 31.12.2009, to the petitioner.

6. The petitioner completed his course of three

years' in December, 2011. Since the petitioner was not granted study leave, he vide communication dated 23.01.2012 (Annexure P-11), sought voluntary retirement from the post of Project Officer. He again wrote a letter on 02.03.2012 (Annexure P-12) requesting voluntary retirement from the post of Project Officer. The request made by the petitioner for premature retirement was accepted vide office order dated 13.07.2012 (Annexure P-13), whereby he was retired voluntarily w.e.f. 23.04.2012, in public interest subject to the condition that all outstanding government dues, if any, will be recovered/adjusted from the dues/pensioner benefits of the incumbent concerned.

7. It has also been averred that despite his retirement, the petitioner has not been given the due and admissible financial benefits by the respondent-Society till date. The petitioner made a representation on 03.08.2012 (Annexure P-14), seeking release of leave encashment and other voluntary retiral benefits. However, nothing was paid to him.

8. The petitioner, mainly feeling aggrieved by the non-grant of study leave to him, has approached this Court *inter alia* on the grounds that once the respondent-Society had granted the permission to pursue the course, he ought to have been granted study leave too, which was to be followed thereafter. It has further been averred that the respondent-Society is registered under the Registration of Societies Act on 04.03.1989 and has its own Rules. Rule 2.8 defines the Chief Executive Officer (in short "CEO") to be appointed as per Rule 10. The Rule 10 provides that the "CEO" shall be an officer of the Indian Administrative Service borne on the HP Cadre with minimum six years' service including one year's field experience in the senior scale. Rule 14 empowers the CEO to sanction and create posts, appoint, regularize and confirm employees, as required for the proper functioning of the Agency and thus, the CEO is fully competent to create posts, appoint, regularize and confirm employees. As such, the petitioner sought directions to the respondents to grant him study leave for pursuing three years B.Tech. course w.e.f.

24.04.2009 to 23.04.2012, with all consequential benefits and also to release the due and admissible retiral benefits to him w.e.f. 23.04.2012 along with interest thereon.

9. Respondent No.1 filed reply to the petition and averred that the petition is not maintainable on facts and law and thus the same deserves to be dismissed. Neither any fundamental nor any legal right of the petitioner has been violated by the respondents. The petitioner had submitted an application on 04.04.2008 (Annexure R-1), requesting respondent No.1, for giving him permission to undergo three years B.Tech. degree course in Electrical Engineering, which application was processed and the petitioner was permitted to seek admission to the aforesaid course. The petitioner submitted an affidavit/undertaking on 26.09.2008 (part of Annexure R-3 at page 33) that after completing higher studies, he will work with respondent No.1 for a period of at least three years, as required under Sub-rules 4 and 5 of CCS (Leave) Rules. Thereafter, on receipt of the affidavit/undertaking, respondent No.1 moved the case of the

petitioner to respondent No.2 on 04.10.2008 (Annexure R-4), requesting that the leave applied for by the officer may be sanctioned. But respondent No.2 gave reply on 27.10.2008 (Annexure R-5), stating that the matter for granting or denying the study leave may be examined and decided by respondent No.1.

10. While the issue for grant of study leave was pending consideration, the petitioner had applied for earned leave, which was sanctioned on 26.11.2008 (Annexure P-6) and the case of the petitioner for giving or denying permission for study leave was pursued. Thereafter the petitioner submitted an application on 03.08.2009 (Annexure R-9), requesting for grant of extra-ordinary leave, which was considered and vide office order dated 24.08.2009 (Annexure R-10), the leave was granted.

11. It has further been averred that since no leave was due in the leave account of the petitioner beyond 31.12.2009, he was directed to remain or avail extra-ordinary leave (without pay) after 31.12.2009 and being on extra-

ordinary leave, the petitioner completed three years B.Tech. course on December 2011. After completion of the aforesaid course, the petitioner instead of joining the duty with the respondent-Society, submitted a request on 23.01.2012 (Annexure R-12), followed by another request dated 02.03.2012 (Annexure R-13), for granting him voluntary retirement. The request made by the petitioner was acceded to and he got retired voluntarily from service, vide office order dated 13.07.2012 (Annexure R-14) with effect from 23.04.2012. The claim of the petitioner for treating the period with effect from 24.04.2009 to 23.04.2012 as study leave with pay and allowances is devoid of any merit, since the petitioner had not performed his part of legal obligation, by rejoining duty after acquiring the higher qualification or serving the respondent-Society for a period of 3 years as per the undertaking and the requirement of Rule 50 (5) of the CCS (Leave) Rules, and thus, no further action was taken by the respondent-Society.

12. It has also been averred that the petitioner is not

entitled to any leave or salary for the period w.e.f. 01.08.2009 to 23.04.2012, out of the total study period w.e.f. 24.04.2009 to December 2011 and even thereafter till his voluntary retirement on 23.04.2012, as he himself made an application for granting him extra-ordinary leave, which was duly sanctioned on 24.08.2009. It has also been averred that Rule 56 (2) of the CCS (Leave) Rules, cannot be applied for granting full salary irrespective of the fact as to whether sufficient leave was available in the leave account, for which leave salary was payable as per Rule 40 of the CCS (Leave) Rules.

13. It has further been averred that the petitioner is not entitled to the benefit of leave encashment in lieu of unutilized earned leave, as the petitioner had utilized 151 days' of earned leave w.e.f. 24.11.2008 to 23.04.2009 and 13 days' earned leave w.e.f. 24.04.2009 to 06.05.2009 and when no earned leave had either accrued or was available in his leave account on the date of voluntary retirement w.e.f. 23.04.2012, his claim for leave encashment is untenable on facts and law. It has also been averred that the petitioner has

neither any locus standi nor claim for pension after voluntary retirement, especially when respondent-Society is not a pensionable establishment and CCS (Pension) Rules are neither attracted nor applicable in the present case.

14. The petitioner did not file rejoinder to the reply and thus, has not controverted the pleas raised in the reply.

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

16. It is not in dispute that the petitioner was only granted the permission to pursue the course and no study leave was granted in his favour. Not only this, even when his application for grant of study leave was pending adjudication, the petitioner had given the affidavit/undertaking that after completing the study, he will work with respondent No.1 for at least three years. An affidavit to that effect was also sworn by him on 26.09.2008, which has been placed on record by the respondent-Society, along with Annexure R-3 (Colly). This fact has not been disclosed by the petitioner in the writ petition.

17. It is an admitted fact that the petitioner after completing B.Tech. degree, did not serve respondent No.1 for three years, but on the other hand, made a request seeking voluntary retirement on 23.01.2012 (Annexure P-11) and again reiterated his request, vide another application dated 02.03.2012 (Annexure P-12) and the said request was acceded to by respondent No.1 and vide office order dated 13.07.2012 (Annexure P-13), the petitioner was retired voluntary w.e.f. 23.04.2012.

18. Once the petitioner has not complied with his part of obligation, the prayer made by the petitioner to grant him study leave, cannot be accepted, rather the plea raised by him is unfounded. It is not even the case of the petitioner that he had not furnished an undertaking that after completion of the degree, he will serve respondent No.1. The petitioner did not place on record the said undertaking/affidavit, which was furnished by him on 26.09.2008 and further, even it is not so mentioned in the petition that he had furnished the affidavit/undertaking to the effect that after acquiring the

qualification of three years B.Tech. degree in Electrical Engineering, he will serve respondent No.1.

19. It is by now settled in catena of judgments of the Hon'ble Supreme Court that the jurisdiction of the High Court under Article 226 of the Constitution of India is extraordinary, equitable and discretionary and the person, who approaches the Court, must come with clean hands, put forward all the facts before the Court, without concealing or suppressing anything. If there is no candid disclosure of relevant material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed, without considering the merits of the claim.

20. The Hon'ble Supreme Court in **Prestige Lights Ltd. versus State Bank of India**, (2007) 8 SCC 449, has held that the prerogative remedy is not a matter of course. While exercising the extraordinary power, a Writ Court would indeed bear in mind the conduct of the party, who is invoking such jurisdiction.

21. Similar view was also taken in **Udyami Evam**

***Khadi Gramodyog Welfare Sanstha and another vs. State of Uttar Pradesh and others***, (2008) 1 SCC 560 and in ***K.D. Sharma vs. Steel Authority of India Limited and others***, (2008) 12 SCC 481. The relevant paras of the judgment of ***K.D. Sharma's case*** read as under.

*"34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.*

*35. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of R. v. Kensington Income Tax Commrs. in the following words: (KB p. 514)*

*"... it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts-it says facts, not law. He must not misstate the law if he can help it-the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has*

*taken on the faith of the imperfect statement."*

*(emphasis supplied)*

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, "We will not listen to your application because of what you have done." The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

37. In *Kensington Income Tax Commrs. Viscount Reading, C.J.* observed: (KB pp. 495-96)

*"...Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that the Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit."*

*(emphasis supplied)*

38. *The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts".*

39. *If the primary object as highlighted in Kensington Income Tax Commrs. is kept in mind, an applicant who does not come with candid facts and "clean breast" cannot hold a writ of the court with "soiled hands". Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court."*

22. The above view was again followed in ***K. Jayaram and others vs. Bangalore Development Authority and others,***

(2022) 12 SCC 815, and the relevant para of the judgment reads as under:-

*"15. In the instant case, since the appellants have not disclosed the filing of the suit and its dismissal and also the dismissal of the appeal against the judgment of the civil court, the appellants have to be non-suited on the ground of suppression of material facts. They have not come to the court with clean hands and they have also abused the process of law. Therefore, they are not entitled for the extraordinary, equitable and discretionary relief."*

23. The petitioner did not disclose the material fact in the writ petition regarding an undertaking given by him to serve respondent No.1 for three years after completing the course and thus, it is concluded that he has not approached the Court, with clean hands and has suppressed the material facts and thus, he is not entitled to any relief, as claimed by him in the petition.

24. Furthermore, it is also not in dispute that when the application for grant of study leave was pending adjudication, the petitioner was granted the ex-post facto sanction earned leave, commuted leave and extra-ordinary leave, vide office order dated 24.08.2009. Admittedly, the study leave was never sanctioned in his favour and thus, he

cannot stake any claim that as a matter of right, he should be granted the said leave.

25. As per the provisions of Rule 50 of the CCS (Leave) Rules, the study leave is granted to an employee, only if the said study is beneficial to the Department, after acquiring the same. In the present case, as already mentioned above, the petitioner despite the undertaking given to serve respondent No.1 had sought voluntary retirement. The said request was acceded to and the petitioner was retired voluntarily, in terms of his request, as per order dated 13.07.2012 and thus, no illegality can be found with the action of the respondent-Society, whereby the study leave was not sanctioned in his favour.

26. Learned counsel representing the petitioner has vehemently argued that once the petitioner was granted the permission to pursue the B.Tech. course, the natural corollary would be that he should be granted study leave. However, the said submission is without any merit, especially keeping in view the fact that the petitioner despite giving an undertaking

to serve the Department for three years, had sought voluntary retirement. The case of the petitioner for study leave was never rejected and, therefore, it cannot be presumed that the respondents were not considering his application, rather respondent No.1 had written to respondent No.2, despite a strict observation made in the communication dated 27.10.2008 that since he had granted the permission to the petitioner to pursue the course at his own level, he had again written to respondent No.2 vide communication dated 05.02.2009, for grant of approval for study leave (Annexure R-7). Thus, the prayer made by the petitioner in the present petition, cannot be accepted to, for the purpose of grant of study leave to him.

27. Learned counsel for the petitioner submits that the other reliefs, prayed in the petition, have been granted to the petitioner and, therefore, he does not want to press the same.

28. Consequently, in view of the observations made hereinabove, the present petition fails and same is

accordingly dismissed. No order as to costs. Pending application(s), if any, shall also stand disposed of.

**06<sup>th</sup> August, 2026**

*(ankit)*

**( Jiya Lal Bhardwaj )  
Judge**