

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 6241 of 2020

Reserved on: 23.03.2021

Date of decision: 26.03.2021.

Archana RanaPetitioner.

Versus

State of H.P. & Ors.Respondents.

Coram:

Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Hon'ble Mr. Chander Bhusan Barowalia, Judge.

Whether approved for reporting?¹

Yes.

For the Petitioner : Petitioner alongwith her husband Mr. Yashbir Singh Guleria, present in person alongwith Mr. Avneesh Bhardwaj, Advocate.

For the Respondents: Mr. Ashok Sharma, A. G. with Mr. Vinod Thakur, Mr. Vikas Rathore, Addl. A.Gs., Mr. J. S. Guleria and Mr. Bhupinder Thakur, Dy. A.Gs., for respondents No. 1 to 4.

Mr. Ajeet Saklani, Advocate, for respondent No. 5.

Mr. Shubh Karan Singh, Director Elementary Education, Shimla, present in person.

Tarlok Singh Chauhan, Judge

Future hopes and aspiration of the country depends on education, therefore, it is imperative that proper and disciplined functioning of the educational institutions, more particularly, the teachers should be the hallmark. If the laws and

¹***Whether the reporters of the local papers may be allowed to see the Judgment?Yes***

principles are eroded by the teachers themselves, then it not only pollutes the functioning of the institution, deteriorates its standard but also exhibits to its own students the wrong channel adopted. If that be so, how could such educational institutions produce good citizens?

2. It is the educational institutions which are the future hope of this country. They lay the seed for the foundation of morality, ethics and discipline. If there is any erosion or descending by those who control the activities all expectations and hopes are destroyed.

3. To provide a conducive ambience and environment to students, teachers with a particular frame of mind are required and whose priority is to ensure mental and physical well being of the children. They are expected to imbibe the right values from the teachers who naturally become their role models. Sincerity and dedication to their chosen profession are the hallmark of such teachers.

4. To be a teacher is a sacred mission. Dedication to the cause of education is the hallmark of teacher. Teachers, in our perspective, are men of character, honesty, simplicity and dedication. Their mission is to dedicate their lives to brighten the lives of the younger and impressionable generation. Such persons entrusted with the running of the school, universities

should not forget their real roles. They should work for the upliftment of the education.

5. Viewed from such a back-drop, both the petitioner and her husband happen to be the teachers in government school, have not done justice to their roles as ideal teachers, as would be evident from further discussion.

6. Aggrieved by the order of transfer, the petitioner has filed the instant petition for the grant of following reliefs:-

i) That appropriate writ in the nature of mandamus or any other appropriate orders or directions may very kindly be issued to respondents directing them to honour and implement order dated 11.12.2020 i.e. annexure P-2 by which petitioner has been ordered to be transferred to GHS and Jol u/c GSSS Bhali, district Kangra and petitioner has joined at this station pursuant to his relieving order i.e. annexure P-3 and joined at GHS and Jol u/c GSSS Bhali, district Kangra, which is evident from annexure P-4.

ii) That appropriate writ in the nature of certiorari or any other appropriate writ orders or directions may very kindly be issued for quashing and setting aside annexure P-5 and P-6. Respondents may very kindly be directed to quash and set aside/cancel transfer of private respondents No. 5 keeping in view of peculiar facts and circumstances narrated here in before.

lii) That respondents may very kindly be directed to adhere to and honour and obey Comprehensive Guiding Principles-2013 for regulating the transfer of its employees.

7. That petitioner was promoted from JBT to TGT vide order dated 07.12.2020 and ordered to be posted at GHS Draman (Kangra) Vide order dated 11.12.2020, the station of posting was thereafter changed from GHS Draman (Kangra) to GHS Jol under control GSSS Bhali. It is further averred that the petitioner consequent upon her transfer was relieved on 14.12.2020 and on the same day joined at her new station of transfer i.e. GHS Jol after submitting her joining and marked attendance as proof of joining. Copy of attendance register has been appended with the petition as Annexure P-4.

8. It is thereafter averred that respondents, after joining of the petitioner, again issued transfer/adjustment order dated 14.12.2020 (Annexure P-5) whereby private respondent No. 5 was ordered to be transferred in place of the petitioner to GHS Jol and such orders have been passed illegally to adjust and accommodate the private respondent, who is politically influential person and has not completed his normal tenure of posting at previous station.

9. The official-respondents have contested the petition by filing reply wherein it is averred that though the petitioner was adjusted from GHS Draman to Jol on her verbal request vide office Order dated 11.12.2020 and was relieved from duty on 14.12.2020 by the Block Elementary Education, Dharamshala.

However, as per the report of the Principal, Government Senior Secondary School, Bhali, District Kangra when respondent No. 3 (Principal, GSSS, Bhali) was on official duty to the office of Deputy Director, Higher Education, Kangra at Dharamshala, the petitioner alongwith her husband entered his office without permission from any person in the campus. Thereafter, the petitioner opened the official table locker and marked her attendance in the Teachers' Attendance Register. The relevant portion of the report has been reproduced in the reply and reads as under:-

"When the respondent No. 3 was on official duty to the office of Dy. Director of Higher Education, Kangra at Dharamshal the petitioner alongwith her husband entered in his office without permission of anybody in the campus. She opened Official Table Locker and marked her attendance in the Teacher Attendance Register. He came to know about this activity on the next day. They took the photo clip of the attendance register.

Keeping in view of COVID-19 no one was ordered further official, only teachers in charge of fee and collection examination papers were coming in school by their own. It was also directed by your goodself for cancellation the order of Smt. Archana Rana who was promoted as TGT(A) from PRT to GHS Dharaman from GHS Jol u/c complex Bhali. Order of cancellation also received and Sh. Joginder Singh TGT(A) who is 70% handicap has joined his duties vide your order No. EDN-H(2)B(6)H82020 dated 15.12.2020 joining report has been already sent to your office."

10. It is further averred that on 14.12.2020, directions were received from the office of competent authority that Joginder Singh TGT(A) i.e. respondent No. 5 may be adjusted at GHS Jol and approval of the same was received on 15.12.2020. In compliance to the approval, respondent No. 5, who is 70% physically challenged was transferred from Government High School, Ghoond, District Shimla to Government High School, Jol vide order dated 15.12.2020 and joined as such on 18.12.2020.

11. The private respondent has also contested the petition by filing a separate reply wherein it is averred that it is the petitioner who has manipulated transfer/posting by obtaining D.O. note from the local MLA and got herself re-adjusted at Government High School, Jol on 11.12.2020 and the story concocted by the petitioner that she had already joined on 14.12.2020 at Government Primary School, Jol was false.

12. On 16.03.2021, we heard the matter for sometime and directed the case to be listed on 23.03.2021 with further direction to the second respondent to remain present in Court alongwith original record of the joining report of the petitioner as also the attendance register pertaining to Government High School, Jol.

13. On 23.03.2021, when the matter was taken up in the open Court, the petitioner appeared alongwith her husband and

candidly admitted that the joining report as depicted in Annexure P-4 was made by the petitioner herself and the noting portion thereof was made by her husband, which reads as under:-

Consequent upon promotion to the post of TGT (Arts) vide office order No. EDN-H(2)B(2)1/2020 Prot-JBT(TET Arts) on 7th December, 2020 and Particular office order No. EDN-H(2)7/2015 Pro-JBT Arts issued by Director of Elementary Education, Himachal Pradesh, Shimla-1 Smt. Archana Rana joined her services as TGT (Arts) in this institution dt. 14.12.2020 (AN) at GHS Jol u/c GSSS Bhali, District Kangra, H.P.

14. How and under what authority of law the petitioner and her husband entered the office of third respondent without permission and opened the official table locker and thereafter not only the petitioner marked the attendance but even her husband appended the aforesaid note is not at all forthcoming. This action of the petitioner as also her husband amounts to grave and gross misconduct, who as observed above, were supposed to be a role models.

15. Dealing with the role of the teachers, this Court in its very recent judgment passed in **CWP No. 1607 of 2021, titled as Milap Chand vs. State of H.P. & Ors. decided on 22.03.2021**, observed as under:-

5. The petitioner, as mentioned above, is a teacher appointed for educating students. The standards expected of a person practising the noble teaching profession must

be ideal so that the students may know and practice the best principles of a civilized life. The requirement of education for girls and the functions of a teacher have been dealt with and explained at some length by the Hon'ble Supreme Court in **Avinash Nagra vs. Navodaya Vidyalaya Samiti and others (1997) 2 SCC 534**. The relevant portion, as contained in paras 11 and 12 of the judgment, reads as under:-

11. It is in this backdrop, therefore, that the Indian society has elevated the teacher as "guru Brahma, Gurur Vishnu, Guru Devo Maheswaraha". As Brahma, the teacher creates knowledge, learning, wisdom and also creates out of his students, men and women, equipped with ability and knowledge, discipline and intellectualism to enable them to face the challenges of their lives. As Vishnu, the teacher is preserver of learning. As Maheswara, he destroys ignorance. Obviously, therefore, the teacher was placed on the pedestal below the parents. The State has taken care of service conditions of the teacher and he owes dual fundamental duties to himself and to the society. As a member of the noble teaching profession and a citizen of India he should always be willing, self-disciplined, dedicated with integrity to remain ever a learner of knowledge, intelligently to articulate and communicate and imbibe in his students, as social duty, to impart education, to bring them up with discipline, inculcate to abjure violence and to develop scientific temper with a spirit of enquiry and reform constantly to rise to higher levels in any walk of life nurturing constitutional ideals enshrined in Article 51-A so as to make the students responsible citizens of the country. Thus the teacher either individually or collectively as a community of teachers, should regenerate this dedication with a bent of spiritualism in broader perspective of the

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constitutionalism with secular ideologies enshrined in the Constitution as an arm of the State to establish egalitarian social order under the rule of law. Therefore, when the society has given such a pedestal, the conduct, character, ability and disposition of a teacher should be to transform the student into a disciplined citizen, inquisitive to learn, intellectual to pursue in any walk of life with dedication, discipline and devotion with an enquiring mind but not with blind customary beliefs. The education that is imparted by the teacher determines the level of the student for the development, prosperity and welfare of the society. The quality, competence and character of the teacher are, therefore, most significant to mould the caliber, character and capacity of the students for successful working of democratic institutions and to sustain them in their later years of life as a responsible citizen in different responsibilities. Without a dedicated and disciplined teacher, even the best education system is bound to fail. It is, therefore, the duty of the teacher to take such care of the pupils as a careful parent would take of its children and the ordinary principle of vicarious liability would apply where negligence is that of a teacher. The age of the pupil and the nature of the activity in which he takes part are material factors determining the degree and supervision demanded by a teacher.

12. It is axiomatic that percentage of education among girls, even after independence, is fathom deep due to indifference on the part of all in rural India except some educated people. Education to the girl children is nation's asset and foundation for fertile human resources and disciplined family management, apart from their equal participation in socio-economic and political democracy. Only of late, some middle-class people are sending the girl children to co-educational

institutions under the care of proper management and to look after the welfare and safety of the girls. Therefore, greater responsibility is thrust on the management of the schools and colleges to protect the young children, in particular, the growing up girls, to bring them up in disciplined and dedicated pursuit of excellence. The teacher who has been kept in charge, bears more added higher responsibility and should be more exemplary. His/her character and conduct should be more like Rishi and as loco parentis and such is the duty, responsibility and charge expected of a teacher. The question arises whether the conduct of the appellant is befitting with such higher responsibilities and as he by his conduct betrayed the trust and forfeited the faith whether he would be entitled to the full-fledged enquiry as demanded by him? The fallen standard of the appellant is the tip of the iceberg in the discipline of teaching, a noble and learned profession; it is for each teacher and collectively their body to stem the rot to sustain the faith of the society reposed in them. Enquiry is not a panacea but as it in the coffin. It is self-inspection and correction that is supreme. It is seen that the rules wisely devised have given the power to the Director, the highest authority in the management of the institution to take decision, based on the fact-situation, whether a summary enquiry was necessary or he can dispense with the services of the appellant by giving pay in lieu of notice. Two safeguards have been provided, namely, he should record reasons for his decision not to conduct an enquiry under the rules and also post with facts the information with Minister, Human Resources Department, government of India in that behalf. It is seen from the record that the appellant was given a warning for his sexual advances towards a girl student but he did not correct himself and mend his conduct.

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He went to the girls' hostel at 10 p. m. in the night and asked the hostel helper, Bharat Singh to misguide the girl by telling her that Bio-Chemistry Madam was calling her; believing the statement, she came out of the hostel. It is the admitted position that she was an active participant in cultural activities. Taking advantage thereof, he misused his position and made sexual advances towards her. When she ran away from his presence, he pursued her to the room where she locked herself inside; he banged the door. When he was informed by her roommates that she was asleep, he rebuked them and took the torch from the room and went away. He admitted his going there and admitted his meeting with the girl but he had given a false explanation which was not found acceptable to the Enquiry Officer, namely, Assistant Director. After conducting the enquiry, he submitted the report to the Director and the Director examined the report and found him not worthy to be a teacher in the institution. Under those circumstances, the question arises whether the girl and her roommates should be exposed to the cross-examination and harassment and further publicity? In our considered view, the Director has correctly taken the decision not to conduct any enquiry exposing the students and modesty of the girl and to terminate the services of the appellant by giving one month's salary and allowances in lieu of notice as he is a temporary employee under probation. In the circumstances, it is very hazardous to expose the young girls to tardy process of cross-examination. Their statements were supplied to the appellant and he was given an opportunity to controvert the correctness thereof. In view of his admission that he went to the room in the night, though he shifted the timings from 10 p. m. to 8 p. m. which was not found acceptable to the respondents and that he took the torch from the

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room, do indicate that he went to the room. The misleading statement sent through Bharat Singh, the hostel peon, was corroborated by the statements of the students; but for the misstatement, obviously the girl would not have gone out from the room. Under those circumstances, the conduct of the appellant is unbecoming of a teacher much less a loco parentis and, therefore, dispensing with regular enquiry under the rules and denial of cross-examination are legal and not vitiated by violation of the principles of natural justice.

6. The teacher in Indian society has been elevated as God. A teacher creates knowledge, learning, wisdom and equip the students with ability and knowledge, discipline and intellect to enable them to face challenges of the life. A teacher is preserver of learning and destroys ignorance. Therefore, as a member of the noble teaching profession, he should be a role model. Without a dedicated and disciplined teacher, even the best education system is bound to fail. Therefore, it is the duty of the teacher to take care of pupil(s) as a careful parent would take care of its children.

7. It would be a very lamentable state of affairs that when teachers who are considered as equal to God, would fall from the highest pedestal to the lowest level by caring and looking after their self-interests alone and not the interest of their pupil(s).

8. The role of the teacher has been best described by the Hon'ble Supreme Court in **Sushmita Basu vs. Ballygunge Siksha Samity (2006) 7 SCC 680**, the relevant portion of which reads as under:-

5. We must remember that the profession of teaching is a noble profession. It is not an employment in the sense of it being merely an earner of bread and butter. A teacher fulfils a great role in the life of the nation. He is the 'guru'. It is the teacher, who moulds its future citizens by imparting to his students not only knowledge, but also a sense of duty, righteousness and dedication to the welfare of the nation, in addition to other qualities of head and heart. If teachers clamour for more salaries and perquisites, the normal consequence in the case of private educational institutions, if the demand is conceded, would be to pass on the burden to the students by increasing the fees payable by the students. Teachers must ask themselves whether they should be the cause for putting education beyond the ken of children of parents of average families with average incomes. A teacher's profession calls for a little sacrifice in the interests of the nation. The main asset of a teacher is his students former and present. Teachers who have lived up to ideals are held in great esteem by their disciples. The position of the Guru, the teacher, in our ethos is equal to that of God (Matha Pitha Guru Daivam). The teachers of today must ensure that this great Indian concept and the reverential position they hold, is not sacrificed at the altar of avarice.

16. As observed above, the conduct of the petitioner and her husband is totally unbecoming of the teacher and cannot therefore lightly to be brushed aside, especially, in the given background that they took law into their own hands by entering into the office of the third respondent without permission and if that was not enough, they opened the official table locker and

also marked the attendance in the Teachers' Attendance Register and, therefore, deserve to be charge-sheeted for a major misconduct. Ordered accordingly.

17. As is evident from the aforesaid discussion, the petitioner has not come to the Court with clean hands and has filed a false claim to gain unfair advantage and has abused the process of the Court.

18. In ***Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria***, (2012) 5 SCC 370, the Hon'ble Supreme Court held that false claims and defences are serious problems with the litigation. The Hon'ble Supreme Court held as under:-

"False claims and false defences

84. False claims and defences are really serious problems with real estate litigation, predominantly because of ever escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount. This happens because of the enormous delay in adjudication of cases in our Courts. If pragmatic approach is adopted, then this problem can be minimized to a large extent."

19. In ***Dalip Singh v. State of U.P.***, (2010) 2 SCC 114, the Hon'ble Supreme Court observed that a new creed of litigants have cropped up in the last 40 years who do not have any

respect for truth and shamelessly resort to falsehood and unethical means for achieving their goals. The observations of the Supreme Court are as under:-

"1. For many centuries, Indian society cherished two basic values of life i.e., 'Satya' (truth) and 'Ahimsa' (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final."

20. In **Satyender Singh Vs. Gulab Singh, 2012 (129) DRJ, 128**, the Division Bench of Delhi High Court following Dalip

Singh v. State of U.P. (supra) observed that the Courts are flooded with litigation with false and incoherent pleas and tainted evidence led by the parties due to which the judicial system in the country is choked and such litigants are consuming Courts' time for a wrong cause."

The observations of Court are as under:-

"2. As rightly observed by the Supreme Court, Satya is a basic value of life which was required to be followed by everybody and is recognized since many centuries. In spite of caution, courts are continued to be flooded with litigation with false and incoherent pleas and tainted evidence led by the parties. The judicial system in the country is choked and such litigants are consuming courts' time for a wrong cause. Efforts are made by the parties to steal a march over their rivals by resorting to false and incoherent statements made before the Court. Indeed, it is a nightmare faced by a Trier of Facts; required to stitch a garment, when confronted with a fabric where the weft, shuttling back and forth across the warp in weaving, is nothing but lies. As the threads of the weft fall, the yarn of the warp also collapses; and there is no fabric left."

21. Similarly, the Hon'ble Supreme Court in **Kishore Samrite vs. State of Uttar Pradesh and others**, reported in **(2013) 2 SCC 398**, has dealt in detail with "abuse of process of Court" in the following terms:-

Abuse of the process of Court :

“31. Now, we shall deal with the question whether both or any of the petitioners in Civil Writ Petition Nos. 111/2011 and 125/2011 are guilty of suppression of material facts, not approaching the Court with clean hands, and thereby abusing the process of the Court. Before we dwell upon the facts and circumstances of the case in hand, let us refer to some case laws which would help us in dealing with the present situation with greater precision.

32. The cases of abuse of the process of court and such allied matters have been arising before the Courts consistently. This Court has had many occasions where it dealt with the cases of this kind and it has clearly stated the principles that would govern the obligations of a litigant while approaching the court for redressal of any grievance and the consequences of abuse of the process of court. We may recapitulate and state some of the principles. It is difficult to state such principles exhaustively and with such accuracy that would uniformly apply to a variety of cases. These are:

32.1. Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the Courts, initiated proceedings without full disclosure of facts and came to the courts with 'unclean hands'. Courts have held that such litigants are neither entitled to be heard on the merits of the case nor entitled to any relief.

32.2. The people, who approach the Court for relief on an ex parte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where the litigant has

broken such faith, the discretion of the court cannot be exercised in favour of such a litigant.

32.3. The obligation to approach the Court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.

32.4. Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have over-shadowed the old ethos of litigative values for small gains.

32.5. A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.

32.6. The Court must ensure that its process is not abused and in order to prevent abuse of the process the court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the Court would be duty bound to impose heavy costs.

32.7. Wherever a public interest is invoked, the Court must examine the petition carefully to ensure that there is genuine public interest involved. The stream of justice should not be allowed to be polluted by unscrupulous litigants.

32.8. The Court, especially the Supreme Court, has to maintain strictest vigilance over the abuse of the process of court and ordinarily meddling bystanders should not be granted "visa". Many societal pollutants create new problems of unredressed grievances and the Court should endure to take cases where the justice of the lis

well-justifies it. [Refer : Dalip Singh v. State of U.P. & Ors. (2010) 2 SCC 114; Amar Singh v. Union of India & Ors. (2011) 7 SCC 69 and State of Uttaranchal v Balwant Singh Chaufal & Ors. (2010) 3 SCC 402].

33. Access jurisprudence requires Courts to deal with the legitimate litigation whatever be its form but decline to exercise jurisdiction, if such litigation is an abuse of the process of the Court. In P.S.R.Sadhanantham v. Arunachalam & Anr. (1980) 3 SCC 141, the Court held:

“15. The crucial significance of access jurisprudence has been best expressed by Cappelletti:

“The right of effective access to justice has emerged with the new social rights. Indeed, it is of paramount importance among these new rights since, clearly, the enjoyment of traditional as well as new social rights presupposes mechanisms for their effective protection. Such protection, moreover, is best assured by a workable remedy within the framework of the judicial system. Effective access to justice can thus be seen as the most basic requirement the most basic 'human-right' of a system which purports to guarantee legal rights.”

16. We are thus satisfied that the bogey of busybodies blackmailing adversaries through frivolous invocation of Article 136 is chimerical. Access to justice to every bona fide seeker is a democratic dimension of remedial jurisprudence even as public interest litigation, class action, pro bono

proceedings, are. We cannot dwell in the home of processual obsolescence when our Constitution highlights social justice as a goal. We hold that there is no merit in the contentions of the writ petitioner and dismiss the petition.”

34. It has been consistently stated by this Court that the entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties, as truth is the basis of the Justice Delivery System.

35. With the passage of time, it has been realised that people used to feel proud to tell the truth in the Courts, irrespective of the consequences but that practice no longer proves true, in all cases. The Court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice. Therefore, the truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the Courts to become active seekers of truth. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehood must be appropriately dealt with. The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the Court with clean hands. It is the bounden duty of the Court to ensure that

dishonesty and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorised or unjust gain to anyone as a result of abuse of the process of the Court. One way to curb this tendency is to impose realistic or punitive costs.

36. The party not approaching the Court with clean hands would be liable to be non-suited and such party, who has also succeeded in polluting the stream of justice by making patently false statements, cannot claim relief, especially under Article 136 of the Constitution. While approaching the court, a litigant must state correct facts and come with clean hands. Where such statement of facts is based on some information, the source of such information must also be disclosed. Totally misconceived petition amounts to abuse of the process of the court and such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the court. A litigant is bound to make "full and true disclosure of facts". (Refer : Tilokchand H.B. Motichand & Ors. v. Munshi & Anr. [1969 (1) SCC 110]; A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Pari palanai Sangam & Anr. [(2012) 6 SCC 430]; Chandra Shashi v. Anil Kumar Verma [(1995) SCC 1, 421]; Abhyudya Sanstha v. Union of India & Ors. [(2011) 6 SCC 145]; State of Madhya Pradesh v. Narmada Bachao Andolan & Anr. [(2011) 7 SCC 639]; Kalyaneshwari v. Union of India & Anr. [(2011) 3 SCC 287]).

37. The person seeking equity must do equity. It is not just the clean hands, but also clean mind, clean heart and clean objective that are the equi-fundamentals of judicious litigation. The legal maxim *jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiolem*, which means that it is a law of nature that one should not be enriched by the loss or injury to another, is the percept for Courts. Wide jurisdiction of the court should not become a source of abuse of the process of law by the disgruntled litigant. Careful exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose the true facts and approach the court with clean hands.

38. No litigant can play 'hide and seek with the courts or adopt 'pick and choose'. True facts ought to be disclosed as the Court knows law, but not facts. One, who does not come with candid facts and clean breast cannot hold a writ of the court with soiled hands. Suppression or concealment of material facts is impermissible to a litigant or even as a technique of advocacy. In such cases, the Court is duty bound to discharge rule nisi and such applicant is required to be dealt with for contempt of court for abusing the process of the court. [K.D. Sharma v. Steel Authority of India Ltd. & Ors. [(2008) 12 SCC 481].

39. Another settled canon of administration of justice is that no litigant should be permitted to misuse the judicial process by filing frivolous petitions. No litigant has a right to unlimited drought upon the court time and public money in

order to get his affairs settled in the manner as he wishes. Easy access to justice should not be used as a licence to file misconceived and frivolous petitions. (Buddhi Kota Subbarao (Dr.) v. K. Parasaran, (1996) 5 SCC 530)."

12. Now, it is to be seen as to whether the conduct of the respondents was in fact in abuse of the process of the Court. What is "abuse of process of Court" of course has not been defined or given any meaning in the Code of Civil Procedure. However, a party to a litigation can be said to be guilty of abuse of process of the Court in any of the following cases as held by the Hon'ble Madras High Court in Ranipet Municipality Rep. by its.... Vs. M. Shamsheerkhan, reported in 1998 (1) CTC 66 at paragraph 9. To quote:

" 9. It is this conduct of the respondent that is attacked by the petitioner as abuse of process of Court. What is 'abuse of the process of the Court'? Of course, for the term 'abuse of the process of the Court' the Code of Civil Procedure has not given any definition. A party to a litigation is said to be guilty of abuse of process of the Court, in any of the following cases:-

- (1) Gaining an unfair advantage by the use of a rule of procedure.
- (2) Contempt of the authority of the Court by a party or stranger.
- (3) Fraud or collusion in Court proceedings as between parties.
- (4) Retention of a benefit wrongly received.
- (5) Resorting to and encouraging multiplicity of proceedings.
- (6) Circumventing of the law by indirect means.

(7) Presence of witness during examination of previous witness.

(8) Institution vexatious, obstructive or dilatory actions.

(9) Introduction of Scandalous or objectionable matter in proceedings.

(10) Executing a decree manifestly at variance with its purpose and intent.

(11) Institution of a suit by a puppet plaintiff.

(12) Institution of a suit in the name of the firm by one partner against the majority opinion of other partners etc."

The above are only some of the instances where a party may be said to be guilty of committing of "abuse of process of the Court".

22. The judicial system has been abused and virtually brought to its knees by unscrupulous litigants like the petitioner in this case. It has to be remembered that Court's proceedings are sacrosanct and should not be polluted by unscrupulous litigants. The petitioner along with her husband has abused the process of the Court and these observations be entered in the confidential report of the petitioner as also her husband.

23. In view of the aforesaid discussion, we find no merit in this petition and the same is accordingly dismissed with costs of Rs.50,000/- to be paid by the petitioner within four weeks from today to the H.P. High Court Advocates' Welfare Association. In the meanwhile, respondents-Department is directed to initiate an inquiry against the petitioner as also her husband Mr. Yashbir

Singh Guleria for major misconduct and conclude the same as expeditiously as possible and in no event later than 30th September, 2021.

24. Observations made hereinabove be entered in the confidential reports of the petitioner and her husband, as directed.

For compliance to come up on 5th October, 2021.

(Tarlok Singh Chauhan)
Judge

26th March, 2021
(sanjeev)

(Chander Bhusan Barowalia)
Judge

High Court