IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
HON'BLE SHRI JUSTICE ANAND SINGH BAHRAWAT

ON THE 13th OF FEBRUARY, 2026

WRIT PETITION No. 1336 of 2008

BABULAL DEEWAN

Versus

STATE OF M.P. AND OTHERS

Appearance:

Shri Alok Katare – learned counsel for the petitioner.
Shri B. M. Patel – learned Government Advocate for the respondents/State.

ORDER

This petition, under Article 226 of Constitution of India, has been filed seeking the following relief (s):

> "It is therefore most humbly prayed that this petition may kindly be allowed with costs by issuance of Writ, Order or Direction quashing the order Annexure P/1 dated 28.2.2002 and passed by Respondent No.3 S.P. Vidisha and the order of Appellate Authority Annexure P/2 dated 24.10.2002 confirming the order of punishment and the order Annexure P/3 dated 10.9.2007 and the petitioner may kindly be directed to be reinstated back in service with all consequential monetary benefits and the seniority on the post of Head Constable and further the petitioner is entitled for back wages as during this period he has not been gainfully employed anywhere and the petitioner is entitled for further direction to promote the petitioner on the post of

ASI for which he had already qualified in the departmental examination and also undergone the requisite training and any other relief in favour of the petitioner and against the respondents which this Hon'ble Court deem fit, kindly be awarded.''

2. Learned counsel for petitioner submits that petitioner was initially appointed on the post of constable on 17.2.1981. Subsequently, after qualifying the departmental examination petitioner was promoted on the post of Head Constable on 12.5.1987 which was issued by Deputy Inspector General of Police (DIG). Thereafter, at the relevant point of time, when petitioner was posted at Police Station Anandpur, Tehsil Lateri, Distrcit Vidisha, one complaint was made against petitioner. The Superintendent of Police, Vidisha directed to Additional Superintendent of Police to hold fact finding inquiry/ preliminary inquiry against petitioner. Thereafter, charge sheet was issued against petitioner (Annexure P/5). Petitioner submitted reply to the charge sheet and thereafter, Inquiry Officer has been appointed and the statement of witnesses were recorded and Inquiry Officer has found the charges proved and submitted the inquiry report before Disciplinary Authority and the Disciplinary Authority issued a show-cause notice to petitioner. Thereafter, the Superintendent of Police passed an order of dismissal against petitioner, against which petitioner preferred an appeal before the Inspector General of Police (I.G.), which was rejected by order dated 24.10.2002. Thereafter, petitioner preferred a mercy appeal before the State Government, which was partly allowed by modifying the earlier punishment and converting the punishment of dismissal into compulsory retirement. It is further submitted that the Superintendent of Police is not the appointing authority of petitioner. The appointing authority of petitioner is the DIG, who issued the

appointment order. The power to inflict a major punishment vests with the appointing authority and the Superintendent of Police has no power to issue the order of dismissal. Learned counsel for petitioner relied upon judgment/order dated 25.6.2025 passed in W.P. No.4739 /2008 **[Harisingh Parmar v. State of M.P. and others]** wherein this Court has entertained the writ petition even after punishment has been modified in mercy appeal. He pressed into service order passed in ***Harisingh Parmar (supra)***, relevant para of which is quoted below for ready reference and convenience:

> "3. After issuance of the charge-sheet, the petitioner has duly submitted his reply and denied all the charges. The Disciplinary Authority being dissatisfied with the reply filed by the petitioner directed for departmental inquiry. The Inquiry Officer conducted the inquiry and examined number of witnesses and finally submitted inquiry report to the respondent/SP, Gwalior who, after giving showcause notice alongwith the inquiry report to the petitioner, had inflicted the penalty of compulsory retirement from service vide order dated 27.02.2001. The petitioner being aggrieved by the order of Disciplinary Authority had preferred a departmental appeal before Inspector General of Police, which was dismissed vide order dated 19.04.2001. Against which, a mercy petition was filed before the Director General of Police, PHQ, Bhopal which was allowed in part vide order Annexure P/1 whereby the order of the punishment of dismissal from service was converted into compulsory retirement. Aggrieved by the aforesaid orders, the present petition has been filed."

Learned counsel for petitioner further relied upon the judgment/order dated 23.09.2021 passed by the High Court of Chhattisgarh at Bilaspur in W.P. No. 3152 of 2013 **(Ramesh Kumar Sahu v. State of Chhattisgarh and others)** wherein it is held that power of judicial review, the Court will not substitute its own judgment for the decision of the disciplinary authority unless:

(i) the order shocks the conscience of the Court,

(ii) no reasonable man would impose such punishment;

(iii) the decision- maker must have taken leave of his senses,

The relevant paragraphs in the case of Ramesh Kumar Sahu (supra) are reproduced as under:

> "3. Mr. Animesh Tiwari, learned State counsel, would submit that petitioner being a police constable himself committed serious misconduct for which the major punishment of dismissal from service has rightly been inflicted upon him and it has now been converted into compulsory retirement which is strictly in accordance with law.
>
> 7. It is also well settled that while exercising the power of judicial review, the Court will not substitute its own judgment for the decision of the disciplinary authority unless:
> (I) the order shocks the conscience of the Court,
>
> (ii) no reasonable man would impose such punishment;
>
> (iii) the decision- maker must have taken leave of his senses,"

Therefore, he prays to quash the order of punishment of dismissal dated 28.2.2002 (Annexure P/1), appeal rejection order dated 24.10.2002 (Annexure P/2) and mercy petition order dated 10.9.2007 (Annexure P/3) passed by the concerned authorities.

3. Per contra, learned counsel for the respondent/State submits that vide order dated 10.09.2007 (Annexure P/3), the State Government, adopting a lenient view, converted the order of dismissal from service into compulsory retirement. It is further submitted that as per the Schedule appended under Rules 7 and 19, under the heading "Home Department (Police)" of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966, the appointing authority up to the rank of Head Constable is the Senior Superintendent of Police/Superintendent

of Police. It is, therefore, contended that the submission of the petitioner that the Superintendent of Police, Vidisha, had no jurisdiction to pass the order of punishment against him is not tenable. The relevant Schedule of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 regarding the appointing authority of a Head Constable is reproduced as under:

Heard Constables/ Haveldar/Naik	1.Sr. Supdt. Of Police. **2.Supdt. Of Police.** 3.Commandant S.A.F. 4. Sr. supdt. Police (Radio) 8. Dy. Supdt. Of Police of S.A.F. Specially empowered by the Government for the appointment of constables. 9. Officers of equivalent rank.

4. Heard learned counsel for the parties and perused the record.

5. There is **no averment in the petition that the petitioner has any right to file a mercy petition.** This Court put a specific query to learned counsel as to whether there is any statutory provision under the Police Regulations enabling the filing of a mercy petition. Learned counsel for the petitioner was unable to point out any statutory provision or regulation under which a mercy petition is prescribed. **There is no statutory right to file a mercy petition.** However, the petitioner having filed such a mercy petition, the State Government, after considering the facts and grounds mentioned therein, **showed leniency in favour of the petitioner** in the following manner:

> 4/ तदोपरान्त भू0पू0 प्रधान आरक्षक क0 459 बाबूलाल दीवान द्वारा पुनः सेवा में बहाल करने हेतु शासन को दया याचिका प्रस्तत की गई। शासन द्वारा दया याचिका का परीक्षण किया गया। परीक्षणोपरान्त पाया गया कि सेवा से बर्खास्तगी का दण्ड शासकीय सेवक के लिये कर्तव्य न्ष्पिादन में विफल होने पर निर्धारित दंड का कठोरतम स्वरूप है। अनुसूचित जाति के प्रधान आरक्षक का कृत्य निःसंदेह गंभीर प्रवृत्ति का था तथा प्रधान आरक्षक को देय दंड प्रथम दृष्टया उचित परिलक्षित होता है। **परन्तु प्रधान आरक्षक की दीर्घ सेवावधि तथा पारिवारिक जिम्मेदारियों को ध्यान में रखते हुये, ''सेवा से बर्खास्तगी'' के दण्ड को परिवर्तित करते हुये ''बाध्य सेवा निवृत्ति'' के दंड से दण्डित किया जाता है।**

6. Once the petitioner submitted a mercy petition before the State Government and t**he punishment was modified pursuant to the mercy prayer** made by him and once such mercy was shown by accepting his prayer, **petitioner ought to remain satisfied with the relief that he was able to obtain in the mercy petition.** An order passed in a mercy petition is not ordinarily subject to judicial review, as **mercy is not a matter of legal right. It begins where legal rights end.** Even otherwise, the petitioner accepted the outcome of the mercy petition dated 10.09.2007 and since then, has been receiving pension on the basis of the modified order, whereby he was compulsorily retired by order dated 10.09.2007 passed in the mercy petition.

7. The aforesaid aspect has also been considered in the reported judgment of ***H.S. Bhargava v. State Industrial Court of M.P.*, 2005 (4) M.P.L.J. 288**, the relevant paragraphs of which are reproduced hereinbelow for ready reference and convenience:

> **2.** By this petition, the petitioner has claimed judicial review of the order dated 31-8-2001 (Annexure A8) passed by the respondent No. 1

in a mercy petition by which he was reinstated subject to a penalty of withholding of one increment with cumulative effect but without any backwages on the principle of "no work no pay".

3. The petitioner was a Head Constable in the Madhya Pradesh Police Service. He was dismissed from service by order dated 1-11-1975 passed by the Superintendent of Police on charges having been proved against him in a departmental enquiry. The petitioner preferred a statutory appeal against the order of his dismissal but it was dismissed on 17-2-1976. He then preferred a revision and it too was dismissed on 28-5-1976. His mercy petition was however, allowed by the State Government by order dated 31-8-2001, Annexure A8, by which he was reinstated subject to a penalty of withholding of one increment with cumulative effect but without any backwages.

4. The petitioner has asserted that he was entitled for the backwages also and hence the order dated 31-8-2001, Annexure A8, be accordingly reviewed judicially.

5. There is no averment in the petition that the petitioner has any statutory right for filing a mercy petition. The petitioner, therefore, must remain satisfied with the relief that he has been able to obtain in the mercy petition. Orders passed in a mercy petition are not subject to judicial review for "mercy is not the subject of legal rights". It begins where legal rights end. See *de Freitas* v. *Benny*, (1975) 3 WLR 388 at page 394, 395 (PC) quoted in *Reckley* v. *Minister of Public Safety and Immigration*(1996) 1 All ER 562 at page 569 (PC).

6. Further, there is also no averment in the petition that petitioner was not gainfully employed between the period of his dismissal and reinstatement.

7. The petition has no merit and is, therefore, dismissed.

8. As per the judgment passed in the case of **Harisingh Parmar (supra)**, a writ petition is not maintainable against an order passed in a mercy petition. Even

in the aforesaid judgment, the case of **H.S. Bhargava (supra)** has not been taken into consideration.

9. So far as the case of Ramesh Kumar (supra), relied upon by the petitioner, is concerned, this Court does not substitute its own judgment for that of the disciplinary authority. Further, the issue relating to challenging the mercy petition particularly when the relief had already been modified in favour of the petitioner has not been considered in the aforesaid judgment.

10. **Mercy, in the legal concept, means imposition of a lesser punishment than the law allows.** As per the Blackstones' phrase, it is the most amiable of executive powers. **The mercy powers are extraordinary for the Constitution** to allow the executive to set aside statutory appeals, something truly must be at stake. Mercy, which is inherent value, fits that prescription. **Mercy is not the subject of legal rights. It begins where legal rights end.** A delinquent person has no legal right even to have his case considered by the Home Secretary in connection with the exercise of the prerogative of mercy. A person who shows mercy "decides that a particular punishment would be appropriate or just and then decides to exact a punishment of less severity than the appropriate or just one." **It can be said that mercy is best viewed as a free gift; an act of grace, love or compassion that is beyond the claims of right, duty and obligation.**

11. As per the above, vide order dated 10.09.2007 (Annexure P/3), the State Government, adopting a lenient view, converted the order of dismissal from service into compulsory retirement. Therefore, petitioner does not have any fundamental right to challenge the order dated 10.9.2007 (Annexure P/3) passed in mercy petition, order dated 28.2.2002 (Annexure P/1) and order dated 24.10.2002 (Annexure P/2).

12. In view of the foregoing discussion and the facts and circumstances of the present case in their entirety, this Court is of the considered opinion that when State Government itself has shown mercy to the delinquent by imposing a lesser punishment, the present petition, being bereft of substance, is liable to be and is accordingly **dismissed.**

(Anand Singh Bahrawat)
Judge

Ahmad