

**In the Court of Vikas Kapoor, Civil Judge, Court No.7,  
 District Shimla, Himachal Pradesh.**

**Case No. 30-1 of 2018/15.**  
**CIS Regist. No. 90926/2015.**  
**Filing No. 90026/2015.**  
**CNR No. HPSH1200 06432015.**  
**Date of Institution: 18.08.2019.**  
**Date of Decision : 02.08.2021.**

**In the matter of :**

Smt Leela Chauhan, aged about 60 years, wife of Sh. Roshan Lal Chauhan, resident of Kedar Bhawan, Jawahar Park Solan, Tehsil and District Solan, H.P.

..... **Plaintiff.**

**Versus.**

The Himachal Pradesh State Co-operative Marketing and Consumers Federation Limited near Victory Tunnel Shimla, H.P through its Managing Director (HIMFED).

.... **Defendant.**

**Suit for Declaration u/s 34 of Specific  
 Relief Act, 1963.**

For the Plaintiff : Sh. Roshan Lal, SPA of Plaintiff.  
 For the Defendant : Already ex-parte.

**J U D G M E N T.**

Plaintiff was confirmed permanent employee, now retired as senior assistant HIMFED with spotless career. Plaintiff

was transferred from office of the area manager HIMFED Solan to Wine Bottling Plant Parwanoo. Further that plaintiff was relieved in absentia as she was on medical leave, which was sanctioned on submission of medical illness and fitness certificate. Plaintiff has further pleaded that she was hesitant to join at Parwanoo as a woman at a wine bottling plant run mostly by men and she made representation to government and her transfer was canceled. Plaintiff pleaded that defendant malafidely did not obey orders given by government. Plaintiff pleads that she approached the HP administrative tribunal and her transfer was stayed by tribunal. Further plaintiff claims that order of the tribunal was disobeyed by MD of the corporation and she was constrained to file contempt of court petition. Plaintiff further pleads that her petition was dismissed by Tribunal and she thereafter joined her duties at Parwanoo. Plaintiff pleads that on 5.4.2001 a notice was published in newspaper that plaintiff was going to be dismissed for disobedience of transfer order, which was stayed by tribunal and defendant himself was in violation of same. Plaintiff pleads that that's how she came to know of ex-parte disciplinary proceedings wherein she was not even served with Charge-sheet. Plaintiff has pleaded that she wrote to defendant to let her join the disciplinary proceedings, which was denied and she was not even supplied the copy of inquiry report and she was dismissed

despite her medical leave and interim order of Tribunal. Plaintiff has pleaded that she was dismissed by order of MD dated 09.05.2001 and reason given was not fit for service. Plaintiff has submitted that order of dismissal was given on the basis of inquiry report, order of tribunal relevant records and submissions made by plaintiff, mention of which is not in the dismissal order. Plaintiff has submitted that order of dismissal was without any reasons, being in contravention of civil services rules and was passed ex-parte without serving charge-sheet on plaintiff, which is contrary to law. Plaintiff has challenged the order of dismissal on the ground of it being an ex-parte order, non serving of inquiry report, non consideration of medical leave, dismissal despite the interim orders of Tribunal, dismissal by declaring plaintiff absconding from duty but despite of her presence, order partially revoked by board of directors, Punishment not proportionate and it being unconstitutional. Order of dismissal caused period between 9.5.2001 to 5.5.2000 to be treated as dies non and break in service, despite her being in service at parwanoo period from 4.4.2001 to 10.5.2001 and got paid and period of stay cannot be treated as break. Claims that absence from 4.10.2001 to 14.6.2002 was on account of interim order. Plaintiff filed an appeal before Board of directors and was reinstated by resolution dated 14.6.2002 still the period of 5.5.2001 to 14.6.2001 was ordered to

be treated as break in service. Plaintiff filed series of appeal and penalty was reduced in stages and period from 5.5.2000 to 3.4.2001 was ordered to be treated as period spent on leave on review. On further review, penalty held to disproportionate and board waived all penalties by order dated 4.10.2005 but order of dismissal not declared null and void. Further appeal filed before Additional registrar cooperative society but dismissal orders till not declared null and void. Penalties of Forcible consumption of leave, some leaves treated as half pay and some period was treated as extraordinary leave without pay, Annual increments not given. Also plaintiff paid less leave encashment and gratuity. Further appeals were filed with higher authorities which were held to be not maintainable.

2. Defendants were duly served and they contested the suit by filing a Written Statement, wherein Service and transfer of plaintiff admitted. Defendant corporation denied that plaintiff was relieved in absentia, when she was on leave, but she was relieved because she did not join her duties and her leave was sanctioned on 11.3.2003. Defendant has denied the bad working conditions at parwanoo and has pleaded that it is no ground to disobey transfer order and directions by government were to do letters and were not orders. Defendants has denied any orders were given by government and they were merely to do letters, which can be said

to be political interference in working of corporation and amounted to misconduct on part of plaintiff. Defendant has admitted filing of Application and interim order passed by tribunal but has claimed that same was procured by plaintiff by misrepresentation of facts and same were got vacated by defendants. Defendant has denied that they had disobeyed the orders of Tribunal. Defendants admitted that plaintiffs petition was dismissed and she joined at Parwanoo. Defendant allege that notice was published before joining of plaintiff at Parwanoo and she did not join at parwanoo as per transfer order and she only joined after her application in tribunal was dismissed. Defendant has claimed that plaintiff was aware of disciplinary proceedings which she intentionally did not join. Defendant submitted that representation by plaintiff was made only when the disciplinary proceedings were being wound up, further that disciplinary proceedings were not challenged within limitation and plaintiff was not on medical leave. Defendants has denied that disciplinary proceedings were contrary to law, and were conducted behind the back of plaintiff and she was dismissed after the conclusion of legal and valid disciplinary proceedings initiated on the ground of her gross-disobedience of transfer order. Defendant has submitted that the stay granted by Hon'ble tribunal was vacated after they had made representation in the tribunal and original application of plaintiff

was also dismissed. Defendant has submitted that dismissal order is a speaking order and in accordance with law. Defendant has also submitted that penalty imposed on plaintiff is also in accordance with law. Defendant has also submitted that Charge-sheet and inquiry report was properly served on plaintiff. Defendant has alleged that leave of the applicant was granted only for the purpose of regularization of the period of absence and the same was sanctioned only on 11.3.2003, which was submitted on 1<sup>st</sup> February 2003 and same was not given during the time of absence.

**ISSUES -**

- I. Whether the plaintiff is entitled to declaration as prayed for ?  
 ..... OPP
- II. Whether plaintiff is entitled to mandatory injunction as  
 prayed for ?..... OPP
- III. Whether the suit in hand is neither competent nor  
 maintainable as alleged?..... OPD
- IV. Whether the Plaintiff is estopped from filing or maintaining  
 the suit on account of his own act, conduct, deeds, lapses,  
 omission, commission and acquiescences as alleged?.....  
 OPD
- V. Whether the suit is barred by Limitation as alleged?....  
 OPD

VI. Whether the plaintiff has concealed material facts from the court, if so, its consequences?

OPD

VII. Whether suit of the plaintiff suffers from vice of suppression varai and Suggestion false, if so, its consequences?.....

OPD

VII. Whether the plaintiff has no cause of action against the defendant as alleged?...

OPD

IX. Relief.

3. The parties have led oral and documentary evidence in support of their respective averments.

4. I have heard Id counsel for the parties and perused the relevant record of the case.

5. For the reasons to be recorded hereinafter my finding on the aforesaid point are as follows :

**ISSUE No.1** : .Yes

**ISSUE No. 2** : .Yes

**ISSUE No. 3** : .No

**ISSUE No. 4** : .No

**ISSUE No. 5** : .No

**ISSUE No. 6** : .No

**ISSUE No. 7** : .No

**ISSUE No. 8** : .No

**ISSUE No. 9** : No

**RELIEF** : The suit of the plaintiff is **decreed** as per the operative part of the judgment.

**DEFENDANT EX-PARTE.**  
**EVIDENCE LED.**

6. Plaintiff has only examined herself as PW 1 and tendered her evidence by way of affidavit which is Ext PW 1/A. She has proved office order dated 4.5.2000 as Ext PW 1/B, order dated as PW1/B-1, Reply of representation as Ext PW1/C (3 pages), Reply of representation dated 24.4.17 as Ext PW 1/D (4 pages), letter dated 19.04.2001 as Ext PW 1/E, Reply of show cause notice dated 20.4.2001 as Ext PW 1/F, Show cause notice dated 21.4.17 as Ext PW 1/G, Office order dated 9.05.2001 as Ext PW 1/H, Letter dated 21.9.15 as Ext PW 1/J (2 pages), Office order dated 11.3.2003 as Ext PW 1/K, Office order dated 14.6.2002 as Ext PW 1/L, Office order dated 4.10.2005 as Ext PW 1/M, Office order dated 22.1.2003 as Ext PW 1/N, Office order dated 22.10.2005 as Ext PW 1/O, Office order dated 07.12.2006

as Ext PW 1/P (3 Pages), Office order dated 03.5.2005 as Ext PW 1/T ( 2 Pages), Office order dated 5.11.2002 as Ext PW 1/Q, (2 pages), Office order dated 05.04.2007 as Ext PW 1/R, Letter dated 04.09.12 as Ext PW 1/S, Letter dated 19.03.2005 as Ext PW 1/U, Notice u/s 76 as Ext PW 1/V, which she has deposed to be read in her evidence and has prayed that her case be decreed (Original document seen and returned).

### **ISSUES NO. 1 & 2**

7. The present is a service matter, by the present civil suit the plaintiff has challenged her dismissal on the grounds of Ex-parte disciplinary proceedings, unreasoned dismissal order and violation of principles of natural justice. First, the issue of jurisdiction of civil court to decide the service matters will be taken up. The jurisdiction of civil court to adjudicate service matters was discussed by Hon'ble supreme court in the case of **Rajasthan SRTC vs. Bal Mukund Bairwa (2009) 4 SCC 299**, wherein Hon'ble apex court held -

“ 21 A dispute arising in between an employer and employee may or may not be an industrial dispute. The dispute may be in relation to or arising out of a fundamental right of the employee, or his right under a parliamentary Act and the regulations framed thereunder, and/or a right arising under the provision of the industrial Dispute Act or the sister laws and may relate to same or similar or different rights, or even may be based on common law

right or contractual right. The question in regard to the jurisdiction of the civil court must, therefore, be addressed having regard to the fact as to which rights or obligations are sought to be enforced for the purpose of invoking or excluding the jurisdiction of a civil court.

23 If an employee intends to enforce his constitutional rights or a right under a statutory regulations, the civil court will have the necessary Jurisdiction to try a suit. If, however, he claims his right and corresponding obligation only in terms of the provisions of the industrial Dispute Act or the sires laws so called, the Civil court will have none. In view of the matter, in our considered opinion, it would not be correct to contend that only because the employee concerned is also a workman within the meaning of the provision of the 1947 Act or the conditions of his service are otherwise governed by the standing order certified under the 1946 Act ipso facto the civil court will have no jurisdiction. This aspect of the matter has recently been considered by this court in Rajasthan state road transport corporation & Ors vs. Mohar Singh ((2008) 5 SCC 542). the question as to whether the civil court's jurisdiction is barred or not must be determined having regard to the fact of each case. If the infringement of standing order or other provisions of the Industrial Dispute Act are alleged, the civil court's Jurisdiction may be held to be barred but if the suit is based on the violation of principles of common law or constitutional provisions or on other grounds, the civil court's jurisdiction may not be held to be barred. If no rights is claimed under a special statute in terms whereof the jurisdiction of the civil court is barred, the civil court will have jurisdiction

24. When there is a doubt as to whether Civil Court has jurisdiction to try a suit or a not, the courts shall raise a presumption that it has such Jurisdiction.

8. As in this case the dismissal of the plaintiff is challenged on the ground of violation of principle of natural justice therefore this court has ample jurisdiction to entertain the present dispute. Also the defendant is a corporation formed under HP Co-operative societies act 1968, and plaintiff was dismissed under rules framed under the act, and as per catena of judgments given by Hon'ble High Court of HP, this court has jurisdiction to decide the present matter.

**UNREASONED DISMISSAL ORDER.**

9. The order of the dismissal Ext PW 1/H of the plaintiff, the concerned authority had just given a background of the show cause notice and representation preferred by the plaintiff and has simply observed that he has considered the representation, enquiry file and relevant records and the order of the tribunal and has found no merit in submissions made by the plaintiff and has simply come to the conclusion that plaintiff is not a fit employee to be retained in their services and has consequently dismissed her from service and has also ordered that period of unauthorized absence from duty i.e., w.e.f. 5-5-2000 to 3-4-2001 will not count for any service benefit and shall constitute break in service. It is evident from the reading of this order of dismissal that neither the authority has considered the submissions made by the plaintiff

and nor has given any reasons for reaching the conclusion that how, and on the basis of what material the authority has reached the conclusion that plaintiff is not a fit employee to be retained in the service. Plaintiff had preferred representation twice to the Managing director which are Ext PW 1/C and D. From a Reading of these representation it is evident that plaintiff had made representations that no charge-sheet or inquiry report was ever supplied to her. She had represented that she was not aware of the proceedings and that on account of the environment at the Parwanoo plant she was reluctant to join the same. She has also represented that her approaching the tribunal challenging the transfer order should not be used against her. Plaintiff had also preferred representation Ext PW 1/D in addition she made representation that the order of transfer was not made available to her and she was relieved in absentia. She has also represented that she had applied for causal leave and request for extension was also made and further that she was advised rest as she had to undergo treatment. She also made representation that the penalty proposed on her was highly disproportionate. None of these grounds were discussed by the Authority while passing the dismissal order and why they were not accepted the authority has simply come to the conclusion he has found no merit in her submission. The authority has also not discussed the material on

which it has relied to come to the conclusion that the employee is not fit for service. The authority has simply mentioned the inquiry file, relevant records and the order of tribunal in coming to the conclusion that plaintiff is not a fit employee to be retained in the service. Therefore, this order of dismissal Ext PW 1/H is not reasoned and is violative of principle of natural Justice.

### **EX-PARTE DISCIPLINARY PROCEEDINGS.**

10. Plaintiff has pleaded that she only came to know of the disciplinary proceedings by way of showcase notice published in the newspaper against the proposed penalty of dismissal and no effort was made to serve charge-sheet on the plaintiff. Defendant's Written Statement has alleged that plaintiff was fully aware of the proceedings and she purposely did not join the same. But the defendant corporation chose to proceed ex-parte on this case despite being fully aware of the pendency of this case. Therefore, no witness was examined by the defendant Corporation on oath and he could not be cross-examined by the counsel for plaintiff in this circumstance a presumption arises against the defendant as stated by Hon'ble apex court [In Vidhyadhar v. Manikrao](#) - 1999 (3) SCC 573, reiterating the following well recognized legal position:

"Where a party to the suit does not appear in the witness-box and state his own case on oath and does not offer himself to

be cross-examined by the other side, a presumption would arise that the case set up by him is not correct."

11. Therefore, a presumption arises against the defendant that his case is not correct. It is therefore safe to conclude that charge-sheet was not served on the plaintiff and she was proceeded ex-parte and no effort was made to serve her. Therefore, the plaintiff was given no opportunity of being heard and which has seriously prejudiced the plaintiff. As dismissal of the plaintiff was based on ex-parte disciplinary proceedings and order of the dismissal was not reasoned therefore plaintiff is entitled to declaration that dismissal order dated 9.5.2001 is illegal, null and void and as the order of dismissal is null and void and plaintiff is entitled to all consequential benefits and a decree for mandatory injunction directing the defendant to release all consequential benefits. As a result of same issue no. 1 & 2 is decided in positive, in favor of plaintiff and against defendant.

**ISSUES NO. 3 & 4.**

12. The burden to proof these issues was on defendant and as he was proceeded ex-parte no evidence was led on these issues therefore these issues are decided in negative and favor of defendant and against the defendant.

**ISSUE NO. 5.**

13. As the order of the Board of Director deciding the appeal against the order of MD, refusing to set aside the dismissal order passed by the MD was passed in the year 2015 therefore the suit is filed well within the period of limitation. Therefore, this issue is decided in negative in favor of Plaintiff and against the defendant.

**ISSUES NO. 6 & 7.**

14. The burden to proof these issues was on defendant and as he was proceeded ex-parte no evidence was led on these issues therefore these issues are decided in negative in favor of Plaintiff and against the defendant.

**ISSUE NO. 8.**

15. As plaintiff's services were terminated in violation of principles of natural justice therefore it is evident that plaintiff had cause of action to file the present suit. Therefore, this issue is decided in negative in favor of Plaintiff and against the defendant.

**RELIEF.**

16. In view of the discussion made above the suit of the plaintiff is decreed and the order of dismissal dated 9.5.2001 is hereby declared illegal, null and void. The plaintiff is also held

entitled to all the consequential benefits like back wages, proper fixation in new pay scale with effect from 1.6.2006, regular increments on due dates, leave encashment of 300 days earned leave and enhanced retirement gratuity and other benefits as and when due in favor of the plaintiff and also counting of three year adhoc service leading to regularization period in the length of service of the plaintiff for the purpose of calculation of pension and back wages.

17. Also a mandatory injunction is granted directing the defendant to grant and release all consequential benefits to the plaintiff

18. Decree sheet be prepared accordingly. File after its due completion be consigned to the record room.

Announced and signed in the Open Court on this **2<sup>nd</sup> day of August, 2021.**

(A.V)

**sd**  
(Vikas Kapoor)  
Civil Judge, Court No.7,  
Shimla, District Shimla. H.P.

### Annexure-A.

Sr. No.	Name of witness	Whether the witness of plaintiff or defendant.
PW-1	Smt. Leela Chauhan	Plaintiff herself.

### Annexure-B.

Sr. No.	Date of exhibit	Description.
PW1/A	16.10.2017	Affidavit.
PW1/B	-do-	Office order dated 04.05.2000
PW1/B-1	-do-	Office order.
PW1/C	-do-	Reply of representation.
PW1/D	-do-	-do-
PW1/E	-do-	Letter dated 19.04.2001
PW1/F	-do-	Reply of show cause notice.
PW1/G	-do-	Show cause notice.
PW1/H	-do-	Office order.
PW1/J	-do-	Letter.
PW1/K	-do-	Office order.
PW1/L	-do-	-do-
PW1/M	-do-	-do-
PW1/N	16.10.2017	Office order.
PW1/O	-do-	-do-
PW1/P	-do-	-do-

Leela Chauhan Vs. H.P. State co-operative.  
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Relief Act, 1963.

PW1/T	-do-	-do-
PW1/Q	-do-	-do-
PW1/R	-do-	-do-
PW1/S	-do-	Letter.
PW1/U	-do-	-do-
PW1/V	-do-	Notice u/s 76.

sd  
(Vikas Kapoor)  
Civil Judge, Court No.7,  
Shimla, District Shimla. H.P.