

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**CWPOA No. 6228 of 2020****Reserved on: 29.5.2025****Date of decision: 18.6.2025****Vinod Kumar.****...Petitioner.****Versus****State of H.P. & others.****...Respondents.*****Corum******Hon'ble Mr. Justice Vivek Singh Thakur, Judge.******Hon'ble Mr. Justice Ranjan Sharma, Judge.******Whether approved for reporting?¹ Yes.******For the Petitioner.******Mr.Sanjeev Bhushan, Senior Advocate,
with Mr.Rajesh Kumar, Advocate.******For the Respondents:******Mr.Balwinder Singh, Deputy Advocate
General, for respondents No. 1 and 2.******Mr.Ajeet Kumar Saklani, Advocate, for
respondents No. 3 and 4.******Vivek Singh Thakur, Judge***

Petitioner had approached the erstwhile H.P. State Administrative Tribunal by filing Original Application No. 79 of 2019 for quashing and setting aside impugned orders dated 16.9.2017 (Annexure A-1), order dated 23.9.2017 (Annexure A-2) putting him under suspension, inquiry report dated 18.12.2019 (Annexure A-15), impugned

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

order dated 10.7.2018 (Annexure A-19) whereby punishment of dismissal was though modified, but penalty was imposed with findings that charge of misconduct stood proved against him, and Office Order dated 9.8.2018 (Annexure A-20), whereby entire period of service during suspension and after dismissal was treated as dies-non without break in service.

2. On abolition of H.P. State Administrative Tribunal, petition was transmitted to this High Court and has been registered as present petition, CWPOA No. 6228 of 2020.

3. Vide communication dated 16.9.2017 issued by the Government of Himachal Pradesh (Annexure A-1), services of the petitioner who was serving as Superintendent Grade-II in Directorate of Horticulture, Nav Bahar, Shimla-2, were ordered to be placed under suspension for complaining against the Government and making statements in the media against the Government policies and decisions on various issues, in violation of Rules 3 and 8 of the CCS Conduct Rules.

4. Vide Office Order dated 23.9.2017, Director of Horticulture placed the petitioner under suspension by exercising powers conferred under Rule 10 (1) (a) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 by fixing his headquarter during suspension in the Office of Deputy Director Horticulture, Mandi, District Mandi, H.P. with

direction not to leave the headquarter without obtaining prior permission of the competent authority.

5. Vide application dated 23.10.2017 petitioner requested to fix his headquarter at Directorate of Horticulture at Shimla, which was his place of posting prior to his suspension. However, his request was not acceded to and vide communication dated 27.10.2017 he was directed to comply with the orders.

6. Vide memo dated 12.10.2017, Statement of Article of Charges framed against the petitioner, Statement of Imputation of Misconduct in support of Article of Charges, list of documents on the basis of which Article of Charges were framed and list of witnesses relied upon for proving the Article of Charges, were supplied to the petitioner.

7. Article of Charges framed against the petitioner read as under:-

“Article-1

That Sh. That Sh. Vinod Kumar while functioning as Superintendent Grade-II in the o/o Directorate of Horticulture, H.P. Shimla-2 issued press statements criticizing the Govt. and its polices which have been published in different news papers i.e. Amar Ujala and The Tribune News Papers on 04-09-2017 and 08-09-2017. This action on the part of said Sh.Vinod Kumar, is wholly unwarranted and clearly tantamount misconduct, unbecoming of a Government servant. Thus Sh. Vinod Kumar, Superintendent Grade-II has rendered himself to disciplinary action under Rule 3(i)(iii) and 9(i) of CCS Conduct Rules, 1964.

Article-II

That Sh. Vinod Kumar while working as a Senior Assistant and Superintendent Grade-II made false complaints against the Superior officers of the Department and Government without verification of the facts. This act of the said Sh.Vinod Kumar Tantamount to misconduct and thus he is liable to be penalized under Rule 3(i)(iii) and 9(i) of CCS Conduct Rules, 1964.

Article-III

That the Association of said Sh. Vinod Kumar is not recognized registered by the Government and he on the Note Pad of this association made press Statements against the polices and programmes being undertaken by the Government in the public interest which has no bearing on the issues relating to employees for whom such associations are formed. This action of Sh.Vinod is unwanted and against the conduct rules, Thus he is liable to be charged under CCS Conduct Rules, 1964.

Article-IV

That said Sh. Vinod Kumar, Superintendent Grade-II has not joined in the o/o Dy. Director of Horticulture Mandi where his headquarter has been fixed on suspension. Rather he has sent application/intimation to this Directorate to the effect that due to illness, he has been advised rest. But contrary to this, he is organizing press conference against the Department and Government during the medical rest, if any. This action of Sh. Vinod Kumar is unwanted and leads to complete misconduct. Thus he is able to be penalized under CCS Conduct Rules, 1964.”

8. There were 12 documents made basis for Article of Charges, which are as under:-

- “1. Cutting of news papers Amar Ujala, dated 04-09-2017.
2. Cutting of news papers Tribune News Service. Dated 08-09-2017.
3. Letter of H.P. Employees Confederation dated 25-03-2017.
4. Letter of H.P. Employees Confederation dated 06-06-2017.

5. Letter dated 17-05-2012 regarding complained against Sh.S.K.Katoch.
6. Letter No. ADH. 1-219/2012-Udyan-(K)-575 dated 5-7-2013.
7. U.O. Note No. Secy/CM-H0602/2012-DEP-B-85146 dated 13-9-2013.
8. Letter No. P.A./DDH(Planning)/2013 dated 4-1-2016.
9. Leave application of Sh. Vinod Kumar, Supdt. Gr-II dated 23-09-2017.
10. Leave application of Sh. Vinod Kumar, Supdt. Gr-I1 dated 27-09-2017.
11. Letter No. 4-488/89-Udyan-I dated 29-09-2017.
12. Cutting of news paper Amar Ujala dated 05-10-2017."

9. To the memo, petitioner had submitted reply dated 15.11.2017, whereby he had emphatically denied allegations leveled against him with request to revoke his suspension and release his salary.

10. On 28.10.2017, vide Office Order dated 28.10.2017, Additional Director of Horticulture, H.P. Dharamshala, District Kangra, H.P. was appointed as Inquiry Officer by Director of Horticulture in exercise of powers conferred in Rule 14 (5) (2) of the CCS (CCA) Rules, 1965.

11. Inquiry Officer submitted his report on 18.12.2017. Relevant observation and conclusion whereof is as under:-

"It was decided to hold the inquiry ex-party and the witnesses as mentioned in the 16-12-2017 in the Directorate On charge-sheet were summoned to appear before me on Horticulture, HP, Shimla-2 (Photocopy enclosed as Annexure-7). Only one witness Sh. Devinder Thakur could be examined(Statement Annex8). On the request of Presenting Officer to consider news paper cuttings as circumstantial

evidences, the idea to summon the Press Correspondents was dropped in order to avoid the lengthy process and the remaining witnesses were requested to appear before me on 18-12-2017 at 11.00 am at Dharamshala in my office chamber (Photocopy enclosed as Annexure-9). The witness examination report of Sh. S.C. Dhiman is enclosed as Annex. 10."

Conclusions:-

The cognizance of the fact that Sh. Vinod Kumar, Superintendent Grade-II (Under Suspension) appeared before the print media, issued criticizing statements against the policies and programmes of the Government. passed derogatory remark against the Government, senior bureaucrats and officers cannot be ignored. In this context, the news paper cuttings showing pictures of Sh. Vinod Kumar attending press conference are considered as circumstantial evidences to support the facts. Furthermore. Sh. Vinod Kumar failed to defend his case for his unauthorized appearance before print media. not joining at his headquarter fixed under suspension and giving undue and undesired press statements as the President of the so called '**Himachal Pradesh Karamchari Parisangh**'. His acts of non- cooperation in the enquiry lead to the conclusion that he had nothing to say in the matter. His press statements criticizing the policies and programs of the Government is a misconduct un-becoming of a Government servant and required to be dealt firmly. As such, it proves his guilt and invites an appropriate disciplinary action against him under Conduct Rules."

13. Petitioner, in response to the Inquiry Report, had submitted his representation dated 29.12.2017, stating therein that there was no evidence on record to prove the Article of Charges against him and until and unless respective witnesses prove allegations, the charges cannot be said to be proved and, therefore, version of Inquiry Officer was denied

with submission that it was liable not to be considered in absence of proof of facts.

14. Director of Horticulture, vide Office Order dated 30.12.2017, had imposed penalty of dismissal from service under Rule 11(viii) of CCS Conduct Rules, 1965. With regard to the representation submitted by the petitioner, it was stated that same had been carefully considered and various points raised by petitioner were examined in light of record of the case.

15. Vide communication dated 24.1.2018, petitioner had represented to the Government against the proceedings initiated against him and penalty imposed in consequence thereto.

16. The aforesaid representation dated 24.1.2018 was treated as appeal against the order of dismissal, and vide order dated 10.7.2018 passed by Principal Secretary Horticulture, penalty of dismissal was modified to reduction to lower stage of ₹21,290/- in the pay scale of ₹10,300-34,800+4800 grade pay for a period of 3 years with further directions that petitioner will not earn increments of pay during period of reduction and on expiry of this period, the reduction will have effect of postponing his future increments of pay also.

17. Thereafter vide Office Order dated 9.8.2018, entire period of absence of petitioner during aforesaid episode was ordered to be treated as dies-non without break in service.

18. In aforesaid facts, petitioner has approached the Court.

19. In reply to the petition filed by the respondent-State, reiterating the aforesaid facts and circumstances, it has been claimed that charges related to misconduct stood proved against the petitioner and, therefore, justifying the penalty imposed, dismissal of the petition was prayed.

20. It is further stand of respondents-State that despite giving opportunity to the petitioner to represent his case, he did not appear before the Inquiry Officer and resultantly inquiry was proceeded ex parte and thus now petitioner is not entitled for any relief as claimed. Alongwith reply, various communications, sent by the Inquiry Officer to the petitioner, have been placed on record alongwith statements of two witnesses, namely Devinder Thakur and Subhash Dhiman, recorded during the Inquiry.

21. Documents relied upon by the Inquiry Officer/authority against the petitioner, detailed above, have not been proved by any witness examined by the Department/Presenting Officer. As noticed supra after proceeding ex parte against the petitioner, witnesses were

summoned by the Inquiry Officer for 16.12.2017. On that day only one witness Devinder Thakur was examined. Thereafter on request of Presenting Officer to consider newspaper cuttings and circumstantial evidence, the idea to summon the Press Correspondence was dropped in order to avoid lengthy proceedings and remaining witnesses were requested to appear before Inquiry Officer on 18.12.2017 at Dharamshala. On that date, only one witness Subhash Dhiman was examined and thereafter evidence was closed.

22. On the basis of previous Inquiry Report submitted in 2013 by Subhash Chand Dhiman, the then Additional Director Horticulture and S.M. Katiah, the then Deputy Director, Horticulture, it was considered that there was circumstantial evidence of newspaper cuttings.

23. It would be relevant to reproduce the entire statements of Devinder Thakur and Subhash Chand, which are in question-answer form, which are as under:-

"Devinder Thakur, Subject Expert Horticulture."

Question No. 1. Had you complained against Vinod Kumar Superintendent?

Answer: Yes. Made through one letter.

Question No. 2. Reasons for complaint?

Answer: At that time I was President of H.P. Bagwani Sewa Sangh, and one member of the Sangh Mr.S.K. Katoch who was Deputy Director Horticulture, Nahan and others had brought in the notice of Association that some false and baseless news were being published in the newspapers. Resultantly it was reported to the Government.

Question No. 3. Who was publishing these news items?

Answer: These were being published by in name of President H.P. Karmachari Sangh.

Question No. 4. To whom this complaint was submitted by you?

Answer: Submitted in writing to the then Chief Minister of H.P.

Question No. 5. Whether you were informed about the final decision taken on the complaint?

Answer: No.

Subhash Dhiman Additional Director Horticulture (Retired).

Question No. 1. Whether you conducted inquiry in the year 2013 on the complaint made by Devinder Thakur, the then Horticulture Development Officer?

Answer: Yes.

Question No. 2. Under whose order inquiry was conducted?

Answer: This inquiry was conducted in pursuance to written order of Director Horticulture Department of H.P.

Question No. 3. Against whom this inquiry was?

Answer: This inquiry was done on the complaint of Devinder Thakur, the than Horticulture Development Officer against Vinod Kumar, the then Senior Assistant.

Question No. 4. Whether Vinod Kumar Senior Assistant had participated and cooperated in the inquiry?

Answer: No. Not at all.

Question No. 5. What was outcome of inquiry?

Answer: Everything has been detailed in the Inquiry Report submitted by me.”

24. In his statement, Devinder Thakur has not proved any of the documents referred or relied upon by the Presenting Officer/Department/ Authority to prove the Article of Charges. There is no date of making complaint by Devinder Thakur, no mention of name against whom

complaint was submitted and nothing about final outcome of such inquiry or complaint.

25. Similarly, Subhash Dhiman has also not disclosed about the result of Inquiry Report by stating that it was contained in report submitted by him.

26. Whether aforesaid was a preliminary inquiry or Departmental inquiry, is not depicted in the statement of above referred two witnesses. How and in what manner earlier Inquiry, which has not seen light of the day, in present Inquiry would be relevant to prove the Article of Charges, is also beyond comprehension. Statements of these witnesses are lacking in material particulars, especially with respect to documents being relied upon by the Department/Authority/Inquiry Officer. Inquiry Officer has also referred previous Inquiry Report submitted by Mr.Subhash Dhiman and S.M. Katiah, as circumstantial evidence of newspaper cuttings, but such Inquiry Report was never placed on record by the Presenting Officer or by the aforesaid two witnesses examined by the Presenting Officer in support of Article of Charges.

27. It is claim of the petitioner that Inquiry was conducted in a hasty manner, as evident from the communications placed on record with the reply of the respondents/Department, which indicates that despite asking time/adjournment by the petitioner, on account of his ailment as

well for attending the marriage function, Inquiry was completed in his absence and there is no evidence on record of serving a notice of next date(s) upon the petitioner, particularly the date on which evidence of witnesses was recorded at Shimla and Dharamshala, because petitioner was proceeded against ex parte on 13.12.2017 and next date was fixed on 16.12.2017, though it has been claimed that ex parte order was communicated to the petitioner, but there is nothing on record that in what manner ex parte order was communicated to the petitioner alongwith next date 16.12.2017. It is noteworthy that Headquarter of petitioner was fixed at Mandi. However, on 16.12.2017, proceedings were undertaken at Shimla and thereafter next date was fixed on 18.12.2017 at Dharamshala for recording evidence of Department, but no material has been placed on record to depict that how and in what manner next date was communicated to the petitioner.

28. Even if it is considered that petitioner did not associate, cooperate and join the Inquiry, then also Articles of Charges framed against petitioner were and are required to be proved by Department through Presenting Officer, by leading cogent and reliable evidence, at least to substantiate and prove the documents, including news items being relied upon by the authority for framing Article of Charges.

29. In present case, neither any Press Reporter nor News Editor or any other witness claiming that news items in the newspaper were published at the behest and at the instance of petitioner, has been examined.

30. Other documents relied upon to hold the petitioner guilty for misconduct have also not been proved. As evident from the statement of two witnesses recorded during the Inquiry, their deposition is nowhere helpful to substantiate the documents relied upon by the Inquiry Officer, much less to prove the Article of Charges framed against the petitioner.

31. Though petitioner was proceeded ex parte during the Inquiry proceedings, however, before that he had submitted his representation disputing the veracity and correctness of Article of Charges framed against him. Even after receiving Inquiry Report, he had denied the Article of Charges framed against him, therefore, it is not a case where petitioner did not dispute and deny the charges leveled against him, but it is a case where there is a complete expressed denial of allegations leveled in Article of Charges framed against petitioner. Therefore, it was incumbent upon the Authority, Presenting Officer and Inquiry Officer to place on record sufficient evidence to prove the documents on the basis of which Article of Charges were framed in order to substantiate the allegations contained in Article of Charges.

32. Ex parte Inquiry does not mean that Inquiry Officer is free to return findings in favour of Department but against the employee without any evidence on record.

33. In present case, Presenting Officer, concerned Authority and Inquiry Officer have failed to perform their duty and adhere to the basic principle of Natural Justice as well as service jurisprudence. Therefore, in this case interference by exercising jurisdiction under Article 226 of the Constitution of India is warranted.

34. True it is that by exercising jurisdiction under Article 226 of the Constitution of India, the Court has not to re-assess the evidence or re-evaluate the findings from the Departmental Inquiry, but definitely the Court can interfere in the findings if they are based on no evidence or are perverse.

35. In present case, there is reference of circumstantial evidence of Inquiry Report submitted by Subhash Dhiman and S.M. Katiah, but no such report has been ever proved by any witness on record. Statements of two witnesses, referred supra, are also not disclosing any incriminating circumstance or document against the petitioner and, therefore, findings returned by the Inquiry Officer are not only based on no evidence, but also perverse. Departmental Authority as well as Appellate Authority have

failed to consider this aspect, but had accepted the Inquiry Report in a stereo type manner, without looking into record.

36. Therefore, findings returned in the Inquiry are not sustainable and are quashed and set aside.

37. In sequel to quashing of findings returned by the Inquiry Officer, holding the petitioner guilty of misconduct and consequential orders passed in furtherance thereto, i.e. Office Order dated 30.12.2017, 10.7.2018 and 9.8.2018 and Office Order dated 23.9.2017, putting the petitioner under suspension, are also not sustainable and accordingly the same are also quashed and set aside.

38. Consequences of quashing and setting aside impugned Inquiry Report and orders shall follow and benefits thereof shall be extended to the petitioner on or before 30th September, 2025. However, it is made clear that petitioner is not held to be entitled for any interest on arrears, if any, payable to the petitioner.

Petition is allowed and disposed of in aforesaid terms.

**(Vivek Singh Thakur),
Judge.**

**(Ranjan Sharma),
Judge.**

18th June, 2025
(Keshav)