

**HIGH COURT OF HIMACHAL PRADESH, SHIMLA.**

**CWP(T) No. 4326/2008 (OA No.881/1997)**

**Date of Decision: April 30, 2009**

Dr. Atma Ram	.....	Petitioner
Versus		
State of H.P.& Ors.	.....	Respondents.

***Coram:***

**The Hon’ble Mr. Justice Sanjay Karol, Judge.**

***Whether approved for reporting? Yes***

For the petitioner	:	Mr. K. D. Shreedhar, Advocate.
For the respondents	:	Mr. R.K. Sharma, Sr.Addl. A.G. with Mr. Vivek Thakur, Addl. A.G. & Mr. Anil Jaswal, Dy. A.G.

**Sanjay Karol, J. (Oral)**

The petitioner/ the delinquent official, has assailed the order dated 3.12.1996 (Annexure A-1) imposing a penalty of stopping one annual increment for one year i.e. without cumulative effect, upon him while serving as Headmaster, Govt. High School, Jamble, Distt. Kangra; Order of rejection of representation/appeal dated 7.1.1997 (Annexure A-1/1) and order dated 1.4.1997 treating the petitioner’s period of suspension as “Dies Non”.

The petitioner was posted as Headmaster in Govt. High School, Jamble, Distt. Kangra. The said school was upgraded, hence the Panchayat and the local people, decided to celebrate the occasion by organizing the village feast (jug) in the school premises after school hours. The local M.L.A. was to inaugurate the school and participate in the said function.

The Panchayat passed Resolutions dated 13.6.1996 (Annexure A-2), dated 15.6.1996 (Annexure A-4) in this regard.

In terms of letter dated 14.6.1996 (Annexure A-3) petitioner, as Headmaster of the School, duly informed the District Education Officer and specifically sought his guidance and directions.

It appears that the villagers at the panchayat level decided to shift the venue and accordingly, vide letter dated 19.6.1996 (Annexure A-6) informed the petitioner that the function as scheduled would be organized but with the change of venue i.e. outside the school gate in the playground of the school.

The panchayat organized the village feast in which the local MLA participated. The function was organized after the school hours by the villagers. The school management had no role to play in the same.

Apparently, the participation of the M.L.A. did not find favour with the respondent-state, hence on 4.11.1996 the petitioner was served with a memorandum (Annexure A-15) containing articles of charges, initiating disciplinary proceedings against him under the CCS (Conduct) Rules 1964.

The articles of charges framed against the petitioner are reproduced as under:-

**“Article-I**

That the said Shri Atma Ram while functioning as Headmaster in Govt. High School, Jambal, Distt. Kangra during June, 96 organized a political function in the school Campus during the school hours on 20.6.96 without the prior permission of the department/Govt. which amounts to misconduct and misbehaviour failed to maintain absolute integrity, acted like an unbecoming of Govt. servant and thus

violated the provision of rules 3(I)(i) & (iii) of CCS (Conduct) Rules, 64.

**Article -II**

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Arma Ram Headmaster holding the supervisory post should take all possible steps to ensure the integrity and devotion to duty of all Govt. Servants under his control authority. But contrary to it he passed an office order No.936, dated 15.6.96 to organize a political function in the school on 20.6.96 indulging himself and the members of his staff as well as the students of the school in the political activities, which tantamounts to misconduct and breach of trust, failed to maintain devotion to duty and violated provision of the rule 3(I)(ii) & 3(2)(i) of CCS (Conduct) Rules, 1964.”

The petitioner responded to the same. Even though the same is not on record but, however, from another representation dated 7.8.1996 (Annexure A-8), made by him, it is evident that the petitioner did not participate in the function organized by the Gram Panchayat, Jambal.

The Inquiry Officer associated the petitioner in the inquiry proceedings and submitted his report dated 26.11.1996 (Annexure A-19) which, in toto, is reproduced as under:-

“The charges levelled against Shri Atma Ram Headmaster (U/S) the delequent (sic) official were read out and the delequent (sic) official admitted the fact that a function was organized in the school Campus on 20.6.1996 by the public of the concerned Illaqua to inaugurate the opening ceremony of the Govt. High School, Jambal, (Kangra) and the concerned M.L.A. Shri Varinder Kumar Dhiman was invited by the public to inaugurate the said opening ceremony. Shri Vishwa Nath Sharma DEO Kangra was asked about to have the knowledge or to accord permission to organize the function in the school

for which he stated that no such permission was sought by the Headmaster.”

Based on the same, the Disciplinary Authority passed the impugned order dated 3.12.1996, imposing a penalty of stoppage of one increment for one year without cumulative effect. The petitioner filed a statutory appeal which stood dismissed vide impugned order dated 30.3.1997.

It appears that the authorities did not let the matter rest there and having found the petitioner’s alleged mis-conduct to be grave, suspended him vide order dated 18.7.1996 (Annexure A-7). Noticeably, the suspension allowance was not released to him and even the Headquarter, during the suspension period was fixed at a far of place which caused “mental tension and torture” to him.

The order of suspension was subsequently revoked on 3.12.1996 (Annexure A-20) and vide orders dated 1.4.1997 the petitioner’s period of suspension w.e.f. 18.7.1996 upto 3.12.1996 was treated as “Dies Non”.

Importantly, the charge against the petitioner essentially was that (i) without permission, (ii) he had organized a political function, (iii) in the school Campus, (iv) during the school hours on 20.6.1996 (v) passed an office order to organize a political function, (vi) indulged himself, his staff members and students in the political activities and all this amounted to misconduct and violation of Rule 3 of CCS (Conduct) Rules, 1964.

To my mind, none of the charges stand proved by the Inquiry Officer. The only finding of the Inquiry Officer, based on the petitioner’s admission, is that a function was organized in the school Campus on

20.6.1996 by the public to inaugurate the opening ceremony of the Govt. High School, Jambal in which local representative of the village was invited by the public to inaugurate the same. There is no finding with regard to any of the charges imputed against the delinquent official.

That the petitioner had permitted the organization of the function in the school without permission is not the charge for which the disciplinary proceedings against the official had been initiated. The Inquiry Officer could not have returned such findings without affording adequate opportunity to the petitioner. The petitioner has only admitted that the function was organized in which local M.L.A. who was invited by the local people participated. This by itself does not prove the charge or show that the petitioner "had organized a political function in the School Campus". The charge that the petitioner had organized or participated and had also asked his staff and students of the school to participate in the organization of political function also has not been proved. It is evident from the record, undisputedly, that the petitioner did not participate in the said function.

Hence, it cannot be said that the petitioner had not maintained absolute integrity, devotion to duty, or his conduct was unbecoming of a Govt. servant. Simply because the villagers, at the panchayat level, had organized a private function to commemorate the upgradation of the High School, in the presence of the local representative that fact by itself would not amount to dereliction of duty on the part of the Govt. servant. Conduct of a third party cannot be made basis to penalize the petitioner and it cannot be said that he had failed to ensure integrity and devotion to duty.

There is no evidence on record to prove that the petitioner had permitted the holding of a political function in the school premises. On

the contrary, the panchayat had taken a conscious decision of holding the function outside the School premises but in the playground of the school. There is no evidence on record to prove to the contrary. The material obtained from the District Education Officer, Kangra was never supplied to the petitioner nor was he afforded opportunity to either cross examine or rebut the same. Principles of natural justice stand violated. The findings of the Inquiry Officer to the said effect are based on extraneous material and cannot be made basis for imposing penalty upon the petitioner.

It is a settled law that while exercising jurisdiction under Article 226 of the Constitution of India, this Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority. (*State of A.P. vs. S.Sree Rama Rao*, reported in AIR 1963 SC 1723).

The Apex Court in *V. Ramana v. A.P. SRTC & Ors.* (2005) 7 SCC 338, has held that the Court should not interfere with the administrator's decision unless it was illogical or suffered from procedural impropriety or was shocking to the conscious of the Court in the sense that it was in defiance of logic or moral standards. The penalty imposed can be interfered with if it shocks the conscious of the Court.

It is also a settled law that this Court would not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. As long as there is some legal evidence to substantiate the finding, the adequacy

or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings.

In *Coimbatore District Central Cooperative Bank v. Coimbatore District Central Cooperative Bank Employees Assn. & Anr.* (2007) 4 SCC 669, the Apex Court further held as under:-

“It is clear that the Indian Legal system has accepted the doctrine of proportionality. With the rapid growth of administrative law and the need and necessity to control possible abuse of discretionary powers by various administrative authorities, certain principles have been evolved by courts. If an action taken by any authority is contrary to law, improper, irrational or otherwise unreasonable, a court of law can interfere with such action by exercising power of judicial review. One of such modes of exercising power, known to law is the “doctrine of proportionality”.

“Proportionality’ is a principle where the court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise – the elaboration of a rule of permissible priorities. “Proportionality” involves “balancing test” and “necessity test”. Whereas the former (balancing test) permits scrutiny of excessive onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations, the latter (necessity test) requires infringement of human rights to the least restrictive alternative.

The doctrine of proportionality has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are

expected to honour their statements of policy or intention and treat the citizens with full personal consideration without abuse of discretion. There can be no “pick and choose”, selective applicability of the government norms or unfairness, arbitrariness or unreasonableness. It is not permissible to use a “sledgehammer to crack a nut”. As has been said many a time; “where paring knife suffices, battle axe is precluded.”

In *Bank of India & Anr. v. Degala Suryanarayana* (1999) 5

SCC 762, the Apex Court has held as under:-

“Strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The Court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of mala fides or perversity i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The Court cannot embark upon reappreciating the evidence or weighing the same like an appellate authority.”

Further in *Chairman and Managing Director, United Commercial Bank and others vs. P.C.Kakkar*, reported in (2003) 4 SCC 364, it has been held as under:-

“12. To put it differently, unless the punishment imposed by the disciplinary authority or the Appellate Authority



shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed.”

“15. .... It needs no emphasis that when a court feels that the punishment is shockingly disproportionate, it must record reasons for coming to such a conclusion. Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law....”

In the present case, in the absence of any proof of alleged misconduct on the part of the delinquent official, I am afraid the penalty could not have been imposed upon the petitioner. There is no legal evidence on record. The action of the authorities is irrational and unreasonable. Principles of natural justice stand violated.

Surprisingly, the appellate authority while deciding the petitioner’s appeal moved on the premise that the Inquiry Officer in fact had held that the petitioner actually organized a political function. The appellate authority has returned a positive finding that “there remains hardly any doubt that the appellant allowed the function to be organized in the school premises/complex of his own as also he permitted the students and the staff members of the school to actively participate in the said function as is evidently clear from the order book of the school vide order No.936 dated 15.6.1996, vide which he, not only detailed his staff members on duty to prepare for the culture show etc., but also directed them to prepare the students for the same by requesting one and all to

render full cooperation by leaving no stone unturned for the success of the programme in every respect.”

The Inquiry Officer had not found that the petitioner had in fact, directed the students to render full cooperation and in fact the petitioner permitted the students and the staff members of the school to actively participate in the function. The appellate authority has obviously relied upon extraneous material to arrive at such conclusions. The petitioner was also not afforded reasonable opportunity to respond to the same. Principles of natural justice stood violated causing serious prejudice to him.

Importantly, the suspension allowance was not disbursed to the petitioner. It appears that the whole action was initiated if not out of vindictiveness then definitely without application of mind and proper foundation. The respondents action smacks of malafides.

Even during the course of the hearing, it could not be pointed out as to in what manner the organization of a function by the Gram Panchayat, to commemorate the event of upgradation of the school is in violation of Governmental Rules/ Instructions/ guidelines. Assuming hypothetically that the petitioner did allow the Panchayat to hold the celebration in the school Campus, that by itself would not be a reason for holding the petitioner guilty of loss of integrity or dereliction of duty. The public representative was called by the local people and his mere presence by itself would not convert a social function into a political function. In any event it is not a proved misconduct.

For the aforesaid reasons, the impugned orders dated 3.12.1996, 7.1.1997 and 1.4.1997 are quashed. As corollary to the same, the respondents shall take all consequential actions for rectifying the

petitioner's record and disbursement of arrears, if any, within a period of three months from today.

The petitioner shall be entitled to costs quantified Rs.11,000/- .

The writ petition stands disposed of.

( **Sanjay Karol** ),  
**Judge.**

**April 30, 2009.**  
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