

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No. 734 of 2019

Reserved on: 28.04.2025

Decided on: 09.05.2025

Dr. S.D. Sankhayan

...Petitioner

Versus

State of H.P. and others

...Respondents

Coram

The Hon'ble Mr. Justice Satyen Vaidya, Judge

¹ *Whether approved for reporting? Yes*

For the petitioner : Mr. Rajiv Jiwan, Senior Advocate with Ms. Shalini Thakur and Mr. Hitender Verma, Advocates.

For the respondents: Mr. Amandeep Sharma, Addl. Advocate General, for respondent No.1.
Mr. Surinder Saklani, Advocate, for respondents No. 2 and 3.

Satyen Vaidya, Judge

The instant petition has been filed by the petitioner for the grant of following substantive reliefs:

(a) That the impugned orders dated 21.01.2003, Annexure A-5, 29.03.2003, Annexure A-7 and order dated 15.10.2003, Annexure A-9, respectively may be ordered to be quashed and set-aside.

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

(b) That the enquiry may be declared as void ab initio.

(c) That any delegation of power by the Board of Management to the Vice Chancellor for initiating departmental proceedings against the teacher/ applicant whose appointing authority is Board of Management may be declared illegal.

(d) That the applicant may be ordered to be reinstated from the date of his compulsorily retirement and be ordered to be entitled to all consequential benefits.

2. The orders challenged by way of instant petition are as under:

(i) The order dated 21.01.2003 issued by the Board of Management whereby the petitioner was ordered to be compulsorily retired from the service of the University with immediate effect.

(ii) The order dated 29.03.2003 passed by the Chancellor of the university dismissing the service appeal of the petitioner.

(iii) The order dated 23.10.2003 passed by the Chancellor of the university dismissing the review petition of the petitioner.

3. The case as set-up by the petitioner is that he was initially appointed as Assistant Soil Chemist in CSK H.P. Krishi Vishwavidyalaya, Palampur (*hereinafter referred*

to as the “University”). Later, he was appointed as Head of Department of Soil Sciences of the University on 15.05.1998. The petitioner was a strict disciplinarian and for such reason the members of the staff of the University and the colleagues of the petitioner conspired and submitted complaints against him. On such complaints, an inquiry was entrusted to Dr. M.R. Thakur, who *vide* report dated 25.06.1999 not only exonerated the petitioner, but also indicted the complainant. Accordingly, the petitioner was reinstated as Head of Department of Soil Sciences w.e.f.01.07.1999.

4. Another inquiry was instituted against the petitioner and Sh. S.N. Joshi was appointed as Inquiry Officer on 03.07.1999. The petitioner was again removed from the post of Head of Department of Soil Sciences. The petitioner assailed the action of the respondents in removing him from Headship of the department of Soil Sciences by filing O.A. No.2240 of 1991 before the erstwhile State Administrative Tribunal (for short, “Tribunal”). On 23.07.1999, the Tribunal by an interim order directed the University to maintain the *status quo* during the pendency

of the O.A. As a consequence, Sh. S.N. Joshi did not proceed further with the inquiry.

5. On 30.06.2000 Kanwar Hari Singh, IAS retired was appointed as Inquiry Officer into the charges framed against the petitioner. Inquiry report was submitted on 30.04.2001. A copy of inquiry report was supplied to the petitioner on 19.01.2002, that too, after repeated representations made by the petitioner. The petitioner was required to file reply to the inquiry report. The petitioner showed compliance. The reply of the petitioner was placed before the Board of Management (for short, "BOM") without the documentary evidence relied upon by the petitioner. On 02.01.2003, the BOM issued a notice to the petitioner proposing penalty of dismissal from service. The petitioner submitted a detailed reply/representation. The BOM imposed the major penalty of compulsory retirement of the petitioner from service with immediate effect.

6. The petitioner filed appeal to the Chancellor of the University, which was dismissed on 29.03.2003. The petitioner further preferred review petition before the

Chancellor of the University, which was also rejected vide order dated 15.10.2003.

7. In the above narrated factual backdrop, the petitioner has raised following grounds of challenge:

- (a) That the inquiry was *void ab initio* for lack of inherent jurisdiction. The appointing authority of the petitioner was BOM and the Vice-Chancellor was not competent to order the holding of inquiry or to appoint the Inquiry Officer, without prior concurrence of BOM.
- (b) That the charges were not proved against the petitioner.
- (c) That the punishment inflicted upon the petitioner was disproportionate to the charges alleged to have been proved against him.
- (d) That the Vice-Chancellor had personal vendetta as motive against the petitioner, which resulted in the holding of inquiry against the petitioner.

- (e) That the punishment could not have been inflicted in view of the interim order dated 23.07.1999 passed by the Tribunal in O.A. No. 2240 of 1999.
- (f) That no proper inquiry was held against the petitioner.
- (g) That the punishment of compulsory retirement was the major penalty, which could not have been imposed on the charges of trivial nature against the petitioner.

8. The University has filed its reply through the Registrar stating *inter alia* that the original penalty of dismissal from service was reduced to compulsory retirement from service with immediate effect after taking into consideration the request of the petitioner dated 16.01.2003 for voluntary retirement; the long service record of the petitioner and his social commitment towards his family etc.

9. The **factum of appointment** of Dr. M.R. Thakur as Inquiry Officer and submission of his report exonerating the petitioner has not been denied. It has, however, been

submitted that the petitioner was reinstated as Head of Department as Soil Science on 01.07.1999, but the inquiry report of Dr. M.R. Thakur was not accepted by the Vice-Chancellor of the University for the reason that the complainant was not heard by the fact-finding officer. In such circumstances, Sh. S.N. Joshi, IAS (Retd.) was appointed as Inquiry Officer to enquire the matter *de-novo* after affording opportunity of being heard to all concerned. The orders to that effect were issued on 03.07.1999. The petitioner continued to discharge the duties of Head of Department of Soil Science. The O.A. No. 2240 of 1999 was filed by the petitioner against the holding of fresh inquiry with a further prayer to reinstate the petitioner as Head of Department from the back date i.e. 03.12.1998. In view of the *status quo* order passed by the erstwhile Tribunal, the Inquiry Officer though concluded the inquiry and submitted his report on 13.12.1999, but no administrative action was taken.

10. The University filed Miscellaneous Application before the Tribunal for vacation of interim order dated

23.07.1999. The Tribunal vide order dated 17.4.2000, clarified its previous order as under:

“We are afraid that interim order passed on 23.07.1999 has been misread by the petitioner/respondent. We have not ordered that no disciplinary action should be taken against the petitioner, in case he violates any rule and conduct himself in any manner which is not proper for the petitioner/respondent. As such, the grounds taken by the petitioner/respondent for getting the interim stay vacated is not justified and the application is rejected”.

11. Thereafter, a regular inquiry was instituted against the petitioner by the University vide memorandum dated 25.05.2000. Kanwar Hari Singh, IAS (Retd.) and Ex-Member of H.P. Administrative Tribunal was appointed as Inquiry Officer. The Inquiry Report was submitted on 30.04.2001, which was placed before the BOM in its 73rd meeting held on 29.12.2001. The BOM issued direction to supply a copy of inquiry report to the petitioner and if desired by the petitioner, to allow him personal hearing by Vice-Chancellor. The petitioner submitted his response dated 13.03.2002. The matter was again placed before the

BOM in its 76th meeting held on 28.12.2002 and the BOM resolved and approved the punishment of dismissal from service against the petitioner.

12. The petitioner was issued show cause notice *vide* memorandum dated 02.01.2003. The petitioner submitted his response dated 16.01.2003. The petitioner was afforded personal hearing by the Vice-Chancellor. The BOM in its 77th meeting held on 18.01.2003 decided to compulsorily retire the petitioner from service with immediate effect.

13. The petitioner had submitted his request for voluntary retirement, which was also taken into consideration by the BOM, while imposing the punishment of compulsorily retirement from service against the petitioner.

14. The University has further contended that by virtue of Section 48 of the H.P. University of Agriculture, Horticulture and Forestry Act, 1986, the BOM was authorized to delegate to any officer or authority of the University any of the power conferred on it by the Act or statutes of the University. The BOM had delegated its power to the Vice-Chancellor.

15. Out of eight (8) charges, five (5) were stated to be proved against the petitioner. The infliction of punishment of compulsorily retirement from service against the petitioner has also been justified being commensurate to the charges proved against him. The allegation that the Vice-Chancellor had some motive against the petitioner has also been denied. As regards the infliction of punishment during pendency of O.A. No. 2240 of 1999, it has been submitted that the order dated 23.07.1999 had been clarified by the Tribunal and as such, there was no impediment in initiation or culmination of disciplinary proceedings against the petitioner.

16. In rejoinder filed by the petitioner, the averments made in the petition have been reiterated.

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

18. Sh. Rajiv Jiwan, learned Senior Advocate, representing the petitioner would contend that the indictment of the petitioner was without any evidence and the inquiry report was vitiated for such reason. He would further submit that the disciplinary authority has not acted

in accordance with law and has passed the impugned order with the motive to show the petitioner the way out from the University. He has also raised challenge on the ground that the service rules did not provide for the imposition of major penalty on the charges which were trivial in nature. Further, it has been contended that the punishment of compulsorily retirement was in any case disproportionate to the charges allegedly proved against the petitioner.

19. On the other hand, Sh. Surinder Saklani, Advocate, learned counsel for the respondent-University has defended the action of the University on the grounds that it was in accordance with the service rules of the University envisaged by the Statutes of the University. The inquiry was held in lawful manner by an independent person. The petitioner was afforded fullest opportunity to defend himself. The punishment of compulsorily retirement was commensurate with the charges proved against the petitioner.

20. The following Articles of Charges were held proved against the petitioner by the Inquiry Officer:-

Article of Charge No.1:

The Vice Chancellor vide order dated 8.2.2000 directed Dr. S.D. Sankhayan, HOD to submit the cases of teachers for participation in International Conference on “Natural Resource Management” to the Director of Research latest by 9.2.2000 (11.30 AM). The Vice Chancellor also directed him to submit the case of leaves/tour programmes of teachers but Dr. Sankhayan did not obey the orders of the Vice Chancellor, thus violating the provisions contained in statute 8.1(1) and (2) and rendered himself liable for disciplinary action under Statute 8.2 (1), (3) and (8) of the HP K.V. Statutes.

Article of Charge No. 2:

Dr. S.P. Sharma, Soil Chemist, Department of Soil Science has complained that a few documents have been tampered from his personal files maintained by the Head, Department of Soil Science. Dr. Sankhayan was directed thrice to forward the representation of Dr. S.P. Sharma with his comments in time

bound manner but the said Dr. Sankhayan did not carry out the said orders of the competent authority, thus violating the provisions contained in statute 8.1 (1) and (2) and rendered himself liable for disciplinary action under Statute 8.2 (1) and (3).

Article of Charge No.4:

The Vice Chancellor alongwith the Registrar made a surprise check in the department of Soil Science on 2.3.2000 at 4.40 pm. Dr. Sankhayan was found absent and he was called upon to explain his position for willful absence but the said Dr. Sankhayan did not carry out the orders of the authority, thus violated the provisions of Statute 8.1(1) and (2) and rendered himself liable for disciplinary action under Statute 8.2 (1) and (3).

Article of Charge No.5:

Dr. S.D. Sankhayan while working as Head, Department of Soil Science harassed/mentally tortured the non-teaching staff and directed them

to work only as per his order. This action on his part is violative of Statute 8.1 (3) and rendered himself liable for disciplinary action under Statute 8.2 (1) and (8).

Article of Charge No.8:

A report of the functioning of the Department of Soil Science was placed before the Board of Management *vide* item No. 9 of its meeting held on 2.5.2000 on which the Board of Management decided to re-designate Dr. Sankhayan, Professor (Soils) as Associate Director (Agriculture) and post him in the Directorate of Research, HPKV, Palampur. The BOM decided that in case he refuses to accept this arrangement, the University is free to take action against the concerned official. A copy of the decision of BOM was made available to him but Dr. Sankhayan did not comply with the orders of BOM and this action on his part is violative of Statute 8.1(1) (2) and (3) thus rendered himself liable for

disciplinary action under Statue 8.2.(1), (3) and (8) of HPKV Statutes.

21. Thus, petitioner had faced serious charges of insubordination and defiance of the orders and directions of the authorities. A disciplinary inquiry was conducted against petitioner and on having been indicted therein, was inflicted with penalty of compulsory retirement from service by the disciplinary authority.

22. The petitioner is seeking declaration of entire process of inquiry as *void ab initio* on the grounds as noticed above.

23. At this stage this Court is reminded of its restrictive jurisdiction under Article 226 of the Constitution of India with respect to exercise of judicial review against the disciplinary proceedings. It is trite that this Court can only look into the decision making process and not the decision itself. This court cannot examine the findings recorded by the Inquiry Officer as a Court of appeal. In absence of any procedural illegality or irregularity in conduct of departmental inquiry, the charges against delinquent stated to be proved warrant no scope of

interference. The reappraisal of evidence in disciplinary inquiry is not permissible by this Court. However, a small window available for interference is when the findings of fact are totally unsupported by evidence or are such which no reasonable person could have arrived. Reference can be made to the judgments passed by the Hon'ble Supreme Court in ***Chairman-cum-Managing Director, Coal India Ltd. and another vs. Mukul Kumar Choudhuri and others (2009) 15 SCC 620; Allahabad Bank and others vs. Krishna Narayan Tewari (2017) 2 SCC 308; Deputy General Manager (Appellate Authority) and others vs. Ajay Kumar Srivastava (2021) 2 SCC 612*** and ***Umesh Kumar Pahwa vs. Board of Directors Uttarakhand Gramin Bank and others (2022) 4 SCC 385***.

24. While going through the records, this Court has not been able to find any illegality or perversity in the decision-making process. The service rules of the respondent-University are contained in its statutes, more particularly Chapter VIII thereof, which deals with the statutes regarding the conduct, discipline, enquiry, punishment and appeal in respect of officers/teachers and

other employees of the University. No serious violation of the procedure prescribed under aforesaid Chapter has been pointed out. The inquiry was held by the Inquiry Officer and the petitioner was afforded sufficient opportunity to defend himself. Later, even the disciplinary authority is found to have complied with the 'Statute 8' of the Statutes of the University, which provides for the procedure to be adopted by the disciplinary authority before imposition of penalty. It also cannot be said that the findings as returned by the Inquiry Officer were so perverse which could not have been returned by any reasonable person. It is also not the case where the findings of Inquiry Officer were *dehors* the evidence.

25. Coming to the next contention raised on behalf of the petitioner, it can be noticed that the service rules applicable to the employees of respondent-University do not delineate the imposition of minor or major penalty on proof of particular head of charge. The imposition of penalty depends on the severity of allegation proved against the delinquent. The contention that under Statute 8.7 (7) the CCS Conduct Rules and CCS (CCA) Rules should have been

followed and as per said rules, again the major penalty of compulsorily retirement from service could not have been imposed, deserves rejection for the same reason that even in the CCS (CCA) Rules, no such bifurcation has been provided.

26. Lastly, as regards the challenge to the punishment being disproportionate, it will be relevant to notice the settled legal position. In **Coal India Ltd.** (*supra*), the Hon'ble Supreme Court has held as under:-

“19. The doctrine of proportionality is, thus, well-recognised concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision-maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review.

20. One of the tests to be applied while dealing with the question of quantum of punishment would be: would any reasonable employer have

imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment.”

27. In ***Union of India and others vs. Constable Sunil Kumar (2023) 3 SCC 622***, it has been held by Hon’ble Supreme Court as under:

“11. Even otherwise, the Division Bench of the High Court has materially erred in interference with the order of penalty of dismissal passed on proved charges and misconduct of indiscipline and insubordination and giving threats to the superior of dire consequences on the ground that the same is disproportionate to the gravity of the wrong. In CRPF vs. Surinder Kumar (2011) 10 SCC 244 while considering the power of judicial review of the High Court in interfering with the punishment of dismissal, it is observed and held by this Court after considering the earlier decision in Union of India vs. R.K. Sharma (2001) 9 SCC 592 that in exercise of powers of judicial review interfering with the punishment of dismissal on the ground that it was disproportionate, the punishment should not be merely disproportionate but should

be strikingly disproportionate. As observed and held that only in an extreme case, where on the face of it there is perversity or irrationality, there can be judicial review under Articles 226 or 227 or under Article 32 of the Constitution.”

28. The charges proved against the petitioner are of insubordination and defiance on more than one occasion, which, as per the ‘Statute 8.2’ of the respondent-University, constitute improper conduct.

29. The repeated insubordination by the non-adherence to the orders of superiors, cannot be brushed aside lightly for it will inculcate indiscipline and disorderliness in a public institution like respondent-University. Thus, the punishment of compulsorily retirement of petitioner from service, in my considered view, cannot be said to be so disproportionate so as to shake the conscience of the Court. It cannot be said to be strikingly disproportionate, more particularly, when it does not completely divest the delinquent from the retiral benefits completely.

30. The punishment proposed by the BOM against petitioner in the first instance was dismissal from service.

On the representation of petitioner, including his request to grant him option for voluntary retirement, the decision was taken to compulsorily retire the petitioner from service.

31. In light of above discussion, there is no merit in the petition and the same is accordingly dismissed, so also the pending miscellaneous application(s), if any.

9th May, 2025
(GR)

(Satyen Vaidya)
Judge