

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

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 22nd OF NOVEMBER, 2022

WRIT PETITION NO.12073 OF 2022

Between:-

**KESHAV PRASAD SHARMA S/O
SHRI SONARAM SHARMA, AGED –
48 YEARS, OCCUPATION-
SERVICE, R/O SABALGARH,
DISTRICT- MORENA (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI D.P. SINGH - ADVOCATE)

AND

- 1. STATE OF MADHYA PRADESH
THROUGH ITS PRINCIPAL
SECRETARY, DEPARTMENT OF
PUBLIC WORKS, GOVERNMENT
OF MADHYA PRADESH VALLABH
BHAVAN, BHOPAL (MADHYA
PRADESH)**
- 2. THE ENGINEER-IN-CHIEF
DEPARTMENT OF PUBLIC
WORKS, BHOPAL (MADHYA
PRADESH)**
- 3. THE CHIEF ENGINEER,
DEPARTMENT OF PUBLIC**

- WORKS, GWALIOR (MADHYA PRADESH)**
4. **THE EXECUTIVE ENGINEER, DEPARTMENT OF PUBLIC WORKS, DIVISION MORENA, DISTRICT MORENA (MADHYA PRADESH)**
5. **RAVINDRA SINGH KUSHWAH, SUB-ENGINEER, DEPARTMENT OF PUBLIC WORKS, DIVISION GWALIOR, DISTRICT GWALIOR (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI DEVENDRA CHAUBEY – GOVERNMENT ADVOCATE FOR RESPONENTS NO.1 TO 4/STATE AND SHRI D.S. RAGHUVANSHI – ADVOCATE FOR RESPONDET NO.5)

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

ORDER

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

(i) That, the order impugned Annexure -P/1 dated 18.05.2022 may kindly order to be quashed.

(ii) That, the respondent be further commanded to make a stop gap arrangement by the senior most employee of the Sub-Division i.e. petitioner or in Division, District- Morena (M.P.).

(iii) That, any other relief which is suitable in the facts and circumstances of the case in favour of the petitioner including the

costs throughout may be granted.

2. A preliminary objection has been raised by the counsel for the respondent No.5 that in the light of the judgment passed by the Supreme Court in the case of **State of Haryana vs. S.M. Sharma and others** reported in **AIR 1993 SC 2273**, a person is not entitled to hold the current charge of a post, therefore, the petitioner cannot claim that he should have been given the current charge of the post in place of the respondent No.5.

3. The submissions made by the counsel for the respondent No.5 are correct. Grant of current charge of a post does not amount to promotion or creating any vested right in favour of the person to whom the current charge has been given and if the current charge is withdrawn, then he cannot make a complaint because none of his vested right is violated. However, in the present case the primary question is as to whether the respondent No.5 could have been given the current charge of the post of SDO, Sub-Division Sabalgarh, District Morena or not? Therefore, this Court will consider the posting of the respondent No. 5 as incharge SDO Sub-Division Sabalgarh, District Morena along with the submissions made in the return filed by respondent Nos. 1 to 4 specifically the submissions made by the counsel for the respondent Nos. 1 to 4 that no one should be posted in his hometown.

4. The facts of the case are that by impugned order dated 18.05.2022, the respondent No.5 has been given the additional charge of the post of SDO, PWD Sub- Division Sabalgarh, District Morena as the said post had fallen vacant on account of retirement of the then in-charge SDO, PWD Sub- Division Sabalgarh.

5. The said order has been challenged on the ground that not only the petitioner is senior to the respondent No.5, but the respondent No.5 is also facing investigation for offence under Section 13(1)(b) and under Section 13(2) of Prevention of Corruption Act.

6. The respondent Nos. 1 to 4 i.e. State of Madhya Pradesh through its Principal Secretary, (PWD), Engineer-in-Chief, Department of PWD Chief Engineer Department of Public Works, Gwalior and Executive Engineer Department of Public Works Division Morena have filed their joint return, and the respondent No.5 has filed his separate return. The return filed by the respondent Nos. 1 to 4 is supported by an affidavit of Shri I.S.Jadon, Executive Engineer, PWD Division Morena which reads as under:-

IN THE HON'BLE HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

W.P. No.12073/2022

PETITIONER : Keshav Prasad Sharma

V E R S U S

RESPONDENTS: State of M.P. and Ors.

A F F I D A V I T

Name	:	I.S. Jadon
S/o	:	Late Shri Vishal Singh Jadon
Age	:	59 Years
Occupation	:	Executive Engineer
Address	:	PWD, Division – Morena M.P.

I the above named deponent do hereby state on oath as under:

1. That, I am OIC for the respondent no.1 to 4 in the instant matter and well conversant with the facts of the case and competent to swear this affidavit.
2. That, I depose that the factual part of the contents of the reply is true to my knowledge based on the record and legal submission made therein is true and correct as per advice of counsel which I believe to be true.

3. That, the documents annexed herewith are the true copies of their respective originals.

Place: Gwalior

Date: 04.7.22

(Deponent)

VERIFICATION

I, the above named deponent do hereby verify that the contents of this affidavit from Para 1 to 3 are true to the best of my knowledge. No part of it is false and nothing has been concealed therein.

Place: Gwalior

Date: 04.7.22

(Deponent)

7. Thus, it is clear that the return has been filed by Shri I. S. Jadon on the basis of the personal satisfaction that the factual part of the contents of the reply is true to his knowledge based on record and legal submission made therein are true as well as true to the advice given by the counsel.

8. On 21.11.2022 while hearing this matter, this Court found that the return filed by the respondents No.1 to 4 is completely vague, unsatisfactory as well as contrary to law and has been filed in a most vague manner. Accordingly, Shri I.S. Jadon, Executive Engineer, Morena Division Morena was directed to appear before this Court to explain the contents of the return because the State counsel was not in a position to explain the same.

9. Accordingly, in compliance of order dated 21.11.2022. Shri I. S. Jadon, Executive Engineer, PWD Morena who has filed the return along with his affidavit, is present in person.

10. Paragraph 3 of the return reads as under:-

3. That, in this regard it is most humbly submitted that the arrangement made by the respondent no.3 vide alleged impugned order dated 18.05.2022 is temporary and not permanent. It is further submitted that the said arrangement is made

by respondent no.3 is not governed by the circular dated 22.07.2004 (Annexure P-4) as the said arrangement made by the Chief Engineer and not by the Executive Engineer.

11. It is really shocking that the Executive Engineer in the capacity of OIC of the State Government has taken a stand that the arrangement made by impugned order dated 18.05.2022 is temporary in nature and not permanent and it has also been claimed that the said arrangement is made by respondent No.3 (Chief Engineer), who is not governed by the circular dated 22.07.2004 as the said arrangement was made by the Chief Engineer and not by the Executive Engineer. When Shri Jadon was directed to explain the meaning of this paragraph, then he stated that he was under an impression that the allegations are against him. Accordingly, he was directed to read out the concerning paragraph of the writ petition, in which it is alleged that the impugned order dated 18.05.2022 has been passed by Executive Engineer. He fairly conceded that no such ground has been raised. He also fairly conceded that the impugned order dated 18.05.2022 was passed by the Chief Engineer and from the plain reading of this paragraph clearly shows that the OIC of the case has claimed that the Chief Engineer is not governed by the circular dated 22.07.2004, which is really shocking. Circular dated 22.07.2004 is addressed to Engineer-in-Chief. Once a circular has been addressed to the head of the Department, then the said circular would be applicable to the entire Department and no one can claim that since the circular has not been addressed to a particular authority, therefore, it will not apply to the said authority. Even if any temporary arrangement is made by the Executive Engineer in his Division, then still he would be governed by

the circular dated 22.07.2004. Thus, it is clear that the OIC of the case wanted to communicate to the Court that since the order under challenge has been issued by the Chief Engineer, therefore, he is not governed by circular dated 22.07.2004, which cannot be accepted at all.

12. In reply to certain queries, Shri Jadon fairly conceded that the stand taken by him in paragraph 3 is incorrect and in fact, the circular dated 22.07.2004 applies with full force on every temporary arrangement, which is made in the form of handing over of current charge of any post.

13. It is submitted by the counsel for the respondent No.5 also that, the circular dated 22.07.2004 is applicable under the facts and circumstances of the case and his submission shall be considered at a later stage.

14. Thus, it is clear that Shri I.S. Jadon, Executive Engineer Morena, Division Morena by filing vague return has tried to make an attempt to mislead the Court, but that is not the end of the matter.

15. The OIC has claimed that the hometown of the petitioner is Sabalgarh, Morena and the additional charge of SDO was given to the private respondent No.5 as the petitioner is not a suitable candidate as Sabalgarh is his hometown. The contents of Paragraph 4 of the return reads as under:-

4. That, it is pertinent to mention herein that the home town of the petitioner is Sabalgarh, Morena and since the additional charge of SDO was given to the private respondent for Sabalgarh, Morena, therefore, the petitioner is not the suitable candidate as it is his home town. Copy of the relevant extract of the service book is marked as annexed herewith as Annexure R/1.

16. When Shri I.S. Jadon was directed to clarify the meaning of this

paragraph, then he submitted that certain departmental enquiries have already taken place against the petitioner but today he is not in a position to disclose the details of the same. Without adverting to the facts as to whether any departmental enquiry had ever taken place against the petitioner or not, it is sufficient to say that making a wild allegation of possibility of corruption/ functioning contrary to law, without there being any basis, is defamatory in nature and, therefore, the petitioner will have a separate and independent cause of action against Shri I. S. Jadon, Executive Engineer, who has filed the return in the capacity of OIC.

17. One thing is clear that the contents of Paragraph 4 are without any basis and without any facts and figures.

18. The Paragraph 7 of the return reads as under:-

7. That, as far as alleged contention of the petitioner with regard to pendency of proceedings before the EOW are concerned it is submitted that same are not in the knowledge of the present answering respondents and neither the petitioner has placed on record any cogent material in this regard and simply the petitioner has relied upon a newspaper cutting alongwith his writ petition.

19. It is really shocking that the petitioner in his petition had taken a specific stand that a raid has been conducted in the house of the respondent No.5 by EOW, but Shri I.S. Jadon Executive Engineer, Morena Division, Morena being the OIC of the case and specifically when he was filing the return on behalf of the State as well as the Engineer-in-Chief has taken a very strange stand that the respondent Nos. 1 to 4 are not aware of the fact as to whether any criminal investigation under Prevention of Corruption Act is pending against the respondent No.5 or not.

20. When Shri I.S. Jadon was directed to explain the reasons for taking such a strange stand in Paragraph 7 of the return, then he stated that the said stand has been taken on the verbal instructions of the then Chief Engineer, Gwalior Division, Gwalior Shri R.L Bharti, who has retired in the month of August, 2022. The return was filed in the month of July, 2022.

21. Thus, it is clear that Shri I.S. Jadon, Executive Engineer, Morena Division, Morena is trying to take shelter of an officer, who has already retired.

22. Be that as it may.

23. Section 52 of Indian Penal Code reads as under:-

52. **“Good faith”**.—Nothing is said to be done or believed in “good faith” which is done or believed without due care and attention.

24. Thus, it is clear that anything which has been done with due care and attention can be said to have been done in good faith. In order to take the benefit of *bona fide* compliance of the instructions given by the superior authority, Shri I.S. Jadon is also under an obligation to explain that he had taken due care and attention after receiving the instructions from Shri R.L. Bharti, the retired Chief Engineer. It is submitted by Shri I.S. Jadon that Shri R.L. Bharti had informed him that he has not received any communication from the EOW and relying on the said information, he has stated in Paragraph 7 of the return that the information with regard to the registration of offence against the respondent No.5 under the Prevention of Corruption Act is not in the knowledge of the State i.e. respondent Nos. 1 to 4. He fairly conceded that neither he apprised the respondents No.1 to 2 in this regard nor he made any correspondences

with the EOW to find out the correctness of the allegation of raid in the house of the respondent No.5 as alleged by the petitioner.

25. Thus, the stand taken by Shri I.S. Jadon that he had bonafidely relied on the information given by Shri R.L. Bharti is false, baseless and contrary to law. From the submissions made by Shri I.S. Jadon, it appears that he has filed the return in his personal capacity although he has projected that this return is being filed in the capacity of an OIC. Accordingly, Shri I.S. Jadon was directed to pass on the order by which he was appointed as OIC. The order appointing the OIC reads as under:-

कार्यालय कलेक्टर जिला मुरैना म0प्र0
// आदेश //

क्रमांक / 03 / जे0सी0एल0 / 2022 1140
28 / 6 / 2022

मुरैना दिनांक

सिविल प्रक्रिया संहिता 1908 81908 का अधिनियम संख्यांक-5) के आदेश सत्ताईस के नियम 1 तथा 2 के अधीन प्रदत्त शक्तियों को प्रयोग में लाते हुये:-

कार्यपालन यंत्री लोक निमाण विभाग संभाग मुरैना

(पक्षकार का नाम)प्रक0 क0 / डब्ल्यू0पी0 न0— wp / 12073 / 22 केशव प्रसाद शर्मा / स्टेट

मध्य प्रदेश राज्य के लिये तथा उसकी ओर से प्रभार अधिकारी के रूप में अभिवचनों पर हस्ताक्षर करने और उन्हें सत्यापित करने के लिये तथा कार्य करने आवेदन कराने और उप प्रदेश विधि और विधायी कार्य विभाग नियमावली में वर्णित तथ्यों तथा उत्तरदायित्यों के अतिरिक्त वह अपनी नियुक्ति के तुरन्त पश्चात अन्य बातों के साथ ऐसी रीति में जिसके ब्योरे नीचे दिये गये हे निम्नालिखित कार्य करेगा।

1- प्रभारी अधिकारी मामलों के तथ्यों के बारे में तुरन्त ऐसी जांच करेगा जैसी कि आवश्यक हो और याचिका में उठाये गये समस्त बिन्दुओं का पैरा अनुसार उत्तर देते हुये और ऐसी अतिरिक्त जानकारी देते हुये जिससे कि मामले के संचालन में महाधिवक्ता / शासकीय अभिभाषक को सहायता पहुंचाने के संभावना है रिपोर्ट तैयार करेगा यदि किसी प्रक्रम पर विधि विभाग से परामश लिया गया था तो उस विभाग की राय भी रिपोर्ट में विनिर्दिष्ट रूप से निर्दिष्ट की जावेगी।

2- समस्त सुसंगत फाइले दस्तावेज नियम अधिसूचना तथा आदेश एकत्रित करेगा।

3- वादपत्र / याचिका में उठाये गये समस्त बिन्दुओं का पैरा अनुसार उत्तर देते हुये औ ऐसी अतिरिक्त जानकारी देते हुये जिनमें कि शासकीय अभिभाषक को सहायता पहुंचाने के संभावना है एक रिपोर्ट तैयार करेगा।

4- उक्त रिपोर्ट तथा सामग्री के साथ शासकीय अधिवक्ता से सम्पर्क करेगा।

- 5- शासकी अधिवक्ता की सहायता से लिखित कथन/उत्तर तैयार करवायेगा।
- 6- प्रभारी अधिकारी निम्नालिखित कागज/पत्र पेश करेगा-
- (क) वाद नपत्र की एक प्रति के साथ सरकारी की एक रिपोर्ट।
- (ख) प्रस्तावित लिखित कथन का एक प्रारूप।
- (ग) उन सभी दस्तावेजों की सूची जिन्हें साक्ष्य स्वरूप फाइल करना प्रस्तावित है, और जिनकी प्रस्तुत रिपोर्ट में अपेक्षा की गई है।
- (घ) मामले में विशुद्धीकरण के लिये आवश्यक कागज पत्रों की प्रतियां, इसमें 1द की सुनवाई की तारीख भी वण्णित होने चाहियें।
- 7- मामले की तैयारी और संचालन करने में शासकी अधिवक्ता का सहयोग कना और मामले उसके प्रक्रम और प्रगति में नियत किये गये कर्तव्यों से स्वंग को सदैव ही अवगत रखना।
- 8- जब भी कोई आदेश/निर्णय विशिक्त या म.प्र. राज्य के विरुद्ध पारित किया जाता तब विधि विभाग को सूचित कना तथा उसकी प्रमाणित प्रति प्राप्त करने के लिये उसी दिन या आगामी कार्य दिवस को आवेदन करना।
- 9- अपनी रिपोर्ट के साथ आदेश/निर्णय की प्रमाणित प्रति तथा शासकीय अधिवक्ता.....राय अगली कार्यवाही किये जाने के लिये इस कार्यालय को भेजे।
- 10- यह देखना कि आवेदन करने में तथा प्रमाणित प्रतिया प्राप्त करने पौर्ट बनाने राय प्राप्त कने और उसकी सूचना देने में समय नष्ट नही हो।
- 11- जैसे ही उसे अपना सीनान्तरण आदेश प्राप्त होता है वह अर्द्धशासकीय पत्र के माध्यम से तत्काल जानकारी देगा। वह वर्तमान पद का भार सौप देने के प्श्चात भी तब तक प्रभारी अधिकारी बना रहेगा जब तक कि अन्य प्रभारी अधिकारी नियुक्त नहीं कर दिया जाये।
- 12- प्रभारी अधिकारी मामला तैयार करने में शासकीय अधिवक्ता को हर संभव सहयोग देगा। तथा इस बात के लिए उत्तरदायी होगा कि कोई महत्वपूर्ण तथ्य या दस्तावेज अप्रकटित/छुपी नहीं रह जाये।**
- 13- प्रभारी अधिकारी यदि लोक अभियोजन मुकर्रर है तो वह जैसे ही वाद का विनिश्चय होता है परिणाम की रिपोर्ट विभागाध्यक्ष के माध्यम से सरकार को करेगा निर्णय की एक प्रति अभिप्राप्त की जाये। और रिपोर्ट के साथ भेजी जाये।
- 14- प्रभारी अधिकारी या लोक अभियोन मुकर्रर है तो वह इस बात के लिये उत्तरदायी होगा कि उन मामलों में जहां किसी बात के किसी प्रक्रम में पारित किये गये किसी अंतरित आदेश के पुनरीक्षण अपेक्षित है, समय पर कार्यवाही की गई है। अतैव वह इस आदेश की प्रति जैसे ही वह पारित किया जाये विभागाध्यक्ष के माध्यम से अपने अनुशंसा के साथ सरकारी (प्रशासकीय विभाग) को अग्रेषित करे।

मध्य प्रदेश के राज्यपाल के नाम से
तथा आदेशानुसार
कलेक्टर,

एवं पदेन उप सचिव विधि एवं
विधायी कार्य विभाग

जिला मुरैना (म0प्र0)

पृ० क्रमांक / 03 / जे०सी०एल० / 2022 / 140
प्रतिलिपि-

मुरैना दिनांक 28 / 6 / 2022

- 1- अतिरिक्त महाधिवक्ता माननीय उच्च न्यायालय खण्डपीठ ग्वालियर की ओर सूचनार्थ प्रेषित।
- 2- प्रमुख सचिव, मध्य प्रदेश शासन लोक निर्माण विभाग भोपाल
वल्लभ भवन मंत्रालय भोपाल।
- 3- आयुक्त चम्बल संभाग मुरैना की ओर सूचनार्थ प्रेषित।
- 4- अधीक्षण यंत्री लोक निर्माण विभाग मण्डल ग्वालियर की ओर
- 5- कार्यपालन यंत्री लोक निर्माण विभाग संभाग मुरैना सूचनार्थ
को प्रभारी अधिकारी की ओर अग्रेषित। साथ ही अधिवक्ता से सम्पर्क करने और उपस्थित प्रमाण पत्र प्रगति रिपोर्ट करने तथा अपनी प्रत्येक भेंट (विजिट) पर शासकीय अधिवक्ता से आगे की कार्यवाही के लिये सलाह कने तथा अपनी प्रत्येक रिपोर्ट के साथ उसके विभागाध्यक्ष को भेजने हेतु अग्रेषित करेगा। मामले की प्रगति रिपोर्ट की एक प्रति इस कार्यालय को सदैव ही भेजनी चाहिए। वाद पात्र की एक प्रति इस कार्यालय को आवश्यक रूप से भेजी जाये। मामले की सुनवाई तारीख तत्काल को नियम की गई है।

कलेक्टर
जिला मुरैना
(म०प्र०)

26. It is clearly mentioned in the order that the Executive Engineer PWD Morena Division is being appointed as OIC for filing the return and verifying the same as well as for filing other applications on behalf of the State Government. It is specifically mentioned in the order dated 28.06.2022 that before filing the return, the OIC shall immediately conduct an enquiry with regard to the grounds of attack taken in the writ petition and shall give a para wise reply after taking the assistance of Advocate General/ Government Advocate. The OIC shall collect the relevant files, rules, circulars and orders. The OIC shall get the return prepared with the help of Government Advocate. Clause 12 of order dated 28.06.2022 reads as under:-

12. प्रभारी अधिकारी मामला तैयार करने में शासकीय अधिवक्ता को हर संभव सहयोग देगा। तथा इस बात के लिए उत्तरदायी होगा कि कोई महत्वपूर्ण तथ्य या दस्तावेज अप्रकटित/छुपी नही रह जायें।

27. Thus, it is clear from the order dated 28.06.2022 by which Shri I.S. Jadon was appointed as OIC that, he shall be responsible to ensure that no information is left untouched or suppressed. Therefore, it is clear from the order dated 28.06.2022 that in case, if any material fact is suppressed by the OIC, then he shall be responsible and can be proceeded against by the Department.

28. Be that as it may.

29. Clause 8 of the return reads as under:-

8. That, in the aforesaid facts and circumstances since the pendency of any proceedings is not in the knowledge of the department and till date it is also not clear whether any cognizance has been taken by the EOW department against the private respondent, the order of the dated 18.05.2022 was passed in accordance to law.

30. It is the claim of the OIC that the Department is not in the knowledge of the pendency of any proceedings and it is also not clear whether any cognizance has been taken by the EOW Department against the private respondent. Thus, by expressing the ignorance on the part of the respondent Nos. 1 and 2 also, the OIC has tried to convince this Court by indirectly submitting that there is no information to the State with regard to any proceedings, which are being taken by EOW against the respondent No.5.

31. Accordingly, Shri I.S. Jadon was directed to clarify as to whether he had collected the service record of the respondent No.5 before filing the return or not. He fairly conceded that earlier the respondent No.5 was posted at Gwalior and thereafter he was attached in the office of

Executive Engineer, Gwalior and after the post of SDO, PWD, Sabalgarh District Morena fell vacant, he was given the current charge of the said post. However, he clarified that he did not care to read out the order of attachment. Even the order of attachment of the respondent No.5 has not been placed on record. Thus, it is clear that the Chief Engineer, Gwalior and Shri I.S. Jadon, Executive Engineer, who has filed the return in the capacity of OIC, was aware of the criminal investigation, but still he tried to mislead this Court by making a submission that the State is not aware of any proceeding by EOW.

32. One thing is clear that Shri I.S. Jadon, Executive Engineer, Morena Division, Morena has filed incorrect return with a solitary intention to mislead the Court and to give undue advantage to the respondent No.5. In view of Clause 12 of order dated 28.06.2022 in which it has been held by the State Government that the OIC of the case shall ensure that nothing is suppressed or left untouched, it is clear that Shri I.S. Jadon, Executive Engineer, Morena Division, Morena has acted contrary to order dated 28.06.2022 also.

33. Further during the course of arguments, it was submitted by Shri. D. S. Raghuvanshi that as per the circular issued by the State Government any officer should not be posted in his hometown and since the petitioner has been posted in his hometown, therefore, the respondents were correct in not handing over the current charge of the post of SDO.

34. Surprisingly, the respondent Nos. 1 to 4 have not taken the said stand in their return. On the contrary, they have said that since Sabalgarh is the hometown of the petitioner, therefore, he is not a suitable person. It

is really shocking that when petitioner is not suitable for holding the current charge of SDO PWD, Sabalgarh, District Morena being the permanent resident of the said area, then how the petitioner was found to be suitable for holding the post of SDO in the same area? Thus, it is clear that the respondents have deliberately suppressed the circular by which it has been held that no person should be posted in his hometown. However, it is submitted by Shri I.S. Jadon that the petitioner was posted as Sub-Engineer by the order of the respondent No.1. It is really shocking that in the Court proceedings, the respondents are claiming that the petitioner cannot be given current charge in his hometown as there is possibility of misuse of office, but at the same time, the respondent No.1 by posting petitioner as Sub-Engineer in his hometown, has done something which is contrary to its own impressions and circulars.

35. Shri D.S. Raghuvanshi, counsel for the respondent No.5 by relying upon the circular dated 22.07.2004, submitted that Clause 4 of the said circular is clear and a benefit of additional four years shall be given to a Sub-Engineer, who is holding degree in comparison to the Sub-Engineer holding diploma. It is submitted that it is true that as per the gradation list, the petitioner is senior to the respondent No.5, but since the respondent No.5 is holding a degree whereas the petitioner is a diploma holder, therefore, the respondent No.5 is entitled for the benefit of additional four years for calculating the seniority and, thus, the respondent No.5 is senior to the petitioner.

36. Surprisingly, this is not the stand of the respondent Nos. 1 to 4. It is the stand of the respondents No. 1 to 4 that although the petitioner as well as the respondent No.5 were appointed on the same day, but the

respondent No.5 submitted his joining ahead of the petitioner, therefore, he was treated as senior although the said verbal submission does not find place in the reply. However, the said submission has been made by Shri I. S. Jadon during the course of argument, therefore, it is taken into consideration. Shri I. S. Jadon was directed to produce any circular, which provides that the seniority of an employee would be considered on the basis of his/her date of joining and not on the basis of the merit list. He was also directed to clarify as to whether without getting the gradation list amended, he on his own, can treat the respondent No.5 senior to the petitioner? It is fairly conceded by the counsel Shri I.S. Jadon, Executive Engineer that since the petitioner was placed above the respondent No.5, therefore, *prima facie* he is senior to respondent No.5.

37. Since Shri I.S. Jadon, Executive Engineer, who is also the OIC of the case, has admitted that the circular dated 22.07.2004 has full force under the facts and circumstances of the case and even the respondent No.5 has relied upon the Clause 4 of the said circular therefore, it is necessary to consider the circular dated 22.07.2004 which reads as under:-

4. अनुविभागीय अधिकारी के रिक्त पद पर संभाग में कार्यरत वरिष्ठतम उपयंत्री को प्रभार देते समय यह देखा जाए कि स्नातक उपयंत्री को डिप्लोमाधारी उपयंत्री के तुलना में 4 अतिरिक्त वर्षों की वरियता का लाभ दिया जाए।

38. Be that whatever it may.

39. During the course of arguments, it was submitted by Shri D.P. Singh, counsel for petitioner that Clause 4 is dependent upon Clause 1 of the said circular, which specifically provides that at the time of handing over the current charge of the post, it should be kept in mind that whether

any departmental enquiry is pending against him or not. Apart from that it is also required to be seen as to whether any recommendation for departmental action has been made by Lokayukta, EOW, CTE or any vigilance agency of the State Government or not? In the case of complaint with regard to serious financial irregularities whether he has been found to be guilty in preliminary enquiry or not? It is also mentioned that any officer against whom the proceedings for prosecution are under contemplation shall not be given the current charge of the post.

40. During the course of argument, Shri I.S. Jadon tried to convince this Court by submitting that since the respondent No.5 has not been found to be guilty by the Trial Court, therefore, Clause 1 of the circular dated 22.07.2004 shall not apply. Accordingly, Shri I. S. Jadon was directed to once again read out Clause 1 of the circular. After reading the circular, he fairly conceded that there is no provision which requires that unless and until a person is held to be guilty, he cannot be denied the additional charge of the post.

41. From the plain reading of circular dated 22.07.2004, it is clear that if any person has been found to be guilty of serious financial irregularities in a **preliminary enquiry**, then he cannot be given the additional charge of a vacant post. Investigation with regard to disproportionate assets will certainly amount to serious financial irregularities. If the entire sentence “किसी गंभीर वित्तीय अनियमितता की शिकायत के संबंध में की गई प्रारंभिक जांच में दोषी तो नहीं पाया गया है।” is read as a whole, then it is clear that merely because some complaint has been made against an officer with regard to serious financial irregularities, it would not be sufficient unless and until *prima facie* he is found to be guilty in a

preliminary enquiry. Thus, the primary question for consideration is as to whether any preliminary enquiry was conducted by EOW or not.

42. Surprisingly, the respondent No. 5, who is facing investigation has chosen not to file the copy of the FIR. On the contrary, in reply to Paragraph 5.4, he has taken the following stand.

5.4 That, the facts stated in para 5.4 of the petition as written is nothing but based upon certain news published in the newspaper which cannot be adjudicated and accordingly the same are denied. So far as the proceedings initiated by EOW are concerned, the same is matter of record needs no comment. However, it is stated that mere recording of FIR against any Government servant, by EOW is not sufficient to debar him from holding the post. In that view of the matter, the facts stated in this para are not correct.

43. Once the respondent No.5 has admitted that an FIR has been registered against him and has claimed that mere recording of FIR against Government Servant by EOW is not sufficient to debar him from holding the post, then the burden is on him to satisfy this Court as to how Clause 1 of circular dated 22.07.2004 would not apply. Shri D. S. Raghuvanshi could not point out any reason for not filing the copy of FIR. He has also admitted that after the raid was conducted, he was attached in the office of Executive Engineer at Gwalior. Neither the order of attachment is on record nor the FIR has been filed on record. At this stage, it is submitted by Shri. D. P Singh that at the time of filing of writ petition, the petitioner was not in possession of the FIR, which has been registered against the respondent No.5 in Crime No. 33/2021 by EOW, State of Madhya Pradesh, but now he is in possession of the same and

supplied a copy of the said FIR to the Court. When the copy of FIR was given to Shri D. S. Raghuvanshi to make a comment as to whether the copy, which has been supplied by Shri D. P. Singh is the same FIR, which has been lodged against the respondent No.5 or not, then, it was submitted by Shri D. S. Raghuvanshi that he has not seen the original FIR because it was not provided by the respondent No.5, but fairly conceded that apparently it appears that the FIR has been lodged against the respondent No.5. Since the respondent No.5 has deliberately suppressed the copy of FIR by not filing the same along with the return and the State has surprisingly taken a very strange stand that they are not aware of the fact that whether any investigation or FIR has been registered against the respondent No.5 or not, therefore, it can be said that when a person is in possession of the best evidence and if he suppresses the same, then an adverse inference can be drawn against him.

44. Under these circumstances, the copy of FIR, which has been supplied by Shri. D. P. Singh is taken on record. The relevant part of the FIR registered in Crime No.33/2021 Police Station EOW, State of Madhya Pradesh reads as under:-

ई0ओ0डब्ल्यू0 कार्यालय ग्वालियर में उप निरीक्षक के पद पर पदस्थ होकर कार्यरत हूं। आवेदक श्री राममोहन सिंह सेवानिवृत्त कर्मचारी गोले के मंदिर ने अनावेदक रविन्द्र सिंह कुशवाह, एसडीओ लोक निर्माण विभाग ग्वालियर के विरुद्ध करोड़ों रुपये का भ्रष्टाचार कर आय से अधिक सम्पत्ति अर्जित करने के संबंध में एक शिकायती आवेदन पत्र आर्थिक अपराध प्रकोष्ठ इकाई ग्वालियर में दिनांक 16.06.2021 को प्रस्तुत किया था। उक्त शिकायती आवेदन को इकाई के पत्र क्रमांक/प्र0ग्वा0/102-ए/2021 दिनांक 21.06.2021 के माध्यम से मुख्यालय प्रेषित किया गया था उक्त शिकायती आवेदन पत्र का ईओडब्ल्यू मुख्यालय स्तर पर परीक्षण उपरांत शिकायत क्र. 95/2021 दिनांक 28/06/2021 को दर्ज कर गोपनीय जांच हेतु इकाई ग्वालियर प्रेषित की गई। जिसकी जांच मुझ

उपनिरीक्षक योगेन्द्र दुबे द्वारा की जाकर जांच सत्यापन प्रतिवेदन तैयार किया गया। जिसमें संकलित की गई साक्ष्य से अनावेदक रविन्द्र सिंह कुशवाह की 06 अचल सम्पत्तियों की जानकारी प्राप्त हुई जिन्हे अर्जित करने में उसके द्वारा 2,46,17,200/-रु0 (दो करोड़ छियाली लाख सत्राह हजार दो सौ) रूपये व्यय किया जाना अनुमानित पाया गया है व सेवाकाल के दौरान रविन्द्र सिंह कुशवाह को वेतन भत्तों के रूप में लगभग 90,00000/-रु0 (नब्बे लाख) प्राप्त होना पाया है व अनावेदक द्वारा असत्यापन योग्य मदों पर किये गये व्यय को आय का 33 प्रतिशत लेने पर अनावेदक द्वारा असत्यापन मदों पर लगभग 29,70,000/-रुपये (उन्तीस लाख सत्तर हजार)व्यय किया जाना दर्शित होता है व अनावेदक द्वारा सत्यापन योग्य आय जिसमें बच्चों की शिक्षा एवं शादी पर व्यय व बिजली का बिल, एलआईसी पोलिसियों, आदि पर किये गये व्यय की जानकारी गोपनीय रूप से प्राप्त किया जाना संभव न होने से उक्त सत्यापन योग्य मदों में व्यय की गई राशि को अनावेदक की आय में से कम नहीं किये जाने पर भी अनावेदक की बचत आय लगभग 60,30,000/-रुपये (साठ लाख तीस हजार) होती है। जबकि उक्त शिकायत की गोपनीय जांच के दौरान संकलित की गई साक्ष्य से अनावेदक द्वारा भवन एवं भूमि के क्रय करने में लगभग 2,46,17,200/-रु0(दो करोड़ छियाली लाख सत्राह हजार दो सौ) रूपये व्यय किया जाना अनुमानित पाया गया है जो उसकी बचत आय से लगभग 1,85,87,200/-रुपये (एक करोड़ पिच्चासी लाख सतासी हजार दो सौ) रूपये अधिक होने से रविन्द्र सिंह कुशवाह एसडीओ लोक निर्माण विभाग ग्वालियर के विरुद्ध भ्र0नि0अधि01988 संशोधित अधिनियम 2018 की धारा 13(1)ख , 13(2) का अपराध प्रथम दृष्टया प्रमाणित पाये जाने से अनावेदक रविन्द्र सिंह कुशवाह एसडीओ लोक निर्माण विभाग ग्वालियर के विरुद्ध भ्र0नि0अधि01988 संशोधित अधिनियम 2018 की धारा 13(1)ख , 13(2) का अपराध पंजीबद्ध किया जाता है। जिसकी मूल कायमी हेतु आरक्षक प्रदीप शर्मा के हस्ते थाना ईओडब्ल्यू भोपल भेजी जाती है। 13-कार्यवाही जो की गई-उपरोक्त विवरण से धारा 13(1)ख, 13(2) भ्रष्टाचार निवारण अधिनियम 1988 व संशोधित अधिनियम 2018 का प्रकरण पंजीबद्ध कर विवेचना में लिया गया/नहीं लिया गया तथा निरीक्षक शैलेन्द्र सिंह कुशवाह को विवेचना हेतु सौपा गया या क्षेत्राधिकारी के दृष्टिगत थाना..... निल जिला.....को स्थानांतरित किया गया या द.प्र.सं. की धारा 157 व के अंतर्गत कार्यवाही की गई। अभियोगी/सूचनाकर्ता को प्र.सू.प. पढवाकर/पढकर सुनाया गया जिन्होने सही-सही अभिलिखित होना स्वीकार किया इसकी एक प्रति सूचना कर्ता को नि:शुल्क प्रदाय की गई।हस्ताक्षर प्रभारी अधिकारी नाम योगेन्द्र दुबे उप निरीक्षक (नं यदि है) आर्थिक अपराध प्रकोष्ठ इकाई ग्वालियर अभियोगी/सूचनाकर्ता के हस्ताक्षर/निशानी अंगूठाप्रतिमाननीय

विशेष न्यायालय भ्रष्टाचार निवारण अधिनियम ग्वालियर की ओर सादर सूचनार्थ हस्ताक्षर—योगेन्द्र दुबे, उपनिरीक्षक/जांचकर्ता, आर्थिक अपराध प्रकोष्ठ, इकाई ग्वालियर (म.प्र.)। देहाती नालिसी पर से थाना आर्थिक अपराध प्रकोष्ठ भोपाल में उपरोक्त वार्णित आरोपियों के विरुद्ध अपराध क्रमांक/33/2021, दिनांक 09.07.2021 धारा 13(1)ख , 13 (2) भ्रष्टाचार निवारण अधिनियम 1988 व संशोधित अधिनियम 2018 का प्रकरण पंजीबद्ध कर विवेचना में लिया गया।

45. From the plain reading of the FIR, it is clear that the FIR was registered after conducting a preliminary enquiry and in the preliminary enquiry, it was found that the respondent No.5 is in possession of property worth Rs. 2,46,17,200/- whereas his entire salary was only 90,00,000/- and, accordingly, in a preliminary enquiry, it was found that the respondent No.5 is in possession of property worth Rs.1,85,87,200/- which is disproportionate to his known sources of income. It is true that a preliminary enquiry cannot take place of a finding of guilt, but circular dated 22.07.2004 speaks about the findings arrived at by an agency in a **preliminary enquiry**. Circular dated 22.07.2004 does not speak about the final adjudication by the trial Court. Thus, in view of the circular dated 22.07.2004, it was incumbent upon the respondents No.1 to 4 to verify as to whether the person to whom the charge is proposed to be given is facing any departmental enquiry/ investigation or not. Whether there is any recommendation by Lokayukta, EOW, CET, any other vigilance agency of the State Government to initiate any departmental action or not and whether the proposed employee has been found to be guilty in a preliminary enquiry for commission of serious financial irregularities or not? Apart from that, the respondents No.1 to 4 were also under obligation to find out as to whether proceedings for prosecution are in contemplation or not?

46. Registration of FIR and search of the house of the respondent No.5 and pendency of the investigation can be said that the proceedings for prosecution are under contemplation. As per law, after completing the investigation, the investigating officer is required to file a final report (charge-sheet or closure report) and in case, if the closure report is filed, then the concerning Special Judge shall decide the closure report in the light of the judgment passed by the Supreme Court in the case of **Abhinandan Jha and others vs. Dinesh Mishra** reported in **AIR 1968 SC 117**.

47. Thus, where a closure report is filed, then the Special Judge after giving an opportunity of hearing to the complainant has to come to a conclusion as to whether the closure report is liable to be accepted or not, whether the closure report is liable to be rejected and in that case the trial Court shall take cognizance of the same or by recording reason, the Special Judge may also direct the investigating officer to conduct further investigation. Thus, it is clear that unless and until the closure report is accepted by the Special Judge, it cannot be said that the proceedings for prosecution are not under contemplation.

48. Be that whatever it may.

49. The FIR has been registered and investigation is pending, therefore, it can be safely said that the proceedings for prosecution are under contemplation. Under these circumstances, the respondent No.5 was disqualified for holding the additional charge of the post of SDO, PWD Sub-Division, Sabalgarh, District Morena.

50. Surprisingly, not only the respondent No.5 was given the additional charge of the said post irrespective of the specific bar as

provided under Clause 1 of circular dated 22.07.2004, but the respondents by filing a misleading and vague return have tried to mislead this Court in order to justify their illegal act. Thus, it is clear that the respondent No.5 was not entitled to be given the current charge of the post of SDO Sub-Division Sabalgarh District Morena, in spite of that, he was given the said charge by order dated 18.05.2022, but the OIC of the case has also tried to mislead the Court.

51. A stand has also been taken by the respondents No.1 to 4 in their return regarding local posting of officer, therefore, this Court thinks it appropriate to consider that question also. It is made clear that this question is not directly involved in the present case, but it has cropped up because of the specific stand taken by the respondents No.1 to 4, in Paragraph 4 of their return.

52. It is the case of the petitioner that as per the circulars issued by the State Government, a person holding non-executive post can be posted in his hometown. It is the submission of Shri I.S. Jadon as OIC of the case that posting of a person in his hometown may give rise to suspicion or may give chance of getting involved in illegal activities. The apprehension expressed by Shri I.S. Jadon as OIC of case, is not baseless because it must have been expressed on the basis of facts and figures collected by the State Government itself, with regard to the posting of a person in his hometown. Thus, the basic purpose appears to be to check illegal activities by the State employees. Accordingly, Shri I. S. Jadon was directed to point out his hometown. He submitted that his hometown is Bhind and he has been recently posted in Morena. When he was directed to clarify the date from which he is posted in Morena, then he

submitted that he was posted in the year 2018. Thus for the last four years, Shri I. S. Jadon is working on the post of Executive Engineer, Morena Division, Morena but as per his assessment it is his recent posting, whereas according to the transfer policy also, the transfer can be made after the completion of tenure of three years. Accordingly, Shri I.S. Jadon was also directed to clarify his previous posting. He submitted that prior to his posting at Morena, he was posted in Gwalior. Morena is approximately 35 kms away from Gwalior. Thus, it is clear that Shri Jadon was being locally shifted in order to accommodate to a place, which is nearer to his hometown. It is further submitted by Shri Jadon that prior to Gwalior, he had remained at Guna as SDO for 15 long years. Guna, Gwalior, Morena and Bhind are in nearby vicinities. It is submitted by Shri Jadon that in the year 1989, he was posted in Rewa. Thus it is clear that after spending few months at Rewa, Shri Jadon has successfully stayed at all the places, which are around his hometown. Although this Court was not inclined to make any comments with regard to the places of posting of Shri Jadon, but while taking a specific stand in Paragraph 4 that the posting of a person in his hometown may give reasonable apprehension of involving in corrupt practices and the noble idea of the State behind the said stand has compelled this Court to look into the posting of Shri. I. S. Jadon also because this Court has already come to a conclusion that by filing a misleading vague written statement even on behalf of the Principal Secretary, State of Madhya Pradesh through Principal Secretary, PWD and the Engineer-in- Chief, PWD, he has tried to mislead this Court and has suppressed material facts and is contrary to Clause 12 of order dated 28.06.2022 by which he was

appointed as OIC.

53. Under these circumstances, this Court is of the considered opinion that Shri I. S. Jadon by filing misleading return has tried to directly save and protect the respondent No.5 and when he was given full opportunity to explain his return, then ultimately he accepted that he did not act in good faith and still tried to shift the entire responsibility on to the shoulders of the retired employee.

54. Be that as it may.

55. It is for the State Government to decide as to whether the noble idea expressed in the Paragraph 4 of the return is to be followed in the case of Shri I. S. Jadon and other employees or not.

56. Since the State Government itself has taken a specific stand that the posting of a person in his hometown is not in the interest of the State Government, therefore, the State Government is given liberty to reconsider the question of posting of petitioner at Sabalgarh even in the capacity of Sub-Engineer.

57. In view of the findings given by this Court with regard to the applicability of Clause 1 of circular dated 22.07.2004, it is not necessary to consider as to whether the respondent No.5 can be treated as senior to the petitioner in the light of Clause 4 of the said circular or not because once the respondent No.5 is disqualified for being given the current charge of the post of SDO in view of Clause 1, then the seniority of the petitioner and respondent No.5 has become a simple academic issue and it is well established principle of law that the Court must try to avoid answering the questions, which are merely of academic in nature. Therefore, the submission made by the counsel for the respondent No.5

with regard to applicability of Clause 4 is left open and is not being decided in the light of the fact that the respondent No.5 is disqualified from holding the current charge of SDO Sub-Division, Sabalgarh District Morena. Since the respondents have miserably failed to justify the grant of current charge of the post of SDO Sub-Division, Sabalgarh, District Morena therefore, the order dated 18.05.2022 is hereby **quashed** with a cost of **Rs.50,000/-** to be deposited by the OIC in the registry of this Court within a period of one month from today. Since the OIC of the case has filed the return without consulting respondents No.1 and 2 and has tried to mislead the Court, therefore, the cost so deposited by OIC shall not be reimbursed by the State.

58. A copy of this order be supplied to Shri Devendra Chaubey for communicating the same to the Principal Secretary, PWD, Bhopal for necessary information and compliance. The Principal Secretary, PWD / Engineer-in-Chief, PWD, shall submit their report before the Principal Registrar of this Court within a period of 15 days from today about the action proposed by them against erring officers.

59. The petition succeeds and is hereby **allowed**.

(G.S. AHLUWALIA)
JUDGE