



**REPORTABLE/NON-REPORTABLE**  
**IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**  
**ON THE 5<sup>th</sup> DAY OF AUGUST, 2022**

**BEFORE**  
**HON'BLE MR. JUSTICE SATYEN VAIDYA.**

**CIVIL WRIT PETITION ORIGINAL APPLICATION No. 3165 of 2019**

**Between:-**

**SH. RAJ KUMAR**

**...PETITIONER**

**(BY SH. ANUP KUMAR RATTAN, ADVOCATE).**

**AND**

- 1. STATE OF HIMACHAL PRADESH,  
THROUGH PRINCIPAL SECRETARY  
(EDUCATION), TO THE GOVERNMENT OF  
HIMACHAL PRADESH, SHIMLA-171002.**
- 2. THE DIRECTOR, HIGHER EDUCATION,  
GOVT. OF HIMACHAL PRADESH,  
LAL PANI, SHIMLA - 171 001.**
- 3. THE DEPUTY DIRECTOR,  
HIGHER EDUCATION, DISTRICT SOLAN,  
HIMACHAL PRADESH.**
- 4. THE PRINCIPAL, GOVERNMENT  
SENIOR SECONDARY SCHOOL,  
LOHARGHAT, DISTT. SOLAN, H.P.**

**....RESPONDENTS**

**(BY SH. P.K. BHATTI, ADDITIONAL ADVOCATE GENERAL  
WITH SH. KUNAL THAKUR, DEPUTY ADVOCATE  
GENERAL).**

**RESERVED ON: 29.07.2022.**

**DECIDED ON: 05.08.2022.**

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*This petition coming on for pronouncement of judgment this day, the Court passed the following:*

**ORDER**

Brief facts necessary for adjudication of the petition are that the petitioner rendered about 17 years of services in Indian Army and was superannuated in the year 2008. Petitioner is M.A. in History and also has the degree in Bachelor of Education.

2. After retirement, petitioner got his name registered with the Employment Exchange, Ex-servicemen Cell at Hamirpur on 03.10.2008. The Sub-Regional Employment Officer, Directorate of Sainik Welfare, Ex-servicemen Employment Cell, Hamirpur recommended the name of petitioner for appointment as Lecturer (History) in the Department of Higher Education. Respondent No.2 vide order dated 24.07.2012 appointed the petitioner as Lecturer (History) on contract basis against the vacancies for

Ex-servicemen of 2008. Petitioner was posted at GSSS Loharghat, District Solan, H.P.

3. On 11.09.2014 an FIR No. 46/2014 was registered at Police Station, Ramshehar, District Solan, H.P. against the petitioner under Section 354-A IPC. The complainant was a student of Class +2 in GSSS Loharghat. Petitioner was taken in custody on 11.09.2014 and was released on bail on 24.09.2014. Petitioner was suspended from service on 20.09.2014. The Principal, GSSS Loharghat, terminated the services of petitioner vide communication dated 13.01.2015. Respondent No.2 also issued office order dated 17.01.2015, terminating the contract of the petitioner.

4. Aggrieved against his termination, petitioner approached this Court by way of instant petition praying for following substantive reliefs:

*“It is, therefore, humbly prayed that this writ petition may kindly be allowed keeping in view of the facts and the circumstances of the case and in view of the averments made hereinabove, the impugned order of termination of the petitioner, Annexures P-12 & 13*

*passed by respondents No. 2 and 4 may kindly be quashed and set-aside in the interest of justice.”*

5. Petitioner was prosecuted in pursuance to challan filed on completion of investigation in FIR No. 46/2014. During the pendency of this petition, petitioner has been acquitted of all charges in the above noted case vide judgment dated 22.02.2022 passed by the learned Additional District & Sessions Judge, Fast Track, Special Court (POCSO), Solan, District Solan, H.P. in Sessions Trial No. 125-S/7 of 2020/15.

6. The above said judgment of acquittal has been placed on record vide CMP-T No. 321/2022 filed on 23.04.2022. The matter was heard by this Court on 16.06.2022 for some time and was adjourned to 24.06.2022. On said date again, the matter was heard further. Learned Additional Advocate General was directed to have the instructions from the Administrative Department regarding their stand after the acquittal of the petitioner. On 22.07.2022 further time was sought by the learned Additional Advocate General to place on record the instructions. On 29.07.2022, again a similar prayer was made on the ground that the petitioner had not

submitted a copy of judgment of acquittal with respondent No.2. On the basis of such contention, it was observed that the respondents were not interested to consider the grievances of the petitioner at their end. Such observation was made on the basis that the stand of respondent No.2 regarding non-supply of copy of judgment did not appear to be justified as CMP-T No.321/2022 could not have been filed without supplying an advance copy to the respondents alongwith its annexures. The matter was thereafter finally heard. Record also perused.

7. Petitioner has challenged his termination primarily on the ground that the same was in violation of principles of natural justice. No inquiry or other proceedings were conducted. The petitioner was not afforded any opportunity of being heard and hence the termination of the petitioner was not valid in law. It has further been contended that mere registration of FIR against petitioner was not sufficient to terminate his services. Petitioner has also raised additional argument that now since the petitioner has been acquitted of

all charges, his termination in any case is required to be revoked by the respondents.

8. The reply filed on behalf of respondents reveal that the action of terminating the petitioner has been justified on the ground that petitioner was a contractual employee. Since a criminal case was registered against him and he remained in custody, his termination was justified in terms of Clause-7 of the contract agreement.

9. In order to adjudicate the issue regarding legality of termination of petitioner vide impugned orders dated 13.01.2015 (Annexure P-12) and 17.01.2015 (Annexure P-13), it is necessary to assess the nature of employment of petitioner with respondents. There is no denial on behalf of respondents to the factual position asserted by the petitioner.

Office order dated 24.07.2012 (Annexure P-6) clearly reveals that the appointment was offered to petitioner on the recommendation of the Director, Ex-servicemen Cell, Hamirpur against the vacancies of Lecturer (school cadre) for Ex-servicemen of 2008. Though, the appointment was made on contract basis, but from the terms of the aforesaid order,

it is clear that permanency was attached to the employment. As per Clause 6 of the terms and conditions of the office order dated 24.07.2012, the contract was liable to be renewed on year to year basis by the Principal of concerned school on behalf of respondent No.2 subject to good performance and conduct. As per Clause 10, an official appointed on contract basis having completed five years of service, was made liable for transfer on need basis. All other conditions also pointed out that the permanency was attached to the employment with reasonable certainty. Accordingly, the contract agreement was executed and renewed on yearly basis. Petitioner has placed on record the contract agreement executed for the period 01.08.2014 till 31.07.2015.

10. The Recruitment and Promotion Rules framed by the Department of Higher Education for the post of Lecturer (School Cadre), specify one of the mode of appointment as contract appointment. The State Government has framed the policies, from time to time, to regularize the services of its contractual employees. In this view of the matter, it can be inferred that the services of the petitioner were also

permanent in nature. He was also allowed the minimum of pay scale of pay band applicable to the Lecturer (School Cadre) in the Department of Higher Education, Government of Himachal Pradesh.

11. Thus, the termination of the petitioner summarily without adopting due procedure and was clearly in violation of the principle of natural justice. In ***K. Ragupathi vs. State of Uttar Pradesh and others (2022) 6 SCC 346***, the Hon'ble Supreme Court has held as under:

*“14. It could thus be seen that though the communication of the said University dated 12.8.2014 states that the appellant's contractual period has expired, in the facts of the present case, it would reveal that his services were discontinued on account of the allegation made against him by the Dean of the said University. Since even according to the said University, though the employment was contractual but the employee was entitled to get all the benefits of a regular employee, we find that in the facts of the present case, the appellant's services could not have been terminated without following the principles of natural justice. We, therefore, find that the present appeal deserves to be allowed on this short ground.”*

12. Notwithstanding the illegality found in the termination of the petitioner, this Court is not oblivious to the



fact that serious allegations involving moral turpitude were made against the petitioner by none-else than a student of the school where the petitioner was a teacher. The petitioner was charged for offence under Section 354-A IPC. Though, he has been acquitted, but it is trite law that mere acquittal does not entitle an employee to seek service benefits. Each and every case has to be adjudged on its own merits and the authority competent to adjudge is the employer. The relevant considerations are whether the petitioner has been acquitted merely on technical grounds or his acquittal is honourable. The purpose is to assess the desirability and suitability of the employee in the backdrop of allegations levelled against him and the acquittal recorded by the Court of competent jurisdiction.

13. The question as to what should be termed as honourable acquittal has been considered in a number of judgments rendered by the Hon'ble Supreme Court. The latest exposition on the subject has been made by the Hon'ble Supreme Court in ***Union of India and others vs. Methu***

**Meda (2022) 1 SCC 1.** The relevant extract of aforesaid exposition can be gainfully noticed as under:

**“10.** While addressing the question, as argued the meaning of expression ‘acquittal’ is required to be looked into. The expressions ‘honourable acquittal’, ‘acquitted of blame’ and ‘fully acquitted’ are unknown to the Code of Criminal Procedure or the Penal Code, 1860. It has been developed by judicial pronouncements. In *State of Assam & Another vs. Raghava Rajgopalachari*, (1972) 7 SLR 44, the effect of the word ‘honourably acquitted’ has been considered in the context of the Assam Fundament Rules (FR) 54 (a) for entitlement of full pay and allowance if the employee is not dismissed. The Court has referred to the judgment of *Robert Stuart Wauchope vs. Emperor*, (1934) 61 ILR Cal. 168, in the context of expression ‘honourably acquitted’, Lord Williams, J. observed as thus:

“The expression “honourably acquitted” is one which is unknown to courts of justice. Apparently it is a form of order used in courts martial and other extra judicial tribunals. We said in our judgment that we accepted the explanation given by the appellant, believed it to be true and considered that it ought to have been accepted by the Government authorities and by the Magistrate. Further we decided that the appellant had not misappropriated the

monies referred to in the charge. It is thus clear that the effect of our judgment was that the appellant was acquitted as fully and completely as it was possible for him to be acquitted. Presumably, this is equivalent to what government authorities term “honourably acquitted”.

**11.** In *R.P. Kapur vs. Union of India* AIR 1964 SC 787, it is observed and held by Wanchoo, J., as thus: (AIR p. 792, para 9)

“9.... Even in case of acquittal, proceedings may follow where the acquittal is other than honourable.”

**12.** In view of the above, if the acquittal is directed by the court on consideration of facts and material evidence on record with the finding of false implication or the finding that the guilt had not been proved, accepting the explanation of accused as just, it be treated as honourable acquittal. In other words, if prosecution could not prove the guilt for other reasons and not ‘honourably’ acquitted by the Court, it be treated other than ‘honourable’, and proceedings may follow.

**13.** The expression ‘honourable acquittal’ has been considered in *State vs. S. Samuthiram* (2013) 1 SCC 598 after considering the judgments in *Reserve Bank of India vs. Bhopal Singh Panchal* (1994)1 SCC 541 and *R.P.*

*Kapur (supra), Raghava Rajagopalachari (supra); this Court observed that the standard of proof required for holding a person guilty by a criminal court and enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing guilt of the accused is on the prosecution, until proved beyond reasonable doubt. In case, the prosecution failed to take steps to examine crucial witnesses or the witnesses turned hostile, such acquittal would fall within the purview of giving benefit of doubt and the accused cannot be treated as honourably acquitted by the criminal court. While, in a case of departmental proceedings, the guilt may be proved on the basis of preponderance of probabilities, it is thus observed that acquittal giving benefit of doubt would not automatically lead to reinstatement of candidate unless the rules provide so.*

**14.** *Recently, this Court in State (UT of Chandigarh) vs. Pradeep Kumar, (2018) 1 SCC 797, relying upon the judgment of S. Samuthiram (supra) said that acquittal in a criminal case is not conclusive of the suitability of the candidates on the post concerned. It is observed, acquittal or discharge of a person cannot always be inferred that he was falsely involved or he had no criminal antecedent. The said issue has further been considered in State vs. Mehar Singh (2013) 7 SCC 685, holding non-examination of key witnesses leading to acquittal is not honourable acquittal, in fact, it is by giving benefit of doubt. The Court said that nature of acquittal is necessary for core*

*consideration. If acquittal is not honourable, the candidates are not suitable for government service and are to be avoided. The relevant factors and the nature of offence, extent of his involvement, propensity of such person to indulge in similar activities in future, are the relevant aspects for consideration by the Screening Committee, which is competent to decide all these issues.”*

14. The petitioner definitely has a right of consideration vis-à-vis his plea for revocation of his termination, re-engagement and ensuing consequential benefits in view of the exposition made hereinabove. Irrespective of the fact that the termination of petitioner vide orders dated 13.01.2015 (Annexure P-12) and 17.01.2015 (Annexure P-13) have been held to be not in accordance with law, the respondents still have a right to consider the suitability of the petitioner for his continuance on the post of Lecturer (School Cadre) in view of the allegations levelled against him and the acquittal ordered by the learned Additional District and Sessions Judge, Fast Track, Special Court (POCSO), Solan, District Solan, H.P. on 22.02.2022.

15. As a result, respondent No.2 is directed to consider the case of the petitioner for reinstatement and continuance in service with consequential benefits, if any, in view of the observations made hereinabove and also dictum of judgment passed in ***Methu Meda*** (supra). Since the petitioner is out of job for the last about eight years, it is desirable and will be in the interest of justice in case the consideration order is passed by respondent No.2 within four weeks from the date of production of a copy of this judgment before respondent No.2.

16. The petition is accordingly disposed of in the aforesaid terms, so also the pending miscellaneous application(s) if any.

**August 05, 2022**  
(GR)

**(Satyen Vaidya)**  
**Judge**