

**IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR
BEFORE**

HON'BLE SHRI JUSTICE SHEEL NAGU

&

HON'BLE SHRI JUSTICE MANINDER S. BHATTI

ON THE 15th OF MARCH, 2022

WRIT PETITION NO.7094 OF 2015

Between:-

KANAK KUMAR SHRIVASTAVA S/O. SMT. PANKAJ SHYAM SHRIVASTAVA

LEAGAL REPRESENTATIVES

1. SMT. SUCHITRA SHRIVASTAVA,

2. ANTRIKSH SHRIVASTAVA,

3. AADITYA SHRIVASTAVA,

4. SMT. PRIUANKI BHOJAK,

PETITIONERS

(BY MISS NIRMALA NAYAK, ADVOCATE)

AND

**1. THE REGISTRAR GENERAL,
HIGH COURT OF M.P.
JABALPUR, (MADHYA PRADESH)**

2. THE DISTRICT JUDGE, DISTRICT COURT, JABALPUR, M.P.

3. THE O.S.D. (D.E.) HIGH COURT OF M.P., JABALPUR

.....RESPONDENTS

**(BY SHRI AKSHAY DHARMADHIKARI, ADVOCATE FOR RESPONDENT NO.1
TO 3)**

This petition coming on for admission and interim relief this day,

Hon'ble Shri Justice Maninder S. Bhatti passed the following:

ORDER

The petitioner has approached this Court by way of filing the present petition while praying for quashment of order dated 10/10/2011 (Annexure P/1), order dated 25/09/2014 (Annexure P/2) and order dated 03/11/2014 (Annexure P/3). The petitioner has further prayed for issuance of a Writ in the nature of Mandamus commanding the respondents to pay the petitioner arrears of salary for the period of suspension commencing from 05/08/2008 to 10/10/2011 along with interest.

2. The petitioner herein while working against the post of Criminal Reader in the Court of Judicial Magistrate First Class, Jabalpur, was caught red handed in a trap case accepting bribe of Rs.10/- from complainant-Ghanshyam for adjourning the case of the complainant which was pending in the concerned Court. Record reveals that on 21/07/2008, the petitioner was caught red handed by the Vigilance Authority of this Court and, the petitioner was found in possession of amount in his pocket for which no reasonable explanation was furnished by him.

3. Resultantly, in accordance with the procedure laid down in Madhya Pradesh Civil Services (Classification Control and Appeal) Rules 1966, (hereinafter referred to as 'Act of 1966' for the sake of brevity), an inquiry was initiated in which as many as three charges were leveled against him. The charges against the petitioner were to the effect that on 21/07/2008, he accepted bribe/illegal gratification of Rs.10/- with an assurance that the case of the complainant which was pending in the Court of Shri Mahmood Khan, Judicial Magistrate First Class, Jabalpur will be adjourned for next date. The second

charge was to the effect that on the same day, an amount of Rs.525/- was found in upper pocket of his shirt which was obtained from the other litigants whose cases were fixed on that day before the concerned Court. The charge number three was to the effect that despite 19/07/2008 being a non-working Saturday as many as 29 cases were fixed by petitioner for hearing with an oblique motive to obtain illegal gratification. Ultimately, upon initiation of departmental enquiry, witnesses were examined including the complainant and the inquiry officer submitted his report in which he concluded that all the charges were found to be proved. On the basis of inquiry report, disciplinary authority vide order dated 10/10/2011 (Annexure P/1), imposed a penalty of compulsory retirement in accordance with Rule 10(7) of the Rules of 1966. It was further mentioned that for the period of suspension, the petitioner would not be entitled to get any other amount except subsistence allowance. The order of compulsory retirement dated 10/10/2011 was challenged by the petitioner by filing of appeal. The appeal of the petitioner also came to be dismissed vide order dated 25/09/2014 which is contained in Annexure P/2. Thereafter, petitioner preferred a Review Petition that also faced dismissal with modification and the Appellate Authority exonerated the petitioner as regards charge No.2 & 3, but affirmed the penalty as regards charge No.1 vide order dated 03/11/2014 (Annexure P/3). Thus, challenging the aforesaid orders, the petitioner has filed this petition.

4. The submission of learned counsel for the petitioner is to the effect that the order impugned by which the penalty of compulsory retirement was imposed upon the petitioner was infact based on a departmental inquiry which suffered from procedural infirmity as well as numbers of irregularities. It was further argued that the petitioner herein was made a scapegoat at the instance of one Vijay Mishra, who infact was a stranger to the entire proceedings but just in

order to falsely implicate the petitioner, he came into the picture and exhorted the complainant to lodge complaint against the present petitioner.

5. It is further submitted by the counsel for petitioner that no trap could have been laid by the employer since such power is vested exclusively with the Lokayukt. It is further submitted that the petitioner was exonerated as far as charge No.2 & 3 were concerned and therefore, the penalty in disproportionate to the alleged misconduct.

6. Per contra, learned counsel for respondent submits that the orders imposing penalty were just and proper as the disciplinary authority while considering every documents of the disciplinary proceedings, came to a conclusion that the petitioner herein, was no more fit to be retained in service and thus, looking to the seriousness of the charges, imposed the penalty of compulsory retirement and thus the penalty which was imposed upon the petitioner was in proportionate to the charges leveled. Thus, learned counsel for the respondent while placing reliance upon the decision of the Apex Court in (2015) 2 SCC 610 and (AIR 2021 SC 4504) submitted that the scope of interference with departmental inquiry is limited. Interference with departmental inquiry can be made by the Writ Court if the inquiry is held by an incompetent authority or is conducted against the procedure prescribed or in the event of violation of principles of natural justice and since according to the respondent, none of the eventuality is available in the present case, therefore, petition deserves to be dismissed.

7. Having considered the rivals submissions so putforth by the counsel for parties, the moot question which is required to be mulled over is as

to whether an order of compulsory retirement is a punishment or not and under what circumstances, the same can be passed ?

8. However, an attempt has been made by counsel for the petitioner to show that, the order is based on no evidence and particularly to substantiate this argument, learned counsel placed heavy reliance on the testimony of complainant PW-1, Ghanshyam Prasad Kol. An attempt is being made on behalf of the petitioner to demonstrate that its a case of no evidence on the strength of an affidavit which was subsequently sworn by the complainant in which he stated that the petitioner did not demand any amount and also on the basis of the statement where the complainant stated that he did not move any complaint, and he was told by Mr. Vijay Mishra to sign the complaint with an assurance that his case will be disposed of.

9. However, the most important aspect of the evidence of PW-1 i.e complainant is last two lines of paragraph 7 of his testimony which shows that the petitioner herein mounted undue pressure upon the complainant to give testimony in his favour and therefore, it was categorically admitted by the complainant in last two lines of paragraph 7 that in order to save the complainant, he is giving false testimony which is reproduced herein below:-

“लेकिन आज बाबूजी से मिलकर उनके दबाव में उनको बचाने के लिए झूठी गवाही दे रहा हूँ। ”

10. The above admission of the complainant not only completely demolishes the entire defence of the petitioner but also compels us to draw adverse inference against the petitioner inasmuch as he himself was guilty of abuse of the process by attempting to pressurize the witness. Thus, it cannot be said that its a case of no evidence. The complainant categorically stated in his

complaint and also the statement which was recorded on 21/07/2008 (Ex.P/5C) itself that the petitioner had told him to bring Rs.10/- on the next date and thus accordingly on the next date of hearing, he gave bribe of Rs.10/- to the petitioner. It is also important that during the trap, an amount of Rs.525/- approximately was found in the pocket of the petitioner who failed to give any reasonable explanation of the same. On the contrary, he expressed his unawareness as regards the amount being in his pocket.

11. Thus, in our considered view, there was ample evidence against the petitioner and particularly looking to his conduct even during the course of inquiry, when he made an attempt to mount undue pressure upon the complainant to give favourable testimony, therefore, petitioner's submission that the procedure laid down for holding the departmental inquiry was vitiated or the case in hand is a case of no evidence, is ill founded.

12. In view of above discussion, we have no hesitation to hold that the order impugned dated 10/10/2011 (Annexure P/1) was based on oral as well as documentary evidence and thus, the disciplinary authority rightly passed the order of compulsory retirement which was in consonance with the gravity of charges leveled against the petitioner. The said part of the order was rightly affirmed by the Appellate Authority vide its order dated 25/09/2014, thus, in our considered opinion, present petition has no substance. Thus, this petition deserves to be and accordingly stands **dismissed**. However no order as to cost.

(SHEEL NAGU)
JUDGE

(MANINDER S. BHATTI)
JUDGE