



( 2025:HHC:45261 )

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**CWP No.7191 of 2023**

**Date of Decision:- 18.12.2025**

**Faqeer Chand**

**....Petitioner**

**Versus**

**High Court of Himachal Pradesh**

**....Respondent**

**Coram**

***The Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice***

***The Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge.***

***Whether approved for reporting?<sup>1</sup> Yes.***

For the Petitioner :

Ms. Sunita Sharma, Senior Advocate as Legal-Aid-Counsel with Ms. Sugandh Verma, Advocate.

For the Respondent :

Mr. Janesh Gupta, Advocate.

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

Challenge in the present Civil Writ Petition (CWP) is sought to the order dated 27.09.2023 (**Annexure P-7**), whereby the petitioner was discharged from service during the period of probation, while working as Peon of Choice of one of the Judges of this Court on account of having rendering unsatisfactory services.

**2.** The challenge primarily raised by the learned Senior Counsel appearing as a Legal-Aid-Counsel for the said

<sup>1</sup> Whether reporters of Local Papers may be allowed to see the judgment?

petitioner-employee is on the ground that criminal proceedings as such were initiated against the petitioner-employee and he has been suspended on that count therefore, it was necessary to lift the veil as such against the order of the discharge. Accordingly, she has referred to the order dated 28.08.2023 (**Annexure R-I**), wherein the petitioner-employee as such was placed under suspension on account of the lodging of FIR No.84/2023 dated 24.08.2023 against the petitioner under Section 381 of Indian Penal Code, at Police Station, East Shimla, District Shimla, Himachal Pradesh.

3. It is thus submitted that it is not a discharge simpliciter but is a punitive order as such and therefore reliance has been placed upon the judgment of the Apex Court in Civil Appeal No.3788 of 2017 titled **The Manager, S.M.U.P. School & Others Vs. M. Noushad & Others**, decided on 27.02.2025, wherein it has been held that the departmental inquiry should have been held and dispensing of services as such without holding the same violates the principles of natural justice.

4. We have perused the paper-book and it would transpire that the appointment was done on 01.06.2019 (**Annexure P-1**) on co-terminus basis as Peon of Choice while exercising the powers under Article 229 of the Constitution of

India read with Item No. 4(B) of Schedule-III Part-D, (Class-IV) of "The Himachal Pradesh High Court Officers and the Members of Staff (Recruitment, Promotion, Conditions of Service, Conduct & Appeal Rules, 2015" (hereinafter referred to as "Rules of 2015"). The terms of the appointment order would go on to show that the same was made on co-terminus basis and was also liable to be terminated even before the term of the Judge, at any time, without assigning any reason and without any notice, if his work and conduct is not found satisfactory. The relevant part of the said order reads as under:-

*"3. Appointment will be on co-terminus basis and will cease with the demitting of the office by the Hon'ble Judge.*

*4. Appointment will be liable to be terminated, even before the term of Her Ladyship, at any time, without assigning any reason and without any notice, if his work and conduct is not found satisfactory."*

5. Apparently, as per the Rules, as has been replied by this Court, the representation had been preferred before completing four years of service and after period of three years and seven months for considering his case for regularization and his services were regularized vide order dated 13.01.2023 **(Annexure P-2)**, while again exercising the powers under Article 229 of the Constitution of India read with Item No.4 of "Rules of 2015", by the then Chief Justice to appoint/absorb the petitioner-

employee who was working as a Peon (co-terminus) and Peon on regular basis, in view of the relaxation of the Rules as provided under Rule 22 of the Rules *ibid*. Rule 22 reads as under:-

Part-V		
	No. of Rule	Particulars of the Rule
Relaxation	22	Hon'ble the Chief Justice may, from time to time, to remove any hardship in an individual case or in case of any class or group of cases, relax any condition or any requirement as it relates to age, qualification or minimum experience, as is or may be prescribed in or under these Rules.

6. The appointment thus came to be on probation for a period of two years and the appointment was liable to be terminated at any time, without any notice, if his work and conduct was not found satisfactory. The said order reads as under:-

*“In exercise of the powers vested in him under Article 229 of the Constitution of India read with Item No.4 of “The Himachal Pradesh High Court Officers and the Members of Staff (Recruitment, Promotion, Conditions of Service, Conduct & Appeal) Rules, 2015”, Hon’ble the Chief Justice has been pleased to appoint/absorb Shri Faqueer Chand, Peon (co-terminus) as Peon on regular basis, in the pay level-I (i.e. Rs.18000-56900) of the pay matrix under HPCS (Revised Pay) Rules, 2022 plus usual allowances, in terms of clause (a) of item No.4, Part-”D”, (Class-IV) annexed with the Rules *ibid*, in relaxation of Rules as provided*

*under Rule 22 of the Rules ibid, with immediate effect.*

*The above appointee will remain on probation for a period of two years. His appointment will be liable to be terminated at any time, without any notice, if his work and conduct is not found satisfactory. His seniority will be determined as per the Rules."*

7. In such circumstances, the impugned order dated 27.09.2023 **(Annexure (P-7))** had been passed before the probation period could be confirmed. The said order reads as under:-

**"OFFICE ORDER"**

*"Whereas Shri Faqeer Chand was initially appointed as Peon of Choice of Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge, on co-terminus basis, on the establishment of this Registry vide Office Order No. HHC/Estt.1(27)/74-II-Class-IV-14983-92, dated 01.06.2019 and thereafter absorbed/appointed as Peon on regular basis vide Office Order No. HHC/Estt.3(1017)/2019-1882, dated 13.01.2023, has failed to render satisfactory services during the period of probation.*

*Now, therefore, Hon'ble the Chief Justice, High Court of Himachal Pradesh in exercise of the powers vested in him under Article 229 of the Constitution of India read with the provisions contained in "The Himachal Pradesh High Court Officers and the Members of the Staff (Recruitment, Conditions of Service, Conduct & Appeal) Rules, 2015 and all the powers enabling in this behalf, is pleased to discharge Shri Faqeer Chand aforesaid from service, with immediate effect, for rendering unsatisfactory services during the period of probation."*

8. It is apparent that the order as such does not refer to any criminal proceedings on the basis of which the termination had been done and is only on account of the fact that the

services of the petitioner were found unsatisfactory and it was done during the period of probation and there is nothing stigmatic about the order. Merely, because the petitioner-employee as such had been taken into custody and detained for a period of more than 48 hours from 25.08.2023, the Authority as such had placed him under suspension, keeping in view the mandate of Rule 10, sub-Rule 2 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 and he was directed to maintain the headquarter as such. It is thus apparent that the suspension was only on account of the Rule which provides the employer as such to take necessary steps as such and he was also granted the necessary subsistence allowance thereafter vide office order dated 21.09.2023 (**Annexure P-5**).

9. Apparently, he was also released on bail vide order dated 12.09.2023 (**Annexure P-3**) by the Additional Sessions Judge, Shimla, Himachal Pradesh on account of the fact that it was a fit case for grant of bail as the necessary valuable ornaments and the U.S. dollars to the extent of Rs.3,000/- which were stolen some of the same had been recovered at the instance of the accused.

10. Counsel for the respondent-High Court has thus submitted that the reading of the order of discharge simpliciter

shows that there was no reference as such to the criminal proceedings and the Authorities have only discharged the petitioner-employee on the basis of his appointment order which had put him in probation for a period of two years. He relied upon the judgment of the Apex Court in **Parshotam Lal Dhingra Vs. Union of India AIR 1958 SC 36** to submit that the probationer as such during the said period can be discharged simpliciter and no departmental proceedings as such have to be initiated.

**11.** It has also been pointed out that in the case of **The Manager, S.M.U.P. School & Others** (supra), it was held that there was an absence during the period of probation and there were complaints from students, parents and other teachers about the behaviour, including conduct towards the Headmistress of the employee in question. The Apex Court while upholding the order as such of the Single Judge and the Division Bench of the High Court had dismissed the appeal, wherein it had been noticed that an inquiry had been conducted by the Assistant Education Officer, while stating that Respondent No.1 had psychological problems and was mentally unstable, and unfit to teach children and had been removed from service. The order had been challenged in the revision and thereafter the matter had been

taken to the High Court, wherein finding was recorded that no departmental proceedings had been conducted on the point of the mental illness of respondent No.1, or on the alleged 'misconduct' which was formed the basis for his termination and was stigmatic. The facts herein are nowhere in similar as such as the services of the petitioner have been dispensed with during the period of probation within a period of eight months from when he was appointed on probation and there is no reference to the criminal proceedings in the said order and it cannot be termed as stigmatic.

**12.** Reliance has been placed upon the judgment of the Apex Court in ***V.P. Ahuja Vs. State of Punjab and Others*** (2000) 3 SCC 239 which would go on to show that the order passed which was the subject matter of challenge was stigmatic order whereby, the Chief Executive Officer had been held to have failed in the performance of his duties administratively and technically during his period of probation. In such circumstances, it was held by the Apex Court that the order itself ex-facie, was stigmatic and the services could not be terminated arbitrarily, in a punitive manner without complying with the principles of natural justice and therefore the said judgment would not be applicable.



13. Similarly, in the judgment of the Apex Court in **State Bank of India and Others Vs. Palak Modi and Another (2013) 3 SCC 607**, the issue in question was the termination during the period of probation on account of use of unfair means in test/exam by the candidates during the departmental examination. The High Court had interfered as such and set aside on the same back-ground which order was upheld by the Apex Court while falling back on the judgment of the Apex Court in **P.L. Dhingra's case** (supra), while noting that it is a important milestone and facet of service jurisprudence. The relevant portion reads as under:-

*"26.....Shortly put, the principle is that when a servant has right to a post or to a rank either under the terms of the contract of employment, express or implied, or under the rules governing the conditions of his service, the termination of the service of such a servant or his reduction to a lower post is by itself and prima facie a punishment, for it operates as a forfeiture of his right to hold that post or that rank and to get the emoluments and other benefits attached thereto. But if the servant has no right to the post, as where he is appointed to a post, permanent or temporary either on probation or on an officiating basis and whose temporary service has not ripened into a quasi-permanent service as defined in the Temporary Service Rules, the termination of his employment does not deprive him of any right and cannot, therefore, by itself be a punishment. One test for determining whether the termination of the service of a government servant is by way of punishment is to ascertain whether the servant, but for such termination, had the right to hold the post. If he had a right to the post as in the three cases herein-before mentioned, the termination of his*

service will by itself be a punishment and he will be entitled to the protection of Art. 311. In other words and broadly speaking, Art. 311(2), will apply to those cases where the government servant, had he been employed by a private employer, will be entitled to maintain an action for wrongful dismissal, removal or reduction in rank. To put it in another way, if the government has, by contract, express or implied, or, under the rules, the right to terminate the employment at any time, then such termination in the manner provided by the contract or the rules is, *prima facie* and *per se*, not a punishment and does not attract the provisions of Art.311.....”

14. Similarly, in the judgment of the Apex Court in **Gujarat Steel Tubes Ltd. And Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others (1980) 2 SCC 593**, it was held by Justice V.R. Krishna Iyer that if there is a suspicion of misconduct and the master does not wish to bother about it and determination can be *simpliciter* and he may not wish to continue with a dubious servant who he is not happy with. The relevant paragraph reads as under:-

“On the contrary, even if there is suspicion of misconduct, the master may say that he does not wish to bother about it and may not go into his guilt but may feel like not keeping a man he is not happy with. He may not like to investigate nor take the risk of continuing a dubious servant. Then it is not dismissal but termination *simpliciter*, if no injurious record of reasons or punitive pecuniary cut back on his full terminal benefits is found. For, in fact, misconduct is not then the moving factor in the discharge. We need not chase other hypothetical situations here.”

**15.** In such circumstances, we are of the considered opinion that the satisfaction of the employer having been breached, the employer was well justified in discharging the employee during the period of probation and no fault can be found in the said process. Resultantly, we do not find any merit in the peculiar facts and circumstances of the case and the petition stands dismissed.

**16.** Pending miscellaneous application(s) if any, shall also stand disposed of.

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

**(Jiya Lal Bhardwaj)**  
Judge

**18<sup>th</sup> December, 2025**

**(Munish Thakur)**