

IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

CWPOA No: 4678 of 2019

Reserved on: 06.06.2025

Decided on : 15.10.2025

Ravinder Kumar

...Petitioner

Versus

State of Himachal Pradesh and Others

...Respondents

Coram:

Hon'ble Mr. Justice Ranjan Sharma, Judge

¹ *Whether approved for reporting? Yes.*

For the petitioner: Mr. Amit Singh Chandel, Advocate.

For the respondents: Mr. Gobind Korla, Additional
Advocate General.

Ms. Vaishali Lakhanpal,
Advocate for Respondent No 6.

Ranjan Sharma, Judge

Petitioner-Ravinder Kumar, a Junior Basic
Teacher, has come up before this Court, seeking
the following relief(s):-

- “a) That the Annexure P-19 dated 17.6.2014, P-20 dated 21.6.2013 issued by the respondents No 1-7 may kindly be quashed and set aside in the interest of law, equity and justice;
- b) That respondent No.9 may kindly be directed to expedite inquiry, and to take appropriate

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

action in accordance with law against respondent No. 6 and respondent No. 8 and other persons found guilty in the investigation, in the interest of law and justice;"

FACTUAL MATRIX:

2. Case as set up by Learned Counsel is that the petitioner was working as Junior Basic Teacher in Government Primary School Jol, Education Block Bijhari, District Hamirpur and he was named as Ex-officio-Member Secretary of School Management Committee "herein referred to as the Committee." The Committee passed a resolution on 06.03.2012 [*Annexure P-2*], deciding to construct one room in said school and pursuant to this decision, an agreement /contract was signed between the District Project Officer, Hamirpur and School Management Committee of GPS Jol on 21.3.2012, *Annexure P-3*, indicating that a total expenditure of Rs 3,15,000/- [i.e. Rs 2,85,000/- for the construction of room and Rs. 30,000/- for BALA Features i.e. building as learning aid] in said school. It is the case

of the petitioner that though the Government had sanctioned an amount of Rs. 3,15,000/- but the Authorities issued Instructions for carrying out the aforesaid construction and other related works in SSA and RMSA, providing that the amount for undertaking civil works was to be utilized by Junior Engineer concerned and final 10% payment was to be made after an assessment by Junior Engineer. Para (vi) of the Instructions provided that Junior Engineer/Technical Assistants was required to inspect construction works at three stages i.e. at stage of layout and then at stage of foundation and finally at roof level.

2(i). Case of the petitioner is that construction of room as well as the BALA Features on the constructed room was undertaken and sanctioned amount was spent by Junior Engineer concerned, which is *borne out* from the Ledger details as annexed with the writ petition. It is averred that

on 25.7.2013/5.8.2013 [Annexure P-13], one Smt. Shashi Bala, submitted an online complaint dated 9.2.2013 against Junior Engineer of SSA namely Sunil Verma, who has been impleaded as a party respondent in instant case. Pursuant to the aforesaid complaint, the District Project Officer [SSA-cum-Principal DIET Hamirpur] wrote a letter to Deputy Director, Elementary Education Hamirpur, stating that though Junior Engineer of BEO Bijhari has submitted the assessment report of Rs 2,88,000/- but the performed work was got reassessed by another Junior Engineer who submitted a report that the work amounting to Rs. 2,65,000/-had been undertaken on the spot. It is averred that a perusal of Communication dated 7.3.2014, *Annexure P-15* reveals that SDO Block Bijhari submitted another assessment report of Rs 2,75,787/-, in the matter. Based on the assessment report furnished by SDO Block Bijhari dated 4.11.2013, the DPO-cum-Principal

Diet Hamirpur, directed that an amount of Rs 39,213/-be recovered from petitioner who was the Member Secretary of SMC of GPS Jol at the relevant time.

2(ii) Pursuant to the reassessment, the Deputy Director of Elementary Education addressed a letter to the Block Elementary Education, Hamirpur on 18.3.2014, *Annexure P-16*, and in response to this, the petitioner submitted a reply denying his liability vide Annexures P-17 and P-18 dated 2.4.2014 /13.06.2014 but by ignoring this, the *Impugned Order was passed by Block Elementary Education Officer Bijhari on 17.6.2014, Annexure P-19 directing the petitioner to deposit an amount of Rs. 39,213/- in the Bank Account of the respondents.*

It is in this background that the petitioner has filed the instant petition, assailing the orders dated 17.6.2014, *Annexure P-19* and the orders dated 21.06.2013, *Annexure P-20* whereby, recovery

of Rs. 39,213/- has been ordered against the petitioner.

STAND OF RESPONDENT-STATE IN REPLY-AFFIDAVIT:

3. Pursuant to the issuance of notice, the respondents No. 1 to 8 have filed Reply-Affidavit dated 15.09.2014.

3(i). Perusal of the Reply-Affidavit indicates that School Management Committee of GPS Jol decided to construct one additional class room in the said school. Pursuant to resolution of SMC, an amount of Rs 3,15,000/- was sanctioned by the Government which included an amount of Rs.30,000/-, which was to be spend towards the building as learning aid [BALA Features]. Para 3 of Reply indicates that the amount of Rs.30,000/-, which was to be spent towards BALA Features was spent without the permission of the higher authorities. It is further averred that even 10% of final payment was to be released after assessment by the concerned

Junior Engineer but the same was released in breach of the agreement.

3(ii). In addition, the respondents have stated in the Reply-Affidavit that though Junior Engineer had submitted the assessment report to the tune of Rs. 2,88,000/-, as per the expenditure/utilization certificate submitted by the SMC but construction work of additional class room at GPS Jol, Block Bijhari was again reassessed, when it was found that an amount of Rs. 2,65,000/- has been spent on said construction. It is further averred in the Reply-Affidavit that based on Annexure P-15, dated 7.3.2014, SDO Block Bijhari, in terms of his letter dated 4.11.2013 had conducted another assessment revealing that an amount of Rs 2,75,787/- had been spent on construction and entire amount which ought to have been spent had not been spent by concerned persons, including the petitioners.

In this backdrop, the respondents have

opposed the claim, praying for dismissal of the writ petition.

STAND OF RESPONDENT No 6 IN REPLY-AFFIDAVIT:

4. Respondent No.6 being Deputy Project Officer-cum-Principal DIET has filed a separate reply. In Reply-Affidavit, the stand is that as per resolution of SMC and the need for construction of a room, an amount of Rs.3,15,000/-was sanctioned to SMC for carrying out construction of one room etc. with the direction to complete the construction at the earliest.

REBUTTAL IN REJOINDER:

5. Petitioner filed separate rejoinders to the separate reply(ies) filed by the respondents, by reiterating the stand in the writ petition and in denying the stand taken by respondents in the Reply-Affidavit. Petitioner stated that the respondents could not issue the impugned order of recovery, when, the work was primarily to be executed by

Junior Engineer concerned. He further submits that after execution of works, the petitioner released the payment as per bills which are borne out in Ledgers from time to time. Petitioner also furnished comparative chart of amounts spent, which forms part of Annexures P-27 and 28 also. It is averred in rejoinder that since petitioner was a teacher then, as per Sections 24 and 27 of Right of Children to Free and Compulsory Education Act, ***{herein referred to as RTE Act}*** the petitioner could not have been fastened with the recovery, when, the petitioner being a teacher could not be made to perform non-educational activities. However, the petitioner has pointed out that intended recovery is not tenable, on facts as well as in law.

6. Heard, Mr. Amit Singh Chandel, Learned Counsel for petitioner and Mr. Gobind Korla, Learned Additional Advocate General for the Respondents-State and Ms. Vishali Lakhanpal, Advocate for

Respondent No.6.

ANALYSIS

7. Taking into account the entirety of the facts and circumstances, this Court is of the considered view that the Impugned Order dated 17.6.2014, *Annexure P-19* and other corresponding orders mandating recovery of Rs 39,213/- from the petitioner does not stand test of judicial scrutiny, *for following reasons:-*

7(i). Perusal of Communication dated 25.07.2013 /5.8.2013, *Annexure P-13* indicates that one Ms. Shashi Bala had submitted an online complaint dated 9.2.2013 against Junior Engineer of SSA, with respect to the construction work of additional class room at GPS Jol Block Bijhari, District Hamirpur. Once the complaint was submitted against Junior Engineer, then, action of the State Authorities in fastening the liability on the petitioner who was only a Member Secretary of SMC of GPS Jol, is

not in true spirits. Moreover, as per Section 21 of the RTE Act, once the SMC is a statutory body, consisting of elected representatives of local authority, parents or guardians of children and teachers, who are to monitor the utilization of grants received from the Government or local authority or other source then, the action of the State Authorities Respondents in fastening the alleged recovery solely on the petitioner and without involving and without seeking an explanation from the members of SMC and that too by giving a complete go to the norms and the minimum mandate of natural justice and without holding a common inquiry vitiates impugned order of recovery against the petitioner.

7(ii). Even a perusal of Communication dated 25.7.2013, *Annexure P-13* and Communication dated 7.3.2014, *Annexure P-15*, reveal glaring discrepancies in assessment, undertaken by the respondents with respect to construction of additional class rooms

in GPS Jol Education Block in Bijhari, District Hamirpur. Material on record indicates that the Junior Engineer, BDO Bijhari submitted assessment report to tune of Rs 2,88,000/-based on expenditure /utilization certificates. However, the respondents have relied upon another reassessment report of the aforesaid construction which squeezes down the expenditure incurred to extent of Rs.2,65,000/-. On the other hand, SDO Block Bijhari vide letter dated 4.11.2013, has submitted another assessment report showing that an amount of Rs 2,75,787/- has been spent on construction. The discrepancies and variations in the assessment reports is a matter, which could not be made the basis for fastening liability on the petitioner. Since variation and discrepancy in the assessment reports is writ large, therefore, the liability, if any could only be fastened after resorting to the disciplinary action against Junior Engineer, the petitioner and all

other persons, including the SMC members at relevant time against whom allegations were leviable in instant case. However, the facts on record, do not indicate that any such regular departmental proceedings, in the spirit of Rule 11 and Rule 14 of the CCS [CCA] Rules were undertaken by the respondents against any of the employees including the petitioner. Gross variations or discrepancies in the assessment reports cannot be made the basis for inferring or in attributing the alleged loss, solely against the petitioner. Factum as to whether the loss had in-fact occurred and was attributable to the Junior Engineer or other employees is a matter which is to be tested and proved during the regular departmental inquiry, which was never conducted by the respondents. Drawing inference of non-accomplishing the work and by attributing alleged shortfall/deficiency solely on the petitioner cannot stand test of judicial scrutiny for want of

proof either in departmental proceedings or in the judicial proceedings, which were never undertaken by respondents in instant case. In this background, the Impugned Order of recovery dated 17.6.2014, Annexure P-19 and similar orders of recovery cannot be sustained as they are unreasonable, arbitrary and without any authority of law are quashed and set aside.

7(iii). Case needs to be tested from another perspective. Petitioner was a Junior Basic Teacher in GPS Jol Education Block Bijhari in District Hamirpur. In addition to being a regular teacher, the petitioner was an Ex-Officio-Member-Secretary of School Management Committee of GPS Jol. In case the sanctioned amount of Rs 3,15,000/- or any part thereof [i.e. Rs.39,213/-as per recovery orders] was attributable to the petitioner then also, the same could not have been directed to be recovered by casting allegations of misconduct against the

petitioner without resorting to a regular departmental inquiry as contemplated in Rule 14 of the CCS [CCA] Rules or the alleged misappropriation, if any, [not accepted] was to be asserted and proved in criminal proceedings in accordance with law. Nothing has been done, in the instant case. In these circumstances, this Court is of the considered view that the impugned recovery of Rs 39,213/- [Annexure P-19] and other similar orders cannot be attributed solely to petitioner in the instant case, and therefore, order of recovery is quashed and set aside.

7(iv). In addition to above, even the recovery of Rs. 39,213/- which has been ordered or sought to be recovered by respondents from the petitioner certainly amounts to imposing penalty, against an employee. Such penalty by way of recovery could not be resorted to by the State Authorities, without complying with the mandate of Rule 16 of the CCS

[CCA] Rules i.e. by issuing a memorandum of charges, calling for a reply and in case the facts in the reply were disputed then, to resort to an inquiry, as contemplated in Rule 14 of the CCS [CCA] Rules. No such compliance has been made by respondents in the instant case. Nothing has been brought on record by Learned State Counsel or Learned Counsel appearing for respondent No. 6 that any such compliance of Rule 16 and Rule 14 has been resorted to against petitioner in the instant case. Pertinently, in facts of instant case, once petitioner had denied the allegations, therefore, once the Disciplinary Authority of the petitioner is Deputy Director of Elementary Education and aforesaid authority has neither formed any opinion on certain objective criteria nor recorded reasons and had not conveyed such reasons to hold or not to hold an inquiry against petitioner and the denied could not be used against the petitioner,

except after the same were established and proved in regular inquiry, therefore, in absence of formation of opinion, absence of recording reasons and absence of communicating such reasons but in passing the impugned order of recovery is unsustainable, when, while dealing with pari materia provisions, the Honble Supreme Court has mandated in the case of **(2014) 13 SCC 211**, titled as **Food Corporation of India vs Sarat Chandra Goswami** and thus the absence of formation of opinion, absence of recording reasons and absence of communicating such reasons vitiates the impugned order of recovery of Rs.39,213/- which has been ordered or directed to be made against the petitioner is without any authority of law. In these circumstances, the impugned recovery order dated 17.6.2014, [*Annexure P-19*] is quashed and set aside.

7(v). Plea of the respondents in Reply-Affidavit that an amount of Rs. 30,000/-was spent towards

Bala Features without permission of the higher authorities. This plea is not tenable *for the reason*, that respondent has not placed on record any material to show that such amount was to be spend with prior permission of higher authorities. In these circumstances, in absence of any cogent and convincing material on record, necessitating the prior approval of higher authorities, when, the work of construction of a room and drawing of BALA Features thereon was a composite work, which was duly executed then, the Impugned Order of recovery was unsustainable.

7(vi). Petitioner is a Junior Basic Teacher who belongs to Class-III category of service under the State Government. Once intended recovery as in *Annexure P-13, Annexure P-15 and Annexure P-19* is sought to be made from a Class-III Employee, without authority of law and otherwise also the recovery is arbitrary, illegal, iniquitous therefore,

the Impugned Recovery could not be affected from the petitioner, a Class-III Employee, in terms of the mandate of the Honble Supreme Court in **State of Punjab and Others** versus **Rafiq Masih, 2015 (4) SCC 334**, in the following terms:-

18. (i) Recovery from employees belonging to **Class-III** and Class-IV service (or Group 'C' and Group 'D' service).
- (ii) *Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
- (iii) *Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
- (iv) *Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*
- (v) ***In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.***

The Impugned Order dated 17.06.2014 [Annexure P-19] and similar order dated 21.06.2013 [Annexure P-20] ordering the recovery of Rs. 39,213/-

against the petitioner cannot be permitted to operate to the prejudice and disadvantage of the petitioner leading to hardship and without such allegation having been proved after following due process of law. Moreover, once the petitioner had not misrepresented anything and he was not a party to any fraud and such allegation has not been established either in departmental proceedings therefore, the Impugned recovery ordered without affording an opportunity and without such allegation having been proved amounts to ordering recovery on mere ipse-dixit which cannot sustain. Besides this, in a similar fact situation, the recovery was quashed by the Hon'ble Supreme Court in **2025 SCC Online SC 724**, titled as **Jogeswar Sahoo and Others** versus **District Judge, Cuttack and Others**, in the following terms:

“9. This Court has consistently taken the view that if the excess amount was not paid on account of any

misrepresentation or fraud on the part of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous, such excess payments of emoluments or allowances are not recoverable. **It is held that such relief against the recovery is not because of any right of the employee but in equity, exercising judicial discretion to provide relief to the employee from the hardship** that will be caused if the recovery is ordered.

DIRECTIONS:

8. In view of above discussion and for the reasons recorded hereinabove, the instant petition is *allowed, in the following terms:-*

- i) The Impugned recovery orders dated 17.06.2014, Annexure P-19, is quashed and set-aside;
- ii) Similar orders intending recovery against the petitioner as in Annexures P-13 and P-15 are also declared inoperative for all intents and purposes;

- iii) Since the recovery was stayed by this Court on 17.07.2014, the aforesaid order is made absolute;
- iv) Parties left to bear respective costs.

In aforesaid terms, the instant petition is allowed and disposed of along with all pending miscellaneous application(s), if any.

(Ranjan Sharma)
Judge

15th October, 2025
(himani)