2025:HHC:36364

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.8622 of 2024

Decided on: 27th October, 2025

Om Prakash **....Petitioner**

Versus

Hon'ble High Court of H.P and others **...Respondents**

Coram
Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice
Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

Whether approved for reporting?[1] ***Yes***

For the petitioner: Mr. B.L. Soni and Mr. Nitin Soni, Advocates.

For the respondents: Mr. Shriyek Sharda, Advocate, for respondents No.1 and 2.

Mr. Arjun Lall, Advocate, for respondent No.3.

G.S. Sandhawalia, Chief Justice *(Oral)*

The challenge in the present writ petition is to the initiation of the disciplinary proceedings dated 10th July, 2024 (Annexure P-2) by the District and Sessions Judge, Mandi, under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, as per the statement of the articles of charges issued as per Article-I and Article-II.

2. The resultant proceedings, whereby the Inquiry Officer

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

as such was appointed namely Mr. Avinash Chander, Additional District and Sessions Judge, Sundernagar, are also subject matter of consideration, along with the Presenting Officer, Sh. Khem Raj, Record Keeper, being appointed on 31st of July, 2024, Annexures P3 and P4, respectively.

3. The sum and substance of the argument raised by the learned counsel for the petitioner-employee, who is a Senior Assistant working with the District Legal Services Authority, Mandi, District Mandi, H.P. (**hereinafter referred to as "DLSA"**), is that he was appointed by the H.P. State Legal Services Authority, Kasumpti, Shimla (**hereinafter referred to as "SLSA")** on 25.10.2016 and was placed at the disposal of the Chairman (District Judge), DLSA, Mandi for reporting for duty. It is accordingly the case of the counsel for the petitioner that having been appointed by the SLSA, disciplinary proceedings could not be initiated by the District and Sessions Judge, Mandi, not being the State Legal Services Authority under Section 6 of The Legal Services Authorities Act, 1987 **(hereinafter referred to as "the Act").**

4. The stand taken by respondent No.3/SLSA is that the District Judge is the Chairman of the District Authority in terms of Section 9(2)(a) of the Act and the action was initiated in the capacity of the Chairman, DLSA. The appointing authority is the Member

Secretary, SLSA acting as a Head of the Department in consultation with the Chief Justice. The action as such has been held to be justified.

5. The reply filed by respondent No.2 states that vide letter dated 22.03.2024 (Annexure R-2), it was conveyed to the Chairman, DLSA that the Hon'ble Executive Chairman of the SLSA had directed that all communications received from the Secretary, DLSA, addressed against the present petitioner, regarding the act of insubordination, non-compliance with the orders, dereliction of duty etc. shall be sent to the Chairman, DLSA, for further necessary action at own level being the Chairman-cum-Controlling Officer of DLSA. The proceedings had been initiated under Rule 14 of the CCS (CCA) Rules, 1965, in view of the directions of the Hon'ble Executive Chairman, SLSA.

6. The argument raised by the counsel for the petitioner at the first blush appears to be very attractive, especially keeping in view the fact that at the initial stage, after the fact finding inquiry had been done on 12.12.2022, vide communication dated 16.03.2024 (Annexure R-3/A), the Member Secretary, SLSA, had communicated to the petitioner that he was not complying with the directions and would have to be dealt with in accordance with the rules and called for his explanation. The said communication had

been forwarded at the district level to the DLSA on 16.03.2025 itself. The petitioner had filed his reply to the same on 18.03.2024 (Annexure R3/B), raising various objections but never raised the issue of jurisdiction. The reply thus had been firstly forwarded on 18.03.2024 by the Member Secretary, DLSA, at the District level to the Chairman, DLSA who on 19.03.2024 (Annexure R3/C) had forwarded the same to the Member Secretary, SLSA.

7. The petitioner in his rejoinder to the reply filed by respondents No.1 and 2, has also taken a plea that the matter was never placed before the appointing authority i.e. State Authority for taking necessary action and therefore, keeping in view Rules 3 and 6 of the Himachal Pradesh State Legal Services Authority Rules, 1995, the Member Secretary, could not delegate the powers and authority of the State Authority to the Chairman, District Legal Services Authority, for taking any disciplinary action.

8. Keeping in view the above, counsel for the respondent-SLSA placed before us the noting portion dated 21.03.2024, whereby the then Executive Chairman, SLSA, had approved the proposal as such that the Chairman, DLSA, would take necessary action at his own level with the request to send the action taken report to the Authority, while also approving various proposals to look into the financial irregularities and to visit Mandi and examine

the entire financial record of the DLSA and give a detailed status report.

9. It is not disputed that on 22.03.2024 (Annexure R-2), the Member Secretary, SLSA, also wrote to the Chairman, DLSA, that he had been directed by the Hon'ble Executive Chairman to take action at his own level being the Chairman-cum-Controlling Officer of DLSA. The said letter reads as under:-

> ***"112-LSA/Estt. Part-XV/2024/853 22.03.2024***
>
> *To*
>
> ***The Chairman (District Judge),***
> *District Legal Services Authority, Mandi,*
> *District Mandi, H.P.*
>
> *Sub:- Complaint of Shri Om Prakash, Senior Assistant, DLSA, Mandi alongwith entire record.*
>
> *Sir,*
>
> *On the captioned subject, I have been directed by the Hon'ble Executive Chairman of this Authority to send all the communication received from the Ld. Secretary, District Legal Services Authority, Mandi which she addressed against Shri Om Prakash, Senior Assistant regarding acts of insubordination, non-compliance with orders, dereliction of duty etc. alongwith copy of noting dated 16th March, 2024 of this Authority alongwith the reply of the official concerned as well as complaint of Shri Om Prakash regarding harassment etc. to your goodself for further necessary action at your own level being the Chairman-cum-Controlling Officer of DLSA, Mandi."*

10. It is apparently in such circumstances, the petitioner as such was charge-sheeted on 10th July, 2024 and vide orders, both

dated 31st July, 2024 (Annexures P3 and P4), the Inquiry Officer and the Presenting Officer were duly appointed.

11. Counsel for the petitioner has thus placed heavy reliance upon the judgment of the Apex Court in ***Union of India and others vs. B.V. Gopinath,*** **(2014) 1 SCC 351,** to contend that the methodology as such which had been adopted by the appointing authority and giving the power at the district level was not justified in the facts and circumstances of the case.

12. Counsel for respondent No.3, on the other hand, has placed reliance upon a recent judgment of the Apex Court in ***State of Jharkhand and others vs. Rukma Kesh Mishra*** **(2025) SCC OnLine SC 676** where ***B.V. Gopinath's case*** was also discussed.

13. It has accordingly been held that the disciplinary authority is mandated by law to 'draw up' or 'cause to be drawn up' the substance of the imputations of misconduct or misbehavior and it may not prepare the document but rather delegate the task to someone else and if the delegation is proved and nothing much is to be done and the courts ought to exercise restraint.

14. It is also a matter of record that vide Resolution No.4 dated 17.04.1998, which also finds mentioned in the appointment letter dated 25.10.2016 (Annexure P-1), the Member Secretary, SLSA, was declared as the Head of the Department under the

Fundamental Supplementary Rules, which fact is not disputed and which is rather the stand of the counsel for the petitioner also. Section 6 and 9 of The Legal Services Authorities Act, 1987 reads as under:-

> ***"[6. Constitution of State Legal Services Authority.-****(1) Every State Government shall constitute a body to be called the State Legal Services Authority for the State to exercise the powers and perform the functions conferred on, or assigned to, a State Authority under this Act.*
>
> *(2) A State Authority shall consist of—*
>
> *(a) the Chief Justice of the High Court who shall be the Patron-in-Chief;*
>
> *(b) a serving or retired Judge of the High Court, to be nominated by the Governor, in consultation with the Chief Justice of the High Court, who shall be the Executive Chairman;*
>
> *(c) such number of other members, possessing such experience and qualifications as may be prescribed by the State Government, to be nominated by that Government in consultation with the Chief Justice of the High Court.*
>
> *(3) The State Government shall, in consultation with the Chief Justice of the High Court, appoint a person belonging to the State Higher Judicial Service, not lower in rank than that of a District Judge, as the Member-Secretary of the State Authority, to exercise such powers and perform such duties under the Executive Chairman of the State Authority as may be prescribed by that Government or as may be assigned to him by the Executive Chairman of that Authority:*

Provided that a person functioning as Secretary of a State Legal Aid and Advice Board immediately before the date of constitution of the State Authority may be appointed as Member-Secretary of that Authority, even if he is not qualified to be appointed as such under this sub-section, for a period not exceeding five years.

(4) The terms of office and other conditions relating thereto, of members and the Member-Secretary of the State Authority shall be such as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

(5) The State Authority may appoint such number of officers and other employees as may be prescribed by the State Government in consultation with the Chief Justice of the High Court, for the efficient discharge of its functions under this Act.

(6) The officers and other employees of the State Authority shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

(7) The administrative expenses of every State Authority, including the salaries, allowances and pensions payable to the Member-Secretary, officers and other employees of the State Authority shall be defrayed out of the Consolidated Fund of the State.

(8) All orders and decisions of the State Authority shall be authenticated by the Member-Secretary or any other officer of the State Authority duly authorised by the Executive Chairman of the State Authority.

(9) No act or proceeding of a State Authority shall be

*invalid merely on the ground of the existence of any vacancy in, or any defect in the constitution of, the State Authority.**]***

[9. District Legal Services Authority-*(1) The State Government shall, in consultation with the Chief Justice of the High Court, constitute a body to be called the District Legal Services Authority for every District in the State to exercise the powers and perform the functions conferred on, or assigned to, the District Authority under this Act.*

(2) A District Authority shall consist of—

(a) the District Judge who shall be its Chairman; and

(b) such number of other members, possessing such experience and qualifications, as may be prescribed by the State Government, to be nominated by that Government in consultation with the Chief Justice of the High Court.

(3) The State Authority shall, in consultation with the Chairman of the District Authority, appoint a person belonging to the State Judicial Service not lower in rank than that of a Subordinate Judge or Civil Judge posted at the seat of the District Judiciary as Secretary of the District Authority to exercise such powers and perform such duties under the Chairman of that Committee as may be assigned to him by such Chairman.

(4) The terms of office and other conditions relating thereto, of members and Secretary of the District Authority shall be such as may be determined by regulations made by the State Authority in consultation with the Chief Justice of the High Court.

(5) The District Authority may appoint such number of officers and other employees as may be prescribed by the State Government in consultation with the Chief Justice of the High

Court for the efficient discharge of its functions.

(6) The officers and other employees of the District Authority shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

(7) The administrative expenses of every District Authority, including the salaries, allowances and pensions payable to the Secretary, officers and other employees of the District Authority shall be defrayed out of the Consolidated Fund of the State.

(8) All orders and decisions of the District Authority shall be authenticated by the Secretary or by any other officer of the District Authority duly authorised by the Chairman of that Authority.

(9) No act or proceeding of a District Authority shall be invalid merely on the ground of the existence of any vacancy in, or any defect in, the constitution of the District Authority.]"

15. We are thus of the considered opinion that the judgment in ***Rukma Kesh Mishra's case (supra)*** has held that the interference by the Courts, once the superior officer as such has granted the delegation, is not to be interfered with. In the said case, apparently, disciplinary proceedings had been initiated and the challenge was raised by the employee in question who was a Member of the Civil Service of the State. The argument raised was that the matter had not been placed before the Chief Minister at the initial stage. In the said case, the termination order had also been

passed and the learned Single Judge had then interfered with the order on this ground that at the initial stage the matter was not placed before the Chief Minister. The matter had also been carried to the Division Bench unsuccessfully by the State. Interference was then done by the Supreme Court by holding as under :

> *"36. Since invocation of the provisions in Discipline and Appeal Rules similar to Rule 14(3) of the 1965 Rules or Rule 17(3) of the 2016 Rules and citing failure to adhere to the same to invalidate orders terminating services of officers/employees is not too infrequent, we consider it proper to briefly touch upon the requirement thereof. The Disciplinary Authority is mandated by the law to 'draw up' or 'cause to be drawn up' the substance of the imputations of misconduct or misbehavior as a definite and distinct article of charge together with the statement of such imputations. The phrases 'draw up' and 'cause to be drawn up' do have different meanings in the context of disciplinary proceedings, though both relate to drawing up of a charge-sheet. By 'draw up', what is express is that the Disciplinary Authority itself is responsible for preparing the substance of imputation and the statement of allegations in support thereof, whereas 'cause to be drawn up' would enable the Disciplinary Authority to instruct or direct someone else to prepare the substance and statement. The effect of it is that the Disciplinary Authority itself may not prepare the document but rather delegate the task to someone else. If the delegation is proved to have been made in favour of an authority holding an office superior to that of the officer/employee proposed to be proceeded against, nothing much is required to be done and the courts ought to exercise restraint.*

> *37. xxxxxx*
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> *38. Turning focus once again to the factual narrative, it is worthy of being noted that it was the Cabinet which approved the proposal to dismiss the respondent. Respondent's service having been terminated based on such approval, the Single Judge as well as the Division Bench should have been loath to hold the dismissal illegal on acceptance of the specious plea raised by the respondent by its misplaced reliance on B.V. Gopinath (supra) and Promod Kumar (supra).*
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> *39. Viewed from whichever angle, we are unable to support the finding returned by the Single Judge, since affirmed by the Division Bench, that the charge-sheet did not have the approval of the competent authority though both the Benches indubitably agreed that the proposal to initiate disciplinary proceedings did have such approval. We repeat, the entire proposal of initiating disciplinary proceedings inclusive of the draft charge-sheet, to suspend the respondent pending such proceedings and the names of the officers who would conduct the inquiry and present the case of the department in such inquiry having been approved by the Chief Minister, the Single Judge seems to have occasioned a grave miscarriage of justice in interfering with the order of dismissal on the wholly untenable ground of lack of approval of the charge-sheet by the Chief Minister; and the Division Bench, by failing to right the wrong, equally contributed to the failure of justice."*

16. Keeping in view the above, once the record goes on to show that the Executive Chairman had delegated the power at the district level to the DLSA who is the District Judge and the Chairman as per Section 9 of the Act, no fault as such can be found in the

initiation of the disciplinary proceedings. It is the own case of the petitioner as noticed in the rejoinder (*sic* replication) that there was no delegation, which is contrary to the communication dated 22.03.2024 (Annexure R-2), where there is specific reference as such by the Member Secretary, SLSA. We have also perused the noting portion, whereby the then Executive Chairman, SLSA, on the note being put up, granted the said approval on 21.03.2024 on the basis of which the letter dated 22.03.2024 was issued.

17. In such circumstances, the authority having been delegated by the Executive Chairman, SLSA, we do not find that any prejudice as such has been caused to the petitioner who apart from the misconduct as such is also being charge-sheeted for mis-classification of funds of Rs.41,50,000/- being shown in the State grant instead of NALSA grant and also holding back payments of the honorarium claim of mediators due to which action is sought to be taken against him.

18. The argument raised by the counsel for the petitioner that there is no power of delegation under the Act has been squarely met by the judgment of the Apex Court itself, which is referred above, that on account of the delegation, the superior officer can always give the authority to the subordinate officer to conduct proceedings.

19. It is not the case of the petitioner that being the Senior Assistant, he is in any way superior to the District and Sessions Judge, Mandi and therefore, there can be no prejudice as such to him.

20. Keeping in view the above, the present writ petition stands dismissed. Pending application(s), if any, stands disposed of.

(G.S. Sandhawalia)
Chief Justice

27th October, 2025
(ankit)

(Jiya Lal Bhardwaj)
Judge