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**THE HIGH COURT OF MADHYA PRADESH**  
**W.P.No.22488/2019**  
**(Vijay Manjhi Vs. State of M.P. & Others)**

**Gwalior, Dated : 14/02/2020**

Shri Prakhar Dhengula, Counsel for the petitioner.

Shri S.N.Seth, Govt. Advocate for the State.

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

*“(a) That, respondent authority may kindly be directed to make a payment of remaining salary and arrears of the suspension period with 12% annum.”*

It is submitted by the counsel for the petitioner that because of registration of an offence under Section 354 of IPC, he was placed under suspension by order dated 06.01.2016. Thereafter, by judgment dated 27.09.2016, the petitioner was acquitted of the charge under Section 354 of IPC. After his acquittal, he filed an application for payment of the outstanding salary for the period of his suspension. However, by the impugned order 09.05.2019 the respondents have rejected the prayer on the ground that since the matter was compromised out of the Court as a result of which the prosecution did not examine any other witnesses and therefore, the petitioner was acquitted by the trial Court by giving an advantage of benefit of doubt. Accordingly, it was held that the petitioner would be entitled for suspension allowance only for the period of suspension.

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It is submitted by the counsel for the petitioner that as per Fundamental Rules 54 and 54-A, the petitioner is entitled for the salary for the period of his suspension.

Heard the counsel for the petitioner.

The Supreme Court in the case **Union of India and Others vs.**

**Jaipal Singh**, reported in (2004) 1 SCC 129 has held as under :-

*"4. On a careful consideration of the matter and the materials on record, including the judgment and orders brought to our notice, we are of the view that it is well accepted that an order rejecting a special leave petition at the threshold without detailed reasons therefore does not constitute any declaration of law by this Court or constitute a binding precedent. Per contra, the decision relied upon for the appellant is one on merits and for reasons specifically recorded therefore and operates as a binding precedent as well. On going through the same, we are in respectful agreement with the view taken in Ranchhodji [1996] 11 SCC 603 (supra). If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest or by department itself, perhaps different considerations may arise. On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and it after initial conviction by the trial court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges, a person convicted of an offence to be so kept out and not to be retained in service. Consequently, the reasons given in the decision relied upon, for the appellants are not only convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing re-instatement cannot be sustained and the respondent has to be*

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*re-instated, in service, for the reason that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny back wages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent. The High Court, in our view, committed a grave error, in allowing back wages also, without adverting to all such relevant aspects and considerations. Consequently, the order of the High Court in so far as it directed payment of back wages are liable to be and is hereby set aside.*

Thus, it is clear that if any person is acquitted in a prosecution which was at the behest or by department itself then he has to be treated differently but where employee gets involved in a criminal case then no fault can be found in any manner for having kept out of job or under suspension, since the law obliges that if a person is facing a criminal prosecution he can be placed under suspension. The counsel for the petitioner has tried to distinguish the above mentioned judgment by mentioning that since in the case of **Jaipal (supra)**, the employee was initially convicted, therefore, he was terminated from service and after securing his acquittal in appeal, he was reinstated in his service and under these circumstances, the Supreme Court has held that he is to be treated differently and whereas in the present case the petitioner has not been acquitted in appeal but was acquitted at the first instance.

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In the considered opinion of this Court, there is no distinction between termination on conviction and suspension during the pendency of the criminal case. If the person was chargesheeted in a case involving moral turpitude then he can always be placed under suspension under the relevant rules. In the present case, the petitioner was facing the trial for an offence under Section 354 of IPC. From the impugned order, it is clear that the petitioner secured acquittal on the basis of compromise.

The Full Bench of this Court in the case of **Ashutosh Pawar vs. State of M.P.** reported in **2018 (2) MPJR 178** has held as under:-

*" Decision of Criminal Court on the basis of compromise or an acquittal cannot be treated that the candidate possesses good character, which may make him eligible, as the criminal proceedings are with the view to find culpability of commission of offence whereas the appointment to the civil post is in view of his suitability to the post. The test for each of them is based upon different parameters and therefore, acquittal in a criminal case is not a certificate of good conduct to a candidate. The competent Authority has to take a decision in respect of the suitability of candidate to discharge the functions of a civil post and that mere acquittal in a criminal case would not be sufficient to infer that the candidate possesses good character. Division Bench judgment of this Court in W.P.No.5887/2016 (Arvind Gurjar vs. State of M.P.) is overruled. Another Division Bench judgment in W.A. No.367/2015 (Sandeep Pandey vs. State of M.P. and others) is also overruled. Jurisdiction of the High Court in a writ petition under Art. 226 of the*

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*Constitution of India is to examine the decision-making process than to act as Court of appeal to substitute its own decision. In appropriate case, if the Court finds decision-making process is arbitrary or illegal, the Court will direct the Authority for reconsideration rather than to substitute the decision of the competent Authority with that of its own.*

*The expectations from a Judicial Officer are of much higher standard. There cannot be any compromise in respect of rectitude, honesty and integrity of a candidate who seeks appointment as Civil Judge. The personal conduct of a candidate to be appointed as Judicial Officer has to be free from any taint. The standard of conduct in the case of Judicial Officer is higher than that expected of an ordinary citizen and also higher than that expected of a professional in law as well. The same must be in tune with the highest standard of propriety and probity."*

The Full Bench of this Court in the case of **Ashutosh Pawar (supra)** has held that the acquittal on the basis of compromise cannot be held to be honourable acquittal. Under these circumstances, no fault cannot be found by the department, if they had decided not to pay the arrears of salary for the period of his suspension.

Accordingly, this petition fails and is hereby rejected.

**(G.S. Ahluwalia)**  
**Judge**

AK/-