

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.15771 of 2024
Date of Decision: 21.05.2025

Surinder Kumar	Versus	Petitioner
Central Sanskrit University		Respondent

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? ¹ Yes.

For the Petitioner:	Mr. Sanjeev Bhushan, Senior Advocate, with Mr. Rajesh Kumar and Mr. Rakesh Chauhan, Advocates.
For the Respondent:	Mr. Balram Sharma, Deputy Solicitor General of India.

Sandeep Sharma, Judge (oral):

Petitioner herein, who was engaged as Data Entry Operator with the respondent-University on 15.12.2008, being aggrieved of order dated 31.05.2024 (Annexure P-2), whereby he came to be communicated with regard to his suspension on account of alleged negligence of work, continuous absence from duty, misconduct and misbehavior with the superiors and colleagues, has approached this Court in the instant proceedings, praying therein for following main reliefs:

“(i) That an appropriate writ, order or directions may be issued and the entire action taken against the petitioner being violative of principles of natural justice may be declared as null and void further since otherwise also the order dated 31.5.2024 has lost its efficacy, therefore, the same may also very kind- ly be declared null and void and therefore is liable to be quashed and set aside in the interest of law and justice.

¹Whether the reporters of the local papers may be allowed to see the judgment? Yes.

(ii) That an appropriate writ, order or directions may kindly be issued and respondent may kindly be directed to pay salary to the petitioner from May, 2024 till the time he is reinstated with further directions to keep pay salary to the petitioner thereafter also and the arrears of the salary with effect from May 2024 may also kindly be ordered to be paid to the petitioner along with interest @9% p.a."

2. Precisely, the grouse of the petitioner, as has been highlighted in the petition and further canvassed by Mr. Sanjeev Bhushan, learned Senior Counsel representing the petitioner is that impugned suspension order dated 31.05.2024 (Annexure P-2) has been passed in complete violation of principles of natural justice, because prior to passing of aforesaid order, no show-cause notice was ever issued, rather, respondent-University, merely on the basis of complaints made by his superiors, proceeded to suspend the services of the petitioner, who otherwise had been serving in the respondent-University for more than 17 years.

3. While making this Court peruse pleadings adduced on record by the petitioner, Mr. Sanjeev Bhushan, learned Senior Counsel representing the petitioner vehemently argued that respondent-University, which was earlier named as Rashtriya Sanskrit Sansthan, with a view to oust the petitioner, concocted false story with regard to his continuous absence from the Institution as well as negligence of work. Mr. Bhushan, learned Senior Counsel submitted that there is nothing on record to suggest that qua aforesaid allegation of negligence as well as continuous absence from the duty, show-notice was ever issued, thereby affording him chance to explain his position.

4. Having taken note of aforesaid allegation levelled in the petition, which is duly supported by way of an affidavit as well as submission made by learned Senior Counsel representing the petitioner, this Court passed the order dated 23.04.2025, which reads as under:

“Though in terms of order dated 04.04.2025, Mr. Balram Sharma, learned Deputy Solicitor General of India has made available record, but perusal thereof nowhere suggests that prior to issuing order of suspension, show-cause notice, if any, was ever issued to the petitioner.

Learned Deputy Solicitor General of India prays for and is granted ten days’ time to verify afore fact.

List on 06.05.2025.”

5. Pursuant to afore order passed by this Court, Professor Satyam Kumari, Director, Central Sanskrit University, has come present before this Court. While making this Court peruse record, afore officer though attempted to argue that before issuing suspension order, number of letters were issued to the petitioner to explain his conduct, but she fairly admitted that prior to issuance of suspension order dated 31.05.2024 (Annexure P-2), no show-cause notice was ever issued. Officer present in Court stated that repeatedly opportunity was given to petitioner to explain his conduct, but neither he came present before the authority concerned, nor ever bothered to submit reply to the communication sent to him and as such, University had no option, but to suspend him, pending inquiry.

6. Though careful perusal of record, made available to this Court by Director, Central Sanskrit University, reveals that repeatedly communications came to be issued to the petitioner for his absence and

misbehavior, but admittedly, no show-cause notice ever came to be issued to the petitioner before passing order of suspension dated 31.05.2024 (Annexure P-2), if it is so, there appears to be merit in the contention of learned Senior Counsel representing the petitioner that impugned suspension order, passed in complete violation of principle of natural justice, is not sustainable in the eye of law.

7. Though, Mr. Balram Sharma, learned Deputy Solicitor General of India, attempted to argue that no inquiry was required to be instituted on account of the fact that petitioner is a temporary employee, but this Court is not impressed with aforesaid submission of Mr. Balram Sharma, learned Deputy Solicitor General of India. By now, it is well settled that even in case of temporary employee, disciplinary proceedings are required to be initiated, especially when there is a charge of misconduct. Since charge of misconduct, being stigmatic, has serious consequences, disciplinary proceedings are required to be initiated, thereby affording opportunity to delinquent official to explain his/her conduct. In this regard, reliance is being placed upon judgment rendered by this Court by this Court in CWP No.617 of 2020, titled as ***Darshana Kumari Vs. State of Himachal Pradesh & Others***, decided on 24.03.2025, relevant Paras of which reads as under:

“13. Pursuant to aforesaid order, learned Additional Advocate General has placed on record communication dated 22.3.2025 issued under the signatures of Director of Higher Education, Himachal Pradesh which is taken on record. It is stated in the afore communication that an inquiry was not conducted as the

PTA teacher being temporary are not covered under CCS (Conduct) Rules, 1972. However, there is no explanation that why it took almost four years for competent authority to pass final decision on the joining submitted by petitioner pursuant to office order dated 26.9.2016. True it is the petitioner herein was appointed as TGT on PTA (GIA) on temporary basis, but once she was terminated on account of her continuous absence, she ought to have been afforded opportunity of being heard by competent authority before passing impugned order having serious repercussion.

14. By law it is well settled that even in the case of a temporary employee, disciplinary proceedings are required to be initiated before passing stigmatic order. Since in the case at hand, petitioner came to be terminated on account of her continuous absence, order of termination being stigmatic and punitive could not have been passed without adhering to the principle of natural justice which also includes opportunity of being heard.

15. Reliance in this regard is placed on judgment passed by **Nar Singh Pal VS UOI & ors.** (supra), relevant paras whereof are reproduced as under:-

“8. The documents which have been placed before us pertain to the preliminary enquiry made against the appellant in which the statement of certain persons who had seen the incident was recorded. The services of the appellant were, thereafter, terminated by paying him the retrenchment compensation through a cheque along with the order dated 20-5-1992. The order having been passed on the basis of preliminary enquiry and not on the basis of regular departmental enquiry without issuing a chargesheet or giving an opportunity of hearing to the appellant, cannot be sustained.

9. We may, at this stage, refer to the observations of Krishna Iyer, J. in Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha in which the learned Judge observed as under:

53. Masters and servants cannot be permitted to play hide and seek with the law of dismissals and

the plain and proper criteria are not to be misdirected by terminological cover-ups or by appeal to psychic processes but must be grounded on the substantive reason for the order, whether disclosed or undisclosed. The Court will find out from other proceedings or documents connected with the formal order of termination what the true ground for the termination is. If, thus scrutinised, the order has a punitive flavour in cause or consequence, it is dismissal. If it falls short of this test, it cannot be called a punishment. To put it slightly differently, a termination effected because the master is satisfied of the misconduct and of the consequent desirability of terminating the service of the delinquent servant, is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case the grounds are recorded in a different proceeding from the formal order does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the enquiry and proceeds to terminate, (liven an alleged misconduct and a live nexuses between it and the termination of service the conclusion is dismissal, even if full benefits as on simple termination, are given and non-injurious terminology is used"

(Emphasis supplied)

10. Applying the above principles, the order in the instant, case, cannot be treated to be a simple order of retrenchment. It was an order passed by way of punishment and, therefore, was an order of dismissal which having been passed without holding a regular departmental enquiry, be sustained.

16. Reliance has also been placed upon judgment passed by Hon'ble Apex Court in Dr. Vijaykumaran C.P.V Vs Central

University of Kerala and ors. (supra), relevant paragraphs whereof have been given as under:

“11. In the present case, all the three elements are attracted, as a result of which it must follow that the stated order is exfacie stigmatic and punitive. Such an order could be issued only after subjecting the incumbent to a regular inquiry as per the service rules. As a matter of fact, the Internal Complaints Committee had recommended to proceed against the appellant appropriately but the Executive Council proceeded under the mistaken belief that in terms of clause 7 of the contract, it was open to the Executive Council to terminate the services of the appellant without a formal regular inquiry as per the service rules. Indisputably, in the present case, the Internal Complaints Committee was constituted in reference to the complaints received from the girl students about the alleged misconduct committed by the appellant, which allegations were duly inquired into in a formal inquiry after giving opportunity to the appellant and culminated with the report recording finding against the appellant with recommendation to proceed against him.

13. A priori, we have no hesitation in concluding that the impugned termination order dated 30.11.2017 is illegal being exfacie stigmatic as it has been issued without subjecting the appellant to a regular inquiry as per the service rules. On this conclusion, the appellant would stand reinstated, but whether he should be granted backwages and other benefits including placing him under suspension and proceeding against him by way of departmental or regular inquiry as per the service rules, is, in our opinion, a matter to be taken forward by the authority concerned in accordance with law. We do not intend to issue any direction in that regard keeping in mind the principle underlying the exposition of the Constitution Bench in Managing Director, ECIL, Hyderabad & Ors. vs. R. Karunakar & Ors. 4. In that case, the Court was called upon to decide as to what should be the incidental order to

be passed by the Court in case after following necessary procedure, the Court/Tribunal was to set aside the order of punishment. The Court observed thus:

“31.Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the 4 (1993) 4 SCC 727 authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the backwages and other benefits from the date of his dismissal to the At this stage, it is also apt to take note of judgment passed by Hon’ble Apex Court in case titled **VP Ahuja Vs. State of Punjab & Ors.**, (2000) 3 Supreme Court Cases 239, wherein Hon’ble Apex Court while dealing with the case of a probationer held that a probationer like a temporary servant is also entitled to certain protection. His services cannot be terminated arbitrarily or punitively without complying with the principles of natural justice. In afore case, appellant’s services were terminated during probation period invoking terms and conditions of his appointment, which permitted termination without notice. Termination order stated that the appellant failed in the performance of his duties administratively and technically. Hon’ble Apex Court in aforesaid judgment held that order on the face of it was stigmatic and punitive and as such, could not have been passed without proper disciplinary proceedings. Petitioner herein is on a better footing on account of her appointment on contract basis. Once Hon’ble Apex Court repeatedly held that even in the case of a temporary employee, disciplinary proceedings are required to be initiated

before passing termination order, respondents herein cannot be permitted to terminate services of the petitioner merely on the basis of show cause notice, rather if not satisfied with the reply to the show cause notice submitted by the petitioner, they ought to have initiated disciplinary proceedings. date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.” (emphasis supplied)

Following the principle underlying the above quoted exposition, we proceed to hold that even though the impugned order of termination dated 30.11.2017 is set aside in terms of this judgment, as a result of which the appellant would stand reinstated, but at the same time, due to flawed approach of the respondent No. 1– University, the entitlement to grant backwages is a matter which will be subject to the outcome of further action to be taken by the University as per the service rules and in accordance with law.”

17. Careful reading of aforesaid judgment passed by Hon’ble Apex Court clearly reveals that order of retrenchment by way of punishment cannot be passed without holding a regular

departmental inquiry. Hon'ble Apex Court in aforesaid judgments has held that since termination order is punitive in nature and stigmatic, delinquent official is required to be subjected to regular enquiry. In both the cases before Hon'ble Apex Court, delinquent officials were temporary employee.

18. Since in the case at hand, termination order against petitioner came to be passed without holding any inquiry, therefore, the same is not tenable in the eyes of law and as such, deserves to be quashed.

8. At this stage, it is also apt to take note of judgment passed by Hon'ble Apex Court in case titled ***VP Ahuja Vs. State of Punjab & Ors.***, (2000) 3 Supreme Court Cases 239, wherein Hon'ble Apex Court while dealing with the case of a probationer held that a probationer like a temporary servant is also entitled to certain protection. His services cannot be terminated arbitrarily or punitively without complying with the principles of natural justice. In afore case, appellant's services were terminated during probation period invoking terms and conditions of his appointment, which permitted termination without notice. Termination order stated that the appellant failed in the performance of his duties administratively and technically. Hon'ble Apex Court in aforesaid judgment held that order on the face of it was stigmatic and punitive and as such, could not have been passed without proper disciplinary proceedings. Petitioner herein is on a better footing on account of his appointment on contract basis. Once Hon'ble Apex Court repeatedly held that even in the case of a temporary employee, disciplinary proceedings are required to be initiated before passing termination

order, respondent herein cannot be permitted to terminate the services of the petitioner merely on the basis of complaints made by his superiors.

9. Consequently, in view of discussion made hereinabove, this Court finds merit in the present petition and accordingly the same is allowed. Impugned suspension order dated 31.05.2024 (Annexure P-2) is quashed and set-aside, however, liberty is reserved to the respondent-University to initiate fresh inquiry, if required, but after serving the petitioner with show-cause notice, thereby affording him opportunity to explain his conduct. Since through instant order, suspension order dated 31.05.2024 (Annexure P-2) has been set-aside, petitioner herein shall be deemed to be in service, as a result thereof, he shall be entitled to full wages for the period, he was unauthorizedly suspended.

The writ petition stands disposed of in the above terms, so also the pending miscellaneous application(s), if any.

**(Sandeep Sharma),
Judge**

May 21, 2025
(Rajeev Raturi)