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

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 5th OF SEPTEMBER, 2022

WRIT PETITION NO. 19637 OF 2022

Between:-

RAJESH RAGHUVANSHI, S/O BHURE SINGH RAGHUVANSHI, AGE 37 YEARS, OCCUPATION NA, R/O VILLAGE MAHUAKHEDA, POLICE STATION ARON, DISTRICT GUNA (MADHYA PRADESH)

…......PETITIONER

(BY SHRI V.K. SAHU - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH ITS PRINCIPAL SECRETARY DEPARTMENT OF JAIL, VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)**

2. **DIRECTOR GENERAL OF PRISONER & CORRECTIOINAL SERVICES, BHOPAL (MADHYA PRADESH)**

3. **SUPERINTENDENT OF CENTRAL JAIL, KRISHNA NAGAR, BHOPAL**

(MADHYA PRADESH)

…......RESPONDENTS

(BY SHRI DEVENDRA CHAUBEY – GOVERNMENT ADVOCATE)

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

ORDER

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

> i. That, the impugned order dated 12.05.2018 (Annexure P/3), 03.04.2019 (Annexure P/2) and 14.02.2020 (Annexure P/1) passed by the respondent authorities may kindly be set aside in the interest of justice.
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> ii. That, the respondent may be directed to reinstated the petitioner in the service with all the consequential benefit or in alternative remanded back to the respondent to consider afresh the stability of the petitioner on the basis of the merits and not only because of the mere conviction in the interest of justice.
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> Any other relief which this Hon'ble Court deems fit in the facts and circumstances of the case same may kindly be granted to the petitioner.

2. The petitioner was working on the post of Jail Guard. He was tried

in a criminal case and ultimately he was convicted. The services of the petitioner were terminated by order dated 12.5.2018 passed by Jail Superintendent, Central Jail, Bhopal on the ground that the petitioner has been convicted by judgment and sentence dated 08.12.2017 passed by Special Judge, (Scheduled Castes and Scheduled Tribes Act), Guna in S.T.No.1/2010. It is submitted that against the judgment of his conviction the petitioner has filed a Criminal Appeal No.6068/2017 and his sentence has been suspended. After the conviction of the petitioner, a *suo motu* enquiry was initiated and the services of the petitioner were terminated only on the basis of his conviction. The petitioner thereafter filed a departmental appeal against the order dated 12.5.2018 and the said appeal was also dismissed by impugned order dated 3.4.2019 passed by Director General of Prisoner and Correctional Services, Bhopal. Thereafter, the petitioner filed a review application before the Jail Department and the said review application has also been dismissed by order dated 14.2.2020.

3. Challenging the orders passed by the Courts below, it is submitted by the counsel for the petitioner that respondent authorities have terminated the services of the petitioner without considering the merits of the matter. It is submitted that a person cannot be terminated merely on the ground of his conviction and the authorities must consider the nature of offence as well as the allegations made against the delinquent officer and also that whether the offence involves moral turpitude or not. No such finding has been given and thus it is submitted that the order of termination is bad. To buttress his contention, the counsel for the petitioner has relied upon the **judgment dated 7.1.2020 passed by the**

Allahabad High Court in Writ-A No.14570/2009 (Ram Kishan vs. State of U.P. And others).

4. *Per contra*, the petition is vehemently opposed by the counsel for the State. It is submitted that there is a material difference between suspension of sentence and stay of conviction. It is not the case of the petitioner that the findings of conviction has been stayed. Furthermore it is clear from the judgment passed by the Criminal Court, that there were serious allegations against the petitioner of causing multiple injuries to the injured Khilan and Veer Singh. The injuries were caused by means of a *Farsa* on head and shoulder of Veer Singh and on different parts of body of Khilan. There are allegations of humiliating the injured for the reason that they belong to Scheduled Castes and Scheduled Tribes. As per the MLC report of Khilan, one incised wound was found on upper part of right hand, one incised wound was found on right ear, two incised wounds were found on left leg, two incised wounds were found on skull. Similarly Khilan had also sustained fracture of right fibula bone, left radius and ulna bone, as well as fracture of parietal bone. Khilan was hospitalized and he was operated upon.

5. Heard the learned counsel for the parties.

6. In the case of **Ram Kishan (supra)** it has been held as under:-

> 9. In **Union of India vs. Tulsiram Patel, (1985) 3 SCC 398,** Hon'ble Supreme Court has considered the provisions of Article 311(2) of the Constitution of India and held as under:-
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> > *"The second proviso will apply only where the conduct of a government servant is such as he deserves the punishment of dismissal, removal or reduction in rank. If the conduct is such as to deserve a*

punishment different from those mentioned above, the second proviso cannot come into play at all, because Article 311(2) is itself confined only to these three penalties. Therefore, before denying a government servant his constitutional right to an inquiry, ***the first consideration would be whether the conduct of the concerned government servant is such as justifies the penalty of dismissal, removal or reduction in rank****. Once that conclusion is reached and the condition specified in the relevant clause of the second proviso is satisfied, that proviso becomes applicable and the government servant is not entitled to an inquiry."*

10. In **Shyam Narain Shukla vs. State of U.P., (1988) 6 LCD 530,** a Division Bench of this court has considered similar question and held as under:-

"In view of the above decision of the Supreme Court, it has to be held that ***whenever a Government servant is convicted of an offence, he cannot be dismissed from service merely on the ground of conviction but the appropriate authority has to consider the conduct of such employee leading to his conviction and then to decide what punishment is to be inflicted upon him.*** *In the matter of consideration of conduct as also the quantum of punishment the employee has not to be joined and the decision has to be taken by the appropriate authority independently of the employee who, as laid down by the Supreme Court, is not to be given an opportunity of hearing at that stage."*

11. Another Division Bench of this Court in **Sadanand Mishra v. State of U.P. 1993 LCD 70** held that on conviction of an employee of a

criminal charge, the order of punishment cannot be passed unless the conduct which has led to his conviction, is also considered. It was further held that the scrutiny or exercise of conduct of an employee leading to his conviction is to be done ex parte and an opportunity of hearing is not to be provided for this purpose to the employee concerned.

12. In **Shankar Das v. Union of India, 1985 (2) SCR 358**, Hon'ble Supreme Court while referring to power under Clause (a) of second proviso of Article 311(2)of the Constitution of India, has observed as under: -

> *"Be that power like every other power has to be exercised fairly, justly and reasonably."*

13. Proviso (a) to Article 311 of the Constitution of India, is an exception to clause (2) of Article 311, which is applicable where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge. In case of **Divisional Personnel Officer, Southern Railway Vs. T.R. Chellappan, 1976 (3) SCC 190 (para-21)**, Hon'ble Supreme Court considered Article 311(2), Proviso (a) and held that this provision confers power upon the disciplinary authority to decide whether in the facts of a particular case, what penalty, if at all, should be imposed on the delinquent employee, **after taking into account the entire conduct of the delinquent employee, the gravity of the misconduct committed by him, the impact which his misconduct is likely to have on the administration and other extenuating circumstances or redeeming features, if any,** present in the case and so on and so forth. The conviction of the delinquent employee would be taken as sufficient proof of misconduct and then the authority will have to

> embark upon a **summary inquiry as to the nature and extent of the penalty to be imposed on the delinquent employee** and in the course of the inquiry, if the authority is of the opinion that the offence is too trivial or of a technical nature it may refuse to impose any penalty in spite of the conviction. The disciplinary authority has the undoubted power after hearing the delinquent employee and considering the circumstances of the case to inflict any major penalty on the delinquent employee without any further departmental inquiry, if the authority is of the opinion that the employee has been guilty of a serious offence involving moral turpitude and, therefore, it is not desirable or conducive in the interests of administration to retain such a person in service. In **Sushil Kumar Singhal vs. Regional Manager, Punjab National Bank, 2010 (8) SCC 573 (Paras-24 and 25),** Hon'ble Supreme Court explained the meaning of the words 'moral turpitude' to mean anything contrary to honesty, modesty or good morals.

7. Therefore, the facts of the case shall be considered in the light of the law laid down by the Supreme Court.

8. The submission made by the counsel for the petitioner is that the services of the petitioner should not have been terminated merely on the ground that he has been convicted for offence under Section 326 of IPC but the respondents should have considered the allegations made against the petitioner.

9. Moral turpitude has been defined by Supreme Court in the case of **Pawan Kumar vs. State of Haryana and another** reported in **(1996) 4 SCC 17** has held as under:

> 12. "Moral turpitude" is an expression which is used in legal as also societal parlance to describe

conduct which is inherently base, vile, depraved or having any connection showing depravity. The Government of Haryana while considering the question of rehabilitation of ex-convicts took a policy decision on 2-2-1973 (Annexure E in the Paper-book), accepting the recommendations of the Government of India, that ex-convicts who were convicted for offences involving moral turpitude should not however be taken in government service. A list of offences which were considered involving moral turpitude was prepared for information and guidance in that connection. Significantly Section 294 IPC is not found enlisted in the list of offences constituting moral turpitude. Later, on further consideration, the Government of Haryana on 17/26-3-1975 explained the policy decision of 2-2-1973 and decided to modify the earlier decision by streamlining determination of moral turpitude as follows:

"… The following terms should ordinarily be applied in judging whether a certain offence involves moral turpitude or not;

(1) whether the act leading to a conviction was such as could shock the moral conscience of society in general.

(2) whether the motive which led to the act was a base one.

(3) whether on account of the act having been committed the perpetrator could be considered to be of a depraved character or a person who was to be looked down upon by the society.

Decision in each case will, however, depend on the circumstances of the case and the competent authority has to exercise its discretion while taking a decision in accordance with the above-mentioned principles. A list of offences which involve moral turpitude is enclosed for your information and guidance. This list, however,

> cannot be said to be exhaustive and there might be offences which are not included in it but which in certain situations and circumstances may involve moral turpitude."
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> Section 294 IPC still remains out of the list. Thus the conviction of the appellant under Section 294 IPC on its own would not involve moral turpitude depriving him of the opportunity to serve the State unless the facts and circumstances, which led to the conviction, met the requirements of the policy decision above-quoted.

10. Further the act disclosing wickedness of character can be categorized as offences involving moral turpitude. It cannot be said that every assault is not an offence involving moral turpitude, however simple act of assault may not be treated as an offence involving moral turpitude.

11. The Supreme Court in the case of **State Bank of India and others vs. P. Soupramaniane** reported in **(2019) 18 SCC 135** has held as under:

> **14.** The other important factors that are to be kept in mind to conclude that an offence involves moral turpitude are : the person who commits the offence; the person against whom it is committed; the manner and circumstances in which it is alleged to have been committed; and the values of the society.
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> **15.** According to the National Incident-Based Reporting System (NIBRS), a crime data collection system used in the United States of America, each offence belongs to one of the three categories which are : crimes against persons, crimes against property, and crimes against society. Crimes against persons include murder, rape, and assault where the victims are always individuals. The object of crimes against property, for example,

robbery and burglary is to obtain money, property, or some other benefits. Crimes against society, for example, gambling, prostitution, and drug violations, represent society's prohibition against engaging in certain types of activities. Conviction of any alien of a crime involving moral turpitude is a ground for deportation under the Immigration Law in the United States of America. To qualify as a crime involving moral turpitude for such purpose, it requires both reprehensible conduct and scienter, whether with specific intent, deliberateness, wilfulness or recklessness.

16. There can be no manner of doubt about certain offences which can straightaway be termed as involving moral turpitude e.g. offences under the Prevention of Corruption of Act, the NDPS Act, etc. The question that arises for our consideration in this case is whether an offence involving bodily injury can be categorised as a crime involving moral turpitude. In this case, we are concerned with an assault. It is very difficult to state that every assault is not an offence involving moral turpitude. A simple assault is different from an aggravated assault. All cases of assault or simple hurt cannot be categorised as crimes involving moral turpitude. On the other hand, the use of a dangerous weapon which can cause the death of the victim may result in an offence involving moral turpitude. In the instant case, there was no motive for the respondent to cause the death of the victims. The criminal courts below found that the injuries caused to the victims were simple in nature. On an overall consideration of the facts of this case, we are of the opinion that the

> crime committed by the respondent does not involve moral turpitude. As the respondent is not guilty of an offence involving moral turpitude, he is not liable to be discharged from service.

12. Further there is a difference between stay of sentence and stay of conviction. Loss of public employment cannot be a consideration for stay of conviction.

13. The Supreme Court in the case of **Government of Andhra Pradesh and another vs. B. Jagjeevan Rao** reported in **(2014) 13 SCC 239** has held as under:

> 6. It is not in dispute that the respondent was convicted by the Principal Special Judge for SPE & ACB cases for the offences punishable under the Act. The High Court, as the order would reflect, had only directed suspension of sentence. There was no order of stay of conviction. It is well settled in law that there is a distinction between suspension of sentence and stay of conviction. This has been succinctly stated in *Rama Narang* v. *Ramesh Narang* [*Rama Narang* v. *Ramesh Narang*, (1995) 2 SCC 513] : (*S. Nagoor Meera case* [*Director of Collegiate Education (Admn.)* v. *S. Nagoor Meera*, (1995) 3 SCC 377 : 1995 SCC (L&S) 686 : (1995) 29 ATC 574] , SCC pp. 380-81, para 7)
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> "*7.* … '*15.* … Section 389(1) empowers the appellate court to order that the execution of the sentence or order appealed against be suspended pending the appeal. What can be suspended under this provision is the execution of the sentence or the execution of the order. Does "order" in Section 389(1) mean order of conviction or an order

similar to the one under Section 357 or Section 360 of the Code? Obviously, the order referred to in Section 389(1) must be an order capable of execution. An order of conviction by itself is not capable of execution under the Code. It is the order of sentence or an order awarding compensation or imposing fine or release on probation which are capable of execution and which, if not suspended, would be required to be executed by the authorities. …

16. In certain situations the order of conviction can be executable, in the sense, it may incur a disqualification as in the instant case. In such a case the power under Section 389(1) of the Code could be invoked. In such situations the attention of the appellate court must be specifically invited to the consequence that is likely to fall to enable it to apply its mind to the issue since under Section 389(1) it is under an obligation to support its order "for reasons to be recorded by it in writing". If the attention of the court is not invited to this specific consequence which is likely to fall upon conviction how can it be expected to assign reasons relevant thereto? … If such a precise request was made to the Court pointing out the consequences likely to fall on the continuance of the conviction order, the court would have applied its mind to the specific question and if it thought that case was made out for grant of interim stay of the conviction order, with or without conditions attached thereto, it may have granted an order to that effect.' (*Rama Narang case* [*Rama Narang* v. *Ramesh Narang*, (1995) 2 SCC 513] , SCC pp. 524-25, paras 15-16)"

> **7.** A similar view has been expressed in *K.C. Sareen* v. *CBI* [(2001) 6 SCC 584 : 2001 SCC (Cri) 1186] .

14. The Supreme Court in the case of **Shyam Narain Pandey vs. State of Uttar Pradesh** reported in **(2014) 8 SCC 909** has held as under:-

> **4.** A "convict" means declared to be guilty of criminal offence by the verdict of court of law. That declaration is made after the court finds him guilty of the charges which have been proved against him. Thus, in effect, if one prays for stay of conviction, he is asking for stay of operation of the effects of the declaration of being guilty.
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> 5. It has been consistently held by this Court that unless there are exceptional circumstances, the appellate court shall not stay the conviction, though the sentence may be suspended. There is no hard-and-fast rule or guidelines as to what are those exceptional circumstances. However, there are certain indications in the Code of Criminal Procedure, 1973 itself as to which are those situations and a few indications are available in the judgments of this Court as to what are those circumstances.
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> **6.** It may be noticed that even for the suspension of the sentence, the court has to record the reasons in writing under Section 389(1) CrPC. Couple of provisos were added under Section 389(1) CrPC pursuant to the recommendations made by the Law Commission of India and observations of this Court in various judgments, as per Act 25 of 2005. It was regarding the release on bail of a convict where the sentence is of death or life imprisonment or of a period not less than ten years. If the appellate court is inclined to consider release of a convict of such offences, the Public Prosecutor has to be given an opportunity for

showing cause in writing against such release. This is also an indication as to the seriousness of such offences and circumspection which the court should have while passing the order on stay of conviction. Similar is the case with offences involving moral turpitude. If the convict is involved in crimes which are so outrageous and yet beyond suspension of sentence, if the conviction also is stayed, it would have serious impact on the public perception on the integrity of the institution. Such orders definitely will shake the public confidence in judiciary. That is why, it has been cautioned time and again that the court should be very wary in staying the conviction especially in the types of cases referred to above and it shall be done only in very rare and exceptional cases of irreparable injury coupled with irreversible consequences resulting in injustice.

7. In *Ravikant S. Patil* v. *Sarvabhouma S. Bagali* [(2007) 1 SCC 673 : (2007) 1 SCC (Cri) 417] , a three-Judge Bench of this Court has held that: (SCC p. 681, para 16)

"*16.5.* … the power to stay the conviction … should be exercised only in exceptional circumstances where failure to stay the conviction, would lead to injustice and irreversible consequences."

8. In *Navjot Singh Sidhu* v. *State of Punjab* [(2007) 2 SCC 574 : (2007) 1 SCC (Cri) 627] , following *Ravikant S. Patil case* [(2007) 1 SCC 673 : (2007) 1 SCC (Cri) 417] , at para 6, this Court held as follows: (*Navjot Singh Sidhu case* [(2007) 2 SCC 574 : (2007) 1 SCC (Cri) 627] , SCC pp. 581-82)

"*6*. The legal position is, therefore, clear that an appellate court can suspend or grant stay of order of conviction. But the person seeking stay of conviction should specifically draw the attention

of the appellate court to the consequences that may arise if the conviction is not stayed. Unless the attention of the court is drawn to the specific consequences that would follow on account of the conviction, the person convicted cannot obtain an order of stay of conviction. Further, grant of stay of conviction can be resorted to in rare cases depending upon the special facts of the case."

9. In *State of Maharashtra* v. *Balakrishna Dattatrya Kumbhar* [(2012) 12 SCC 384 : (2013) 2 SCC (Cri) 784 : (2013) 2 SCC (L&S) 201] , referring also to the two decisions cited above, it has been held at para 15 that: (SCC p. 389)

"*15*. … the appellate court in an exceptional case, may put the conviction in abeyance along with the sentence, but such power must be exercised with great circumspection and caution, for the purpose of which, the applicant must satisfy the court as regards the evil that is likely to befall him, if the said conviction is not suspended. The court has to consider all the facts as are pleaded by the applicant, in a judicious manner and examine whether the facts and circumstances involved in the case are such, that they warrant such a course of action by it. The court additionally, must record in writing, its reasons for granting such relief. Relief of staying the order of conviction cannot be granted only on the ground that an employee may lose his job, if the same is not done."

10. In *State of Maharashtra* v. *Gajanan* [(2003) 12 SCC 432 : 2004 SCC (Cri) Supp 459] and *Union of India* v. *Atar Singh* [(2003) 12 SCC 434 : 2004 SCC (Cri) Supp 461] , cases under the Prevention of Corruption Act, 1988, this Court had to deal with specific situation of loss of job and it has been held that it is not one of exceptional cases for staying the conviction.

> **11.** In the light of the principles stated above, the contention that the appellant will be deprived of his source of livelihood if the conviction is not stayed cannot be appreciated. For the appellant, it is a matter of deprivation of livelihood but he is convicted for deprivation of life of another person. Until he is otherwise declared innocent in appeal, the stain stands. The High Court has discussed in detail the background of the appellant, the nature of the crime, manner in which it was committed, etc. and has rightly held that it is not a very rare and exceptional case for staying the conviction.

15. The allegations against the petitioner are that he had caused multiple injuries to Khilan. The ocular evidence of Khilan is fully corroborated by medical evidence and as many as six incised wounds were found on various parts of the body of the injured Khilan including two on skull and one on right ear and four fractures i.e. fibula, tibia, ulna as well as parietal bone. The petitioner was working as Jail Guard. Although the Trial Court has come to a conclusion that the complainant party was an aggressor but it is equally clear that the petitioner had exceeded his right of private defence by causing multiple injuries to Khilan by *Farsa* who was required to undergo surgical operation and had suffered multiple fractures.

16. Under these circumstances, this Court is of the considered opinion that no case is made out warranting interference.

17. The petition fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

(alok)