IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE

HON'BLE SHRI JUSTICE ASHISH SHROTI

WRIT PETITION No. 29927 of 2022

D.K. DIXIT

Versus

THE STATE OF MADHYA PRADESH AND ANOTHER

Appearance:

Shri P.S. Kaurav - Advocate for the petitioner.

Shri M.S. Jadon – Govt. Advocate for the respondents/State.

Reserved on: 10/09/2025
Pronounced on: 17/09/2025

O R D E R

The petitioner has filed this writ petition under Article 226 of the Constitution of India challenging the order, dated 29.11.2019, (Annexure P/1) whereby the punishment of withholding of his pension to the extent of 15% has been imposed upon him on account of certain misconduct found proved in the departmental enquiry.

[2]. The facts necessary for decision of this case are that at the relevant time, the petitioner was posted as SDO(P), Pathariya, Disrict Damoh (M.P.). He has retired from service on attaining the age of superannuation w.e.f. 30.09.2016.

[3]. While the petitioner was posted as SDO(P), Pathariya, a *merg* intimation was received at Police Station, Hindoriya regarding death of

a girl namely- Kiran who committed suicide by setting herself on fire. The matter was entrusted to petitioner for investigation under Section 174 of Cr.P.C. The petitioner, during investigation, recovered Kerosene Oil Cane from the scene of crime and also recorded statements of the girl's father, mother, grandmother, uncle and also that of her husband and father-in-law. The petitioner also enquired about the incident from the neighbors. After having done so, he was of the opinion that no cognizable offence is made out and accordingly, recording his satisfaction to this effect, forwarded the diary to the Sub-Divisional Magistrate. The diary was sent back by the Sub-Divisional Magistrate because of certain lacuna therein.

[4]. On 24.09.2013, the father of the girl, made an application during *Jansunwai* regarding unsatisfactory investigation done in the matter. Taking note of the complaint, further investigation was entrusted to Shri G.P. Sharma, the then SDO(P), Tendukheda. On investigation by Shri G.P. Sharma, an FIR was registered on 07.01.2014 against the husband and parent-in-laws of deceased girl for offences punishable under Sections 304-B, 498-A, 34 of IPC and Section 3/4 of Dowry Prohibition Act. The trial of the aforesaid case ultimately culminated into passing of the judgment of acquittal, dated 27.05.2015, by the Sessions Judge, Damoh in S.T. No.47/2014.

[5]. After the investigation done by Shri G.P. Sharma and FIR having been registered for the aforesaid offences, the matter of investigation done by the petitioner was taken up. In a preliminary enquiry conducted by Additional Superintendent of Police, Damoh, it was *prima facie*

found that the investigation was not properly done by the petitioner. Taking note of the preliminary enquiry report, a charge-sheet was issued to the petitioner vide memo, dated 01.10.2014 (Annexure P/2). The following two charges were leveled against the petitioner:

> "1. मृतिका श्रीमती किरण पति बाबूलाल कुम्हार उम्र 25 वर्ष की मृत्यु के संबंध में थाना हिण्डोरिया में पंजीबध्द मर्ग क्रं0 35/13 धरा 174 जा0फौ0 की जांच में लापरवाही व उदासीनता बरतना तथा अपराध धारा 304–बी, 498–ए, भादवि 3,4 दहेज एक्ट की पर्याप्त साक्ष्य होने के बाद भी प्रकरण कायम न करके संदिग्ध आचरण के परिचय देकर म0प्र0 सिविल सेवा आचरण नियम 1965 के नियम–3 (1) (एक) एंव (दों) का उल्लंघन करना।
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> 2. थाना हिण्डोरिया में मर्ग क्रं0 35/13 की जांच प्रसंज्ञेय अपराध के छिपाने के उद्देश्य से मर्ग डायरी अनुविभागीय दंडाधिकारी दमोह से फाईल कराने का प्रयास करना। इस प्रकार म0प्र0 सिविल सेवा आचरण नियम 1965 के नियम–3 (1) (एक) एंव (दों) का उल्लंघन करना।"

[6]. The petitioner submitted his reply to the charge-sheet on 05.06.2015 (Annexure P/3). The petitioner's defense was mainly based upon the judgment passed by learned Trial Court on 27.05.2015 wherein the accused persons were acquitted recording a finding that the offence is not made out. He also justified his investigation by submitting that no evidence was found to establish the offence under Section 498-A of IPC. With regard to offence under Section 304-B IPC and Section 3/4 of Dowry Prohibition Act, he submitted that there was no allegation of harassment immediately before the incident.

[7]. The departmental enquiry was thereafter conducted by Deputy Superintendent of Police, Sagar Range, Sagar. During the course of enquiry, the Inquiry Officer recorded statement of as many as 9 prosecution witnesses including the statement of parents, sister and uncle of deceased girl. The statement of Shri G.P. Sharma, the subsequent Investigating Officer was also recorded. After the

departmental enquiry, the report, dated 24.09.2016, was submitted by the Inquiry Officer wherein the charges were found proved against the petitioner. The Disciplinary Authority thereafter forwarded the copy of enquiry report to the petitioner vide memo, dated 22.10.2016, (Annexure P/4) and asked him to submit his explanation to the findings recorded by the Inquiry Officer. The petitioner thereafter submitted his explanation. In the meantime, the petitioner reached the age of superannuation and accordingly stood retired from service w.e.f. 30.09.2016.

[8]. The Disciplinary Authority thereafter passed the impugned order dated 29.11.2019 whereby the punishment of permanently withdrawing petitioner's pension to the extent of 15% has been imposed. Challenging this order of punishment, the present writ petition has been filed.

[9]. Counsel for the petitioner, challenging the impugned order, submitted that there is no misconduct committed by the petitioner and he was within his rights to record his satisfaction about the commission of offence. He submitted that since the petitioner did not get any material to establish commission of offence, he submitted the report accordingly before the Sub-Divisional Magistrate. It is his submission that the opinion recorded by the petitioner is justified in view of the findings recorded by learned Trial Court in the judgment of acquittal. He further submitted that, at best, it can be a case of error of judgment on the part of petitioner, however, no misconduct can be attributed to the petitioner.

[10]. The learned counsel supported the act of the petitioner by submitting that the petitioner found that there was no harassment caused to the deceased girl by her in-laws and in fact because of her extra-marital affair, she committed suicide. He also took this Court through the findings recorded by learned Trial Court in the judgment wherein the investigation done by the petitioner has been referred and relied upon. He thus submitted that the act of petitioner cannot be said to be misconduct and, therefore, no punishment could have been imposed upon him.

[11]. On other hand, learned Govt. Advocate supported the impugned order and submitted that based upon the material collected during the investigation it could not have been said at that stage that no offence has been committed. He referred to various paragraphs of the judgment passed by learned Trial Court and submitted that girl's parents, sister and uncle have categorically deposed about the harassment being caused to the girl by her husband and parents-in-law which was sufficient for registration of offence. He submitted that the subsequent judgment of acquittal passed by learned Trial Court would not dilute the negligence on the part of petitioner in the matter of investigation. It is his submission that in fact because of unsatisfactory investigation done by petitioner, accused persons got benefitted during trial.

[12]. The learned counsel also submitted that scope of interference by this Court in exercise of powers of judicial review in disciplinary matters is confined to examining the validity of decision making process only and this Court would not re-appreciate the evidence. He submitted

that since the petitioner has not raised any ground pointing out any defect in the departmental enquiry, no interference is warranted in this writ petition. He, therefore, prayed for disposal of this petition.

[13]. Considered the arguments and perused the record.

[14]. Before entering into the merits of the case, it is profitable to note here that the scope of interference by this Court under Article 226 of the Constitution of India is well defined by the Apex Court in the case of **Union Of India & Ors Vs. P. Gunasekaran** reported in **(2015)2 SCC 610** wherein in paragraphs 12 & 13, the Apex Court held as under.

> **"12.** Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:
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> (a) the enquiry is held by a competent authority;
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> (b) the enquiry is held according to the procedure prescribed in that behalf;
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> (c) there is violation of the principles of natural justice in conducting the proceedings;
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> (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
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> (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience."

[15]. Since, petitioner's counsel has not raised any ground pointing out defect in the departmental enquiry and has only argued on merits of the charges, this Court is required to see whether this is a case of no evidence or whether the findings recorded during the course of enquiry are so perverse that no prudent man would reach to such a conclusion. This Court would also see whether the findings recorded against the petitioner are based upon preponderance of probability.

[16]. The article of charges supplied to the petitioner along with charge-sheet refers to statements of parents, sister and uncle of the deceased girl recorded by petitioner during investigation by petitioner wherein they made specific allegation of harassment against girl's in-laws. It is not the case of the petitioner that the facts stated in the article of charges are incorrect. Meaning thereby during investigation, the allegation of harassment was made by parents, sister and uncle of the deceased girl against her husband and parents-in-law.

[17]. During the course of investigation, the Investigating Officer is not required to record a conclusive finding regarding commission of offence. He is only required to see as to whether there is sufficient material for *prima facie* registration of FIR or not? The statements given by the family members of the deceased girl coupled with the fact that the deceased had died within two years of her marriage, amounts to sufficient material for registration of case against the in-laws. At that stage, the petitioner could not have recorded the finding that no cognizable offence was made out.

[18]. As per the petitioner's submission, he relied upon the statements given by the neighbors who suggested about the love affair of the deceased girl. However, based upon the statement of neighbors, the statement of family members of deceased girl could not have been ignored. The sanctity of these statements could have been recorded only after full-fledged investigation and trial. Therefore, the departmental authority was justified in recorded a finding during the course of enquiry that the report submitted by the petitioner about non-commission of any

cognizable offence at the stage of investigation under Section 174 of Cr.P.C. was highly improbable and unsatisfactory and the person of stature of petitioner, holding the post of SDO(P), was not expected to record this kind of opinion.

[19]. When the diary was forwarded by the petitioner to Sub-Divisional Magistrate, the same was sent back on account of lacunas in the diary. Thus, the findings recorded during the course of enquiry by the Inquiry Officer were also not accepted by Sub-Divisional Magistrate.

[20]. The learned counsel for the petitioner, placed heavy reliance upon the judgment subsequently passed by learned Trial Court wherein the accused persons were acquitted. In the considered opinion of this Court, the subsequent acquittal of the accused persons may not be a justification for petitioner's investigation at the initial stage. More so, the findings have been recorded by learned Trial Court also with regard to conflicting investigation reports given by petitioner and subsequent I.O. Shri G.P. Sharma.

[21]. In view of the discussion made above, it is not a case where the findings have been based upon improbable reasonings. There is material available in the enquiry record to support the findings. The enquiry Officer as also Disciplinary Authority have recorded their finding after appreciation of the evidence collected during the course of enquiry.

[22]. In view of the Apex Court judgment in the case of **P. Gunasekaran (supra),** this Court cannot go into the sufficiency of evidence and also cannot re-appreciate the evidence like an Appellate

Authority. Therefore, this cannot be said to be a case of 'no evidence'. When tested on touchstone of principle of preponderance of probability, the conclusion arrived at by enquiry Officer and accepted by Disciplinary Authority are found to be probable in the facts and circumstances of the case. Therefore, the order passed by Disciplinary Authority imposing punishment does not warrant any interference.

[23]. The impugned order is, therefore, upheld and the petition is **dismissed.**

(ASHISH SHROTI)
JUDGE

Vpn/-