**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 14th OF SEPTEMBER, 2022

WRIT PETITION No.4231 of 2007

Between:-

RAM SINGH GAMAD, S/O LATE SHRI SAKARIYA GAMAD, AGE 47 YEARS, OCCUPATION: SERVICE (WAS SERVING AS CHIEF EXECUTIVE OFFICER OF JANPAD PANCHAYAT AND SINCE TERMINATED), R/O DATIA (MADHYA PRADESH).

…....PETITIONER

(BY SHRI D.S. RAGHUVANSHI - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH THE PRINCIPAL SECRETARY, PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT, VALLABH BHAWAN, BHOPAL.**

2. **THE COMMISSIONER, GWALIOR DIVISION, GWALIOR (MADHYA PRADESH)**

…....RESPONDENTS

(BY SHRI N.S. TOMAR – GOVERNMENT ADVOCATE)

This petition coming on for final hearing this day, the Court passed the following:

ORDER

This petition under Article 226 of the Constitution of India has been filed seeking the following reliefs:-

> "(i) That, the order dated 10.8.2007 Annexure P/1 passed by the respondents may kindly be directed to be set aside and respondents be further directed to reinstate the petitioner with all consequential benefits including the back wages.
> (ii) That, The other relief doing justice including cost be awarded."

2. The petitioner was working on the post of CEO, Janpad Panchayat, Datia. A charge-sheet was issued on 11/3/2003 by Commissioner, Gwalior Division, Gwalior. The first charge levelled against the petitioner was that in the capacity of Chief Executive Officer, he had made certain transfers of Siksha Karmis for which he was not authorized and the charge no.2 was that the petitioner in the capacity of CEO, Janpad Panchayat, Datia had illegally issued transfer order of 12 Siksha Karmis, which was beyond his jurisdiction and accordingly, the conduct of the petitioner was found to be violative of M.P. Civil Services (Conduct) Rules punishable under M.P. Civil Services (Classification, Control and Appeal) Rules, 1966. According to the respondents, on 15/1/1999 the petitioner had issued a transfer order of 7 Siksha Karmis and thereafter, by order dated 24/4/1999 the earlier order dated 15/1/1999 was recalled. Therefore, this act of the petitioner comes within

the definition of irregularity. Similarly, so far as charge no.2 is concerned, it was alleged that the petitioner by order dated 9/11/1998 had issued transfer orders of 12 Siksha Karmis and thereafter by order dated 9/2/1999 he amended the order dated 9/11/1998, whereas the amendment of the posting order of 17 Siksha Karmis after a long period would certainly come within the definition of transfer, for which he had no jurisdiction.

3. Petitioner denied the charges and submitted his reply. In reply, it was submitted that applications were made by lady Siksha Karmis and, accordingly, he had attached them to different places, which was merely an arrangement and not a transfer order, however, the then Collector, Datia in his monthly meeting had instructed that the attachment should be cancelled and accordingly, the order of attachment of 7 Siksha Karmis was cancelled and they were directed to serve at their original places.

4. So far as charge no.2 is concerned, it was submitted that because of certain difficulties in release of salary of 12 Siksha Karmis due to previous orders passed by his predecessors, he had issued the posting order. It was submitted that the posting order was not issued with any *malafide* intention and it was done in order to maintain the educational system as well as to remove the difficulties in payment of salary.

5. The department was not satisfied with the reply submitted by the petitioner and, therefore, a departmental enquiry was conducted and the enquiry officer found that both the charges are proved. Accordingly, a notice was issued alongwith the enquiry report to show cause as to why the petitioner may not be awarded major penalty. The petitioner submitted his reply, however, the disciplinary authority was not satisfied

with the reply submitted by the petitioner and accordingly, he was saddled with the punishment of dismissal from service.

6. Challenging the order passed by the disciplinary authority, it is submitted by the counsel for the petitioner that even if the entire allegations are accepted, still there was no allegation of any financial irregularity or dishonest intention on the part of the petitioner. Even if some mistake was committed by him, the punishment of dismissal was disproportionate and shocking to the conscience.

7. *Per contra,* the petition is vehemently opposed by the counsel for the State. It is submitted that the petitioner had illegally issued attachment order of 7 lady Siksha Karmis and only on the verbal instructions of the Collector, the attachment orders were recalled and he also issued posting orders which were in the nature of transfer of 12 Siksha Karmis, whereas he was not competent to transfer the Siksha Karmis and, therefore, it is clear that the petitioner has gone beyond his jurisdiction and under these circumstances, the punishment of dismissal from service cannot be said to be disproportionate to the misconduct committed by the petitioner.

8. Heard learned counsel for the parties.

9. The Supreme Court in the case of **Union of India v. K.G. Soni** reported in **(2006) 6 SCC 794** has held as under:-

> **14.** The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in *Wednesbury case* [*Associated*

> *Provincial Picture Houses Ltd.* v. *Wednesbury Corpn.*, (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in the decision-making process and not the decision.
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> **15.** To put it differently, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed.
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> **16.** The above position was recently reiterated in *Damoh Panna Sagar Rural Regional Bank* v. *Munna Lal Jain* [(2005) 10 SCC 84 : 2005 SCC (L&S) 567].

The Supreme Court in the case of **Om Kumar v. Union of India** reported in **(2001) 2 SCC 386** has held as under:-

> **70.** In this context, we shall only refer to these cases. In *Ranjit Thakur* v. *Union of India* [(1987) 4 SCC 611 : 1988 SCC (L&S) 1] this Court referred to "proportionality" in the quantum of punishment but the Court observed that the punishment was "shockingly" disproportionate to the misconduct proved. In *B.C. Chaturvedi* v. *Union of India* [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] this Court stated that the court will not interfere unless the punishment awarded was one which shocked the conscience of the court. Even then,

> the court would remit the matter back to the authority and would not normally substitute one punishment for the other. However, in rare situations, the court could award an alternative penalty. It was also so stated in *Ganayutham* [(1997) 7 SCC 463 : 1997 SCC (L&S) 1806] .
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> **71.** Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary" under Article 14, the court is confined to *Wednesbury* principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The court while reviewing punishment and if it is satisfied that *Wednesbury* principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and such extreme or rare cases can the court substitute its own view as to the quantum of punishment.

The Supreme Court in the case of **Mithilesh Singh v. Union of India** reported in **(2003) 3 SCC 309** has held as under:-

> **9.** The only other plea is regarding punishment awarded. As has been observed in a series of cases, the scope of interference with punishment awarded by a disciplinary authority is very limited and unless the punishment appears to be shockingly disproportionate, the court cannot interfere with the same. Reference may be made to a few of them. (See: *B.C. Chaturvedi* v. *Union of India* [(1995) 6 SCC 749 : 1996 SCC (L&S)

> 80 : (1996) 32 ATC 44] , *State of U.P.* v. *Ashok Kumar Singh* [(1996) 1 SCC 302 : 1996 SCC (L&S) 304 : (1996) 32 ATC 239] , *Union of India* v. *G. Ganayutham* [(1997) 7 SCC 463 : 1997 SCC (L&S) 1806] , *Union of India* v. *J.R. Dhiman* [(1999) 6 SCC 403 : 1999 SCC (L&S) 1183] and *Om Kumar* v. *Union of India* [(2001) 2 SCC 386 : 2001 SCC (L&S) 1039] .)

10. The Wednesbury principle is based on irrationality and the decision by the competent authority can be quashed provided it is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. The Court can interfere with the decision if it is so absurd that no reasonable authority could have taken such a decision.

11. The Supreme Court in the case of **Moni Shankar v. Union of India** reported in **(2008) 3 SCC 484** has held as under:-

> **17.** The departmental proceeding is a quasi-judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The courts exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the Department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability. If on such evidences, the test of the

> doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality. (See *State of U.P.* v. *Sheo Shanker Lal Srivastava* [(2006) 3 SCC 276 : 2006 SCC (L&S) 521] and *Coimbatore District Central Coop. Bank* v. *Employees Assn.* [(2007) 4 SCC 669 : (2007) 2 SCC (L&S) 68]).

The Supreme Court in the case of **Kerala State Beverages (M&M) Corpn. Ltd. v. P.P. Suresh** reported in **(2019) 9 SCC 710** has held as under:-

> **C. *Judicial Review and Proportionality***
> **26.** The challenge to the Order dated 7-8-2004 by which the respondents were deprived of an opportunity of being considered for employment is on the ground of violation of Articles 14, 19 and 21 of the Constitution of India. Lord Diplock in *Council of Civil Service Unions* v. *Minister for the Civil Service* [*Council of Civil Service Unions* v. *Minister for the Civil Service*, 1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] held that the interference with an administrative action could be on the grounds of "illegality", "irrationality" and "procedural impropriety". He was of the opinion that "proportionality" could be an additional ground of review in the future. Interference with an administrative decision by applying the *Wednesbury* [*Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corpn.*, (1948) 1 KB 223 (CA)] principles is restricted only to decisions which are outrageous in their defiance of logic or of accepted moral standards that no sensible person who applied his mind to the question to be decided could have arrived at it.
> **27.** Traditionally, the principle of proportionality

has been applied for protection of rights guaranteed under the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950.

28. In *Om Kumar* v. *Union of India* [*Om Kumar* v. *Union of India*, (2001) 2 SCC 386 : 2001 SCC (L&S) 1039 : AIR 2000 SC 3689] , this Court held as follows: (SCC pp. 399-400, para 28)

> "*28*. By "proportionality", we mean the question whether, while regulating exercise of fundamental rights, the appropriate or least restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the court will see that the *legislature* and the *administrative authority* "maintain a *proper balance* between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve". The legislature and the administrative authority are, however, given an area of discretion or a range of choices but as to whether the choice made infringes the rights excessively or not is for the court. That is what is meant by proportionality."
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> (emphasis in original)

In this case, M. Jagannadha Rao, J. examined the development of principles of proportionality for review of administrative decision in England and in India. After referring to several judgments, it was held that the proportionality test is applied by the Court as a primary reviewing authority in cases where there is a violation of Articles 19 and 21. The proportionality test can also be applied

> by the Court in reviewing a decision where the challenge to administrative action is on the ground that it was discriminatory and therefore violative of Article 14. It was clarified that the principles of *Wednesbury* [*Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corpn.*, (1948) 1 KB 223 (CA)] have to be followed when an administrative action is challenged as being arbitrary and therefore violative of Article 14 of the Constitution of India. In such a case, the Court would be doing a secondary review.
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> **29.** While exercising primary review, the Court is entitled to ask the State to justify the policy and whether there was an imminent need for restricting the fundamental rights of the claimants. In secondary review, the Court shows deference to the decision of the executive.
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> **30.** Proportionality involves "balancing test" and "necessity test". [*Coimbatore District Central Coop. Bank* v. *Employees Assn.*, (2007) 4 SCC 669 : (2007) 2 SCC (L&S) 68] Whereas the balancing test permits scrutiny of excessive and onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations, the necessity test requires infringement of human rights to be through the least restrictive alternatives. [*Judicial Review of Administrative Action* (1955) and Wade & Forsyth: *Administrative Law* (2005); *Coimbatore District Central Coop. Bank* v. *Employees Assn.*, (2007) 4 SCC 669 : (2007) 2 SCC (L&S) 68].

12. If the facts of the present case are considered, then it is clear that the allegations are that on two occasions the petitioner had issued posting orders of Siksha Karmis, which were in the nature of transfer and the petitioner was having no jurisdiction to transfer Siksha Karmis. It is also clear that one order of attachment was recalled by the petitioner.

Neither there is any allegation nor any finding to the effect that the posting / attachment orders were issued with dishonest intentions. Under these circumstances, where the honesty / integrity of the petitioner was not at stake and only his administrative action was under challenge, out of which, one order of attachment was already withdrawn by the petitioner much prior to initiation of departmental enquiry, this Court is of the considered opinion that the dismissal from service of the petitioner is disproportionate to the misconduct committed by the petitioner as well as it is shocking to the conscience of the Court.

13. Under these circumstances, this Court is of the considered opinion that the major punishment of dismissal from service was not warranted. Accordingly, the order dated 10/8/2007, Annexure P/1, so far as it relates to punishment of termination of service is hereby **quashed**. The matter is remanded back to the disciplinary authority to decide the question of punishment afresh. Let the entire exercise be completed within a period of three months from today.

14. With aforesaid observations, the petition is finally **disposed of.**

(G.S. AHLUWALIA)
JUDGE

Arun*