



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MMO No. 184 of 2026

Reserved on: 12.05.2026

Date of Decision 08.07.2026

Ashish Sharma ...Petitioner

Versus

Anupam ...Respondent

Coram

Hon’ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting? No.

For the petitioner : In person.

For the respondent : *Nemo*

Rakesh Kainthla, Judge

The petitioner has filed the present petition for setting aside the order dated 04.11.2025, passed by learned Additional Sessions Judge (CBI Court), Shimla, District Shimla, H.P. (learned revisional Court) vide which the order dated 16.12.2024, passed by learned Judicial Magistrate, First Class, Court No. V, Shimla, District Shimla, H.P. (learned Trial Court) was upheld. *(The parties shall hereinafter be referred to*

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

in the same manner as they were arrayed before the learned trial Court for convenience)

2. Briefly stated, the facts giving rise to the present petition are that the complainant filed a complaint before the learned Trial Court against the accused for committing offences punishable under Sections 406, 420, 463, 468, 471, 500 and 501, etc., of the Indian Penal Code (IPC). It has been asserted that the accused is employed at Dayanand Public School, The Mall, Shimla, H.P. She was involved in unfair recruitment to the post of PGT (IP) in the year 2018. The complainant brought this to the notice of higher authorities. However, they did not take any action against the accused; rather, they suspended the complainant vide letter dated 07.12.2019. A list of witnesses was provided to the complainant, which included Ved Prakash as witness No.13, but no document signed by him was placed in the memorandum dated 02.01.2020. An inquiry was conducted, but Ved Prakash was not cross-examined; therefore, the inquiry is not proper as understood in law. The complainant was removed from his services on 7.12.2021. The accused issued an experience certificate stating, 'the suspension and

removal from service after holding a proper inquiry'. This is a false recital because no proper inquiry was conducted. A fake document was created to harass and defame the complainant; hence, the complaint was filed to take action as per the law.

3. The learned Trial Court held that the complainant was aggrieved by the order of suspension passed against him. The complainant was suspended after a domestic inquiry. The record did not show that any cognizable offence was committed. The complainant had a remedy to approach the appropriate forum instead of filing the complaint. The complainant intended to create undue pressure on the members of the Inquiry Committee; hence, the complaint was dismissed.

4. Being aggrieved by the order passed by the learned Trial Court, the complainant filed a revision, which was decided by the learned Additional Sessions Judge (CBI Court). Shimla, District Shimla (learned revisional Court). The learned revisional Court held that the complainant was removed from service after a disciplinary inquiry. These allegations are to be adjudicated by the competent authority examining the validity of the enquiry and not by the Criminal

Court. The Criminal Court cannot sit over the findings of the departmental proceedings. Learned Trial Court had afforded a proper opportunity and dismissed the complaint after it was found that no cognizable offence was made out. Therefore, the revision preferred by the complainant was dismissed.

5. Being aggrieved by the orders passed by the learned Courts below, the complainant has filed the present petition asserting that the learned Courts below erred in appreciating the material placed on record. The accused had created a fake experience certificate, containing false information. The document was created to harass and defame the complainant's reputation. Anyone who makes a false and disrespectful statement about another person can be held liable for defamation; therefore, it was prayed that the orders passed by the learned Courts below be set aside and the action be taken against the accused.

6. I have heard the petitioner, who appeared in person.

7. The petitioner submitted that Ved Prakash was mentioned as a witness in the memorandum, but he was not cross-examined. An inquiry conducted without examining all

the witnesses is not a proper inquiry. A fake experience certificate was issued, mentioning that a proper inquiry was conducted. Learned Courts below failed to properly appreciate the material placed before them; hence, he prayed that the present petition be allowed and the orders passed by learned Courts below be set aside.

8. I have given a considerable thought to the submissions made at the bar and have gone through the records carefully.

9. The complainant filed the complaint on the assumption that Ved Prakash was not examined, and the inquiry was not proper. Learned Courts below had rightly held that the remedy of the complainant was to approach a proper forum to set aside the inquiry report submitted by an Inquiry Officer, and a criminal Court cannot sit in appeal over the findings recorded by an Inquiry Officer.

10. It was laid down by the Hon'ble Supreme Court in *State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth*, (1996) 1 SCC 435, that a decision rendered between the parties cannot be said to be non-existent, and such an

order has to be avoided by challenging it in a higher forum. It was observed: -

7....In our opinion, even a void order or decision rendered between parties cannot be said to be non-existent in all cases and in all situations. Ordinarily, such an order will, in fact, be effective inter partes until it is successfully avoided or challenged in a higher forum. Mere use of the word 'void' is not determinative of its legal impact. The word 'void' has a relative rather than an absolute meaning. It only conveys the idea that the order is invalid or illegal. It can be avoided. There are degrees of invalidity depending upon the gravity of the infirmity, as to whether it is, fundamental or otherwise and in this case, the only complaint about the initiation of the suo motu proceedings by the Board was, that it was not initiated on intimation by the State Land Board about the non-filing of the statement as required by Section 85(7) of the Kerala Land Reforms Act. In our opinion, this is not a case where the infirmity is fundamental. It is unnecessary to consider the matter further.

8. In *Halsbury's Laws of England*, 4th Edn., (Re-issue) Vol. 1(1) in para 26, p. 31, it is stated, thus:

"If an act or decision, or an order or other instrument is invalid, it should, in principle, be null and void for all purposes; and it has been said that there are no degrees of nullity. Even though such an act is wrong and lacking in jurisdiction, however, it subsists and remains fully effective unless and until it is set aside by a court of competent jurisdiction. Until its validity is challenged, its legality is preserved."

In the *Judicial Review of Administrative Action*, *De Smith, Woolf and Jowell*, 1995 Edn., at pp. 259-60, the law is stated thus:

“The erosion of the distinction between jurisdictional errors and non-jurisdictional errors has, as we have seen, correspondingly eroded the distinction between void and voidable decisions. The courts have become increasingly impatient with the distinction, to the extent that the situation today can be summarised as follows:

- (1) All official decisions are presumed to be valid until set aside or otherwise held to be invalid by a court of competent jurisdiction.”

Similarly, *Wade and Forsyth in Administrative Law*, Seventh Edn., 1994, have stated the law thus at pp. 341-342:

“... every unlawful administrative act, however invalid, is merely voidable. But this is no more than the truism that in most situations the only way to resist unlawful action is by recourse to the law. In a well-known passage, Lord Radcliffe said:

‘An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.’

This must be equally true even where the brand of invalidity is plainly visible: for there also the order can effectively be resisted in law only by obtaining the decision of the court. The necessity of recourse to the court has been pointed out repeatedly in the House of Lords and Privy Council without distinction between patent and latent defects.”

The above statement of the law supports our view that the order of the Board dated 28-6-1977, declining to implead Respondents 3 and 4 (which stood confirmed in revision), concludes the matter against Respondents 3 and 4.”

11. This position was reiterated in *Nagar Parishad, Ratnagiri v. Gangaram Narayan Ambekar*, (2020) 7 SCC 275, wherein it was observed: -

“16. *Arguendo*, the plaint as filed by Respondents 1 to 19 also suffers from another fundamental deficiency. Indeed, it is a cleverly drafted plaint, so as to give an impression that the competent authority had not taken any decision in exercise of statutory powers until the filing of the suit. However, in the written statement, a clear assertion has been made by the defendants (appellant and Respondent 20) that the decision to allot suit land to the appellant and for setting up the Project was taken after due deliberation and consultation with the Expert Committee, including the exercise of statutory powers of the authority concerned in that regard. None of these decisions of the competent authority has been assailed by the plaintiffs, nor has any declaratory relief been sought in that regard. In such a case, it would not be enough to ask for a permanent injunction simpliciter, and the suit so filed ought to have been rejected at the threshold on that count alone. We may usefully advert to the exposition of this Court in *Kandla Port v. Hargovind Jasraj* [*Kandla Port v. Hargovind Jasraj*, (2013) 3 SCC 182: (2013) 2 SCC (Civ) 1]. In paras 26 to 31, the Court observed thus: (SCC pp. 193-95)

“26. Mr Ahmadi next argued that the termination of the lease being illegal and non est in law, the respondent-plaintiffs could ignore the same, and so long as they or any one of them remained in possession, a decree for injunction restraining the Port Trust from interfering with their possession could be passed by the court competent to do so. We are not impressed by that submission.

27. The termination of the lease deed was by an order which the plaintiffs ought to get rid of by having the same set aside, or declared invalid for whatever reasons; it may be permissible to do so. No order bears a label of its being valid or invalid on its forehead. Anyone affected by any such order ought to seek redress against the same within the period permissible for doing so. We may, in this regard, refer to the following oft-quoted passage in *Smith v. East Elloe Rural District Council* [*Smith v. East Elloe Rural District Council*, 1956 AC 736: (1956) 2 WLR 888 (HL)]. The following are the observations regarding the necessity of recourse to the Court for establishing the invalidity of an order established:

‘... An order, even if not made in good faith, is still an act capable of legal consequences. *It bears no brand of invalidity on its forehead.* Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.’ [*Smith case [Smith v. East Elloe Rural District Council*, 1956 AC 736: (1956) 2 WLR 888 (HL)], AC pp. 769-70]

This must be equally true even where the brand of invalidity is plainly visible: for there also the order can effectively be resisted in law only by obtaining the decision of the court. The necessity of recourse to the court has been pointed out repeatedly in the House of Lords and Privy Council without distinction between patent and latent defects. [Ed.: *Wade and Forsyth in Administrative Law*, 7th Edn., 1994.]

28. The above case was approved by this Court in *Krishnadevi Malchand Kamathia v. Bombay Environmental Action Group* [*Krishnadevi Malchand Kamathia v. Bombay Environmental Action Group*,

(2011) 3 SCC 363], wherein this Court observed: (SCC pp. 369-70, para 19)

‘19. Thus, from the above, it emerges that even if the order/notification is void/voidable, the party aggrieved by the same cannot decide that the said order/notification is not binding upon it. It has to approach the court for seeking such a declaration. The order may be hypothetically a nullity, and even if its invalidity is challenged before the court in a given circumstance, the court may refuse to quash the same on various grounds, including the standing of the petitioner, on the ground of delay or on the doctrine of waiver or any other legal reason. The order may be void for one purpose or for one person, it may not be so for another purpose or another person.’

29. To the same effect is the decision of this Court in *Pune Municipal Corpn. v. State of Maharashtra* [*Pune Municipal Corpn. v. State of Maharashtra*, (2007) 5 SCC 211] wherein this Court discussed the need for determination of invalidity of an order for public purposes : (SCC pp. 225-26, paras 36 & 38-39)

‘36. It is well settled that no order can be ignored altogether unless a finding is recorded that it was illegal, void or not in consonance with law. As Prof. Wade states:

“The principle must be equally true even where the 'brand of invalidity' is plainly visible: for there also the order can effectively be resisted in law only by obtaining the decision of the court.” [*H.W.R. Wade, Administrative Law* (6th Edn., Clarendon Press, Oxford 1988) 352].

He further states:

“The truth of the matter is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case, the “void” order remains effective and is, in reality, valid. It follows that an order may be void for one purpose and valid for another; and that it may be void against one person but valid against another.” [H.W.R. Wade, *Administrative Law* (6th Edn., Clarendon Press, Oxford 1988) 352-53]

38. A similar question came up for consideration before this Court in *State of Punjab v. Gurdev Singh* [*State of Punjab v. Gurdev Singh*, (1991) 4 SCC 1: 1991 SCC (L&S) 1082]. ...

39. Setting aside the decree passed by all the courts and referring to several cases, this Court held that if the party aggrieved by the invalidity of the order intends to approach the court for a declaration that the order against him was inoperative, he must come before the court within the period prescribed by limitation. “If the statutory time of limitation expires, the court cannot give the declaration sought for.” ’

30. Reference may also be made to the decisions of this Court in *R. Thiruvirkolam v. Labour Court* [*R. Thiruvirkolam v. Labour Court*, (1997) 1 SCC 9: 1997 SCC (L&S) 65], *State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth* [*State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth*, (1996) 1 SCC 435] and *Tayabbhai M. Bagasarwalla v. Hind*

Rubber Industries (P) Ltd. [Tayabhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd., (1997) 3 SCC 443], where this Court has held that an order will remain effective and lead to legal consequences unless the same is declared to be invalid by a competent court.”

12. Therefore, the order of the removal passed by the competent authority is valid unless set aside. In the present case, the order has not been set aside by the competent authority and very basis of the complaint that the inquiry was fake because Ved Prakash was not cross-examined is legally incorrect; hence, the complaint filed by the complainant that a certificate containing a wrong mention of the proper inquiry is a forged document created to cheat and harm the complainant's reputation is also without any basis.

13. In view of the above, the orders passed by the learned Courts below do not suffer from any infirmity, and there is no reason to exercise the extraordinary jurisdiction vested with this Court in the present case.

14. This is not the first instance when the petitioner has approached the Courts by filing these kinds of petitions. Therefore, it is necessary to take effective steps to prevent the

petitioner from wasting the precious time of the Courts; hence, the present petition is dismissed with the cost of ₹10,000/-, which shall be deposited in the Chief Justice Disaster Relief Fund within a period of four weeks, failing which steps will be taken to recover it as per the law.

15. Before parting, it is necessary to notice that the complainant/petitioner arrayed learned Judicial Magistrate First Class, Court No. V, Shimla, District Shimla, as a party before the learned revisional Court, naming her as an accused. Not only that, but he has also mentioned in para-4(d) of the revision petition that accused No. 1 (learned Trial Court) prepared a false report to protect accused No. 2 in an illegal way, which is a clear-cut sign of corruption. An allegation of corruption against a judicial officer without foundation made recklessly, prima facie, is an attempt to scandalise the judiciary, and amounts to Criminal Contempt of Court¹. Hence, the matter be placed before the appropriate bench having a roster to take an appropriate action, if deemed proper, for making reckless and scandalous allegations against a member of the judiciary.

¹ Court on its Own Motion v. Virendra Singh, 2024 SCC OnLine Del 145

16. The present petition stands disposed of in the aforesaid terms, so also the pending applications, if any.

(Rakesh Kainthla)
Judge

08th July, 2026.
(ravinder)

High Court of HP