

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No. 156 of 2019

Date of Decision: 24.08.2020

Rajesh Kumar

....Petitioner.

Vs.

The State of H.P. and others

.....Respondents.

Coram:

The Hon'ble Mr. Justice Ajay Mohan Goel, Judge

Whether approved for reporting?¹ Yes.

For the petitioner:

Mr. Vijay Bhatia, Advocate.

For the respondents:

M/s Somesh Raj, Dinesh Thakur and Sanjeev Sood, Additional Advocate Generals, for respondents No. 1 to 3.

Mr. Varun Chandel, Advocate, for respondent No. 4.
(Through Video Conferencing)

Ajay Mohan Goel, Judge (Oral):

By way of this petition, the petitioner has, *inter alia*, prayed for the following relief:

“1. That the respondents may be directed to quash the Annexure P-5 dated 25.11.2014 and further directed to stop the recovery.”

2. Brief facts necessary for the adjudication of present petition are as under:

The petitioner was serving as a Senior Assistant in Government Senior Secondary School, Hatwar in the year 2004-2005. A

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

complaint was lodged by the Headmaster of the said School, *inter alia*, on the ground that the petitioner had withdrawn an amount of Rs.1,60,000/- (rupees one lac and sixty thousand only), i.e., Rs.1,00,000/- from the GPF account of Smt. Shakuntala Devi and Rs.60,000/- from the GPF account of Smt. Pushp Lata fraudulently and in an unauthorized manner, though there was no request of the employees concerned with regard to the withdrawal of said amount.

3. Upon receipt of the complaint, the petitioner was called upon to show cause as to what was his response with regard to the allegation so levelled against him. Record demonstrates that the petitioner did not submit any response to the said Show-cause Notice, purportedly on the ground that as he all of a sudden fell ill, he could not respond to the Show-cause Notice. Thereafter, vide order dated 25th November, 2014 (Annexure P-5), which has been impugned by way of present petition, the Director of Higher Education, H.P., ordered that Rs.1,60,000/- plus interest be recovered from the petitioner by way of attachment of his 1/3rd salary per month and the same be paid under proper receipt every month in equal amount both to Smt. Shakuntala Devi and Smt. Pushp Lata till the recovery of their respective embezzled amount with interest of 3% over and above the prevailing rate of interest on GPF.

4. Feeling aggrieved, the petitioner has filed this petition.

5. I have heard learned counsel for the parties and have also gone through the pleadings as well as documents appended with the petition.

6. Learned counsel for the petitioner though has vehemently argued that the act of the petitioner was *bonafide* as the GPF was got released by him on a request which was so made by the employees concerned, however, no material has been placed on record from which it can be inferred that the amount having been withdrawn by the petitioner was paid to the employees concerned, i.e., Smt. Shakuntala Devi and Smt. Pushp Lata. Incidentally, none of them has been made a party in this petition. Besides this, the Court fails to understand as to why the petitioner did not respond to the Show-cause Notice. It appears that the excuse being put forth by the petitioner that the same could not be done by him on account of ill health, was just a concocted story. I say so for the reason that in case the petitioner on the particular date was not in a position to submit his response, then prudence demanded that he should have made a request to the officer for extension of time to submit his response, which has not been done.

7. One more contention which has been raised by learned counsel for the petitioner is that as no proceedings were initiated in consonance with the provisions of CCS (CCA) Rules, 1965, therefore also, order dated 25th November, 2014 (Annexure P-5) is bad in law and not sustainable. In my considered view, there is no merit in the contention of

learned counsel for the petitioner for the simple reason that the provisions of CCS(CCA) Rules are attracted when disciplinary proceedings are to be initiated against a delinquent employee. In the present case, it is not as if some disciplinary proceedings were initiated against the petitioner. There was an allegation levelled against the petitioner that he had fraudulently withdrawn money from the GPF accounts of two employees. A Show-cause Notice was issued to him by the senior officer calling upon him to put forth his version. This was not done by the petitioner, meaning thereby that the contents of the Show-cause Notice impliedly stood admitted by him. In these circumstances, this Court finds no infirmity in the order dated 25th November, 2014 (Annexure P-5), which was passed by the authority concerned, whereby the petitioner was called upon to pay back the amount of GPF, which was fraudulently embezzled by him from the GPF accounts of the the abovementioned employees.

8. Accordingly, as there is no merit in this petition, the same is dismissed, so also pending miscellaneous applications, if any.

(Ajay Mohan Goel)
Judge

August 24, 2020
(bhupender)