

**IN THE HIGH COURT OF MADHYA  
PRADESH  
AT INDORE  
BEFORE  
HON'BLE SHRI JUSTICE SUBODH ABHYANKAR  
ON THE 31<sup>st</sup> OF OCTOBER, 2023  
WRIT PETITION No. 5555 of 2021**

**BETWEEN:-**

**DR. ARVIND KUMAR GUPTA S/O LATE SHRI  
BANWARILAL GUPTA, AGED ABOUT 60 YEARS,  
OCCUPATION: SERVICE 14-A, PANCHWATI  
COLONY (MADHYA PRADESH)**

**....PETITIONER**

**(BY SHRI L.C. PATNE, ADVOCATE)**

**AND**

- 1. STATE OF MADHYA PRADESH THROUGH  
PRINCIPAL SECRETARY DEPARTMENT OF  
HIGHER EDUCATION, VALLABH BHAWAN  
MANTRALAYA (MADHYA PRADESH)**
- 2. COMMISSIONER HIGHER EDUCATION  
DEPARTMENT SATPURA BHAWAN  
(MADHYA PRADESH)**
- 3. REGIONAL ADDITIONAL DIRECTOR  
HIGHER EDUCATION DEPARTMENT  
UJJAIN DIVISION (MADHYA PRADESH)**
- 4. EDUCATION OFFICER AND PRINCIPAL  
GOVERNMENT SWAMI VIVEKANANDA PG**

**COLLEGE NEEMUCH (MADHYA PRADESH)**

5. **CHAIRMAN GOVERNING BODY,  
GYANMANDIR COLLEGE NEAR DUSSERA  
MAIDAN (MADHYA PRADESH)**
6. **DR. VIVEK NAGAR S/O . OCCUPATION:  
CONTRACTUAL PROFESSOR IN LAW  
GYAN MANDIR COLLEGE, NEAR DUSSERA  
MAIDAN (MADHYA PRADESH)**

**.....RESPONDENTS**

**(BY SHRI A.S. PARIHAR, P.L./G.A. FOR STATE AND MS. ADITI MEHTA,  
ADVOCATE FOR RESPONDENT No.5 AND 6)**

.....  
*This petition coming on for admission this day, the court passed  
the following:*

**ORDER**

Heard finally, with the consent of the parties.

2] This writ petition has been filed by the petitioner under Article 226 of the Constitution of India against the order dated 17.06.2020, passed by the respondent No.5, Chairman Governing Body, Gyanmandir, College, Near Dussera Maidan, whereby the petitioner has been suspended on the ground of dereliction of duties. The aforesaid order was challenged by the petitioner by filing a writ petition, W.P. No.12252/2020, which was decided on 12.10.2020, and the petitioner was relegated to file an appeal before the respondent No.2. Subsequently, the appeal was also preferred by the petitioner which has also been rejected on 30.01.2021 which order is also under challenge in this petition.

3] In brief, the facts of the case are that the petitioner was initially appointed as Lecturer (Assistant Professor) of subject Law in the Rishi Galav College, Morena, which is a 100% Government aided private college. As the law faculty of Rishi Galav College, Morena was withdrawn by the Bar Council of India, the petitioner was rendered surplus in the aforesaid college and thus, according to the provisions of Rule 4(a) and 5(1) of *M.P. Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon ki Bharti) Niyam, 1979* (in short 'the Rules of 1979') he was directed to be appointed in Gyanmandir College, Neemuch against the sanctioned vacant post of Assistant Professor in Law and the petitioner was absorbed in the services of Gyanmandir College, Neemuch vide order dated 17.12.1999. The aforesaid college is also a 100% government-aided institution and is affiliated to Vikram University, Ujjain and recognized by Bar Council of India, New Delhi. The petitioner has also obtained the Doctor of Philosophy (Ph.D.) Degree in the Faculty of Law from Vikram University, Ujjain in the year 2009. According to the petitioner, he was discharging his duties most diligently, however, despite petitioner being the senior, the charge of Principal Gyanmandir College, Neemuch was intended to be handed over to respondent No.6, a contractual faculty appointed by Gyanmandir College, Neemuch and just to smear the petitioner's reputation, a false complaint was filed against the petitioner, which was addressed to the respondent No.2 the Commissioner, Department of Higher Education, Bhopal, who also got an enquiry conducted into aforesaid complaint by Regional Additional Director

of Higher Education, Ujjain Division, Ujjain, and the aforesaid complaint was closed on 18.06.2020. The respondent No.2 also directed the respondent No.4, the Education Officer and Principal, Government Swami Vivekananda, Post Graduate College, Neemuch to ensure handing over of the charge of the post of Principal to the petitioner, which was subsequently given to the petitioner on 24.06.2020, but no sooner the aforesaid order was passed, the respondent No.5 passed the impugned order dated 17.06.2020, and the petitioner was suspended from the post of Assistant Professor in Law, Gyanmandir College, Neemuch, which according to the petitioner was without jurisdiction.

4] Counsel for the petitioner has submitted that the suspension order itself has been passed by the respondent No.5 without jurisdiction, for the reason that the respondent No.5 has exercised its power under the provisions of *M.P. Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon ka Nilamban) Niyam, 1978*, (in short ‘the Rules of 1978’) which has already been repealed in the subsequent Rules known as *M.P. Ashaskiya Shikshan Sanstha Anudan Niyam, 2008* (in short ‘the Rules of 2008’). Counsel has also drawn the attention of this Court to Rule 8 of the aforesaid Rules of 2008, which refers to the repeal of the existing Rules of 1978, and thus, it is submitted that after the repeal of the earlier Rules of 1978, the respondent No.5 is no more empowered to pass any order of suspension by invoking the earlier Rules as the order of suspension itself has been passed on 17.06.2020.

5] Counsel has also submitted that even otherwise, after the impugned order of suspension was passed on 17.06.2020, the charge-sheet has been issued to the petitioner on 09.08.2021, which is after around more than one year and two months, and till date the departmental enquiry is also pending against the petitioner, however, the order of suspension has continued to be in operation, which runs contrary to the decision rendered by the Supreme Court in the case of **Ajay Kumar Choudhary Vs. Union of India and Another** reported as (2015) 7 SCC 291, in which the Supreme Court has held that currency of a suspension order should not extend beyond three months if within this period the memorandum of charge-sheet is not served to the delinquent officer/employee and other directions have also been issued. Thus, it is submitted that on both the counts the petition deserves to be allowed. Thus, the order of suspension be set aside.

6] Counsel for the respondent No.5 has vehemently opposed the prayer and it is submitted that no case for interference is made out as the order has been passed in accordance with the provisions of Rule 4(a) and 5 (1) of the Rules of 1979 as also under the provisions of *M.P. Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon ke Vetano ka Sunday) Adhiniyam, 1978* (in short 'the Adhiniyam of 1978'). It is submitted that in such circumstances, when the petitioner's date of appointment is 25.09.1993, the petitioner would be governed by the earlier Rules of 1979. Thus, it is submitted that the repeal of the earlier Rules would have no impact in the present case, however, the counsel has not

denied that the departmental enquiry is still pending against the petitioner, but it is submitted that the decision relied upon by the petitioner in the case of **Ajay Kumar Choudhary (Supra)** would not be applicable in the present case, as in the aforesaid case the suspension order was in operation for around 11 years and the departmental enquiry was pending since 20 years whereas, in the present case, it has only been 2 years since the order of suspension has been passed and the enquiry is also pending since last around 3 years, however, it is not denied that the charge-sheet has been submitted to the petitioner after more than one year.

7] Counsel for the respondent Nos.1 to 4 has also opposed the prayer and it is submitted that no case for interference is made out.

8] Heard counsel for the parties and perused the record.

9] From the perusal of the record, it is found that the facts of the case are not disputed that the petitioner was posted as Assistant Professor of law in *Gyanmandir* College, Neemuch which is a 100% Government aided college. He was suspended on 17.06.2020, on account of dereliction of duties and in the appeal preferred against the aforesaid order of suspension, the same has also been rejected vide order dated 30.01.2021. The order of suspension reveals that the respondent No.5 has not mentioned as to under which provision of law the aforesaid suspension order is being passed and as per the reply filed by the respondents, it has been passed under the provisions of the Adhiniyam of 1978, and the Rules made thereunder, including the Rules of 1978. It is not disputed that the aforesaid Rules have already been repealed and

have been replaced by the Rules of 2008. Rule 8 of the same which refers to the repeal, reads as under:-

**“8. Repeal of existing rules.-** The Madhya Pradesh Ashasakiya Shikshan Sanstha (Suspension of Teacher and Other Staff) Rules, 1978, Madhya Pradesh Sansthatat Nidhi Rules, 1983, Madhya Pradesh Ashasakiya Shikshan Sanstha (Procedure regarding dismissal, removal of teacher and other staff) Rules, 1983, Madhya Pradesh Ashasakiya Shikshan Sansthan (Promotion of teacher and other staff working in the school) Rules, 1988 and Madhya Pradesh Ashasakiya Shikshan Sanstha (Recruitment of teachers and other employees) Rules, 1979, [Ashasakiya Shikshan Sanstha Revised Sahayak Anudan Rules, 1979] shall stand repealed. Provided that any order made or any action taken under the rules so repealed shall be deemed to have been made or fallen under the corresponding provisions of these rules.”

*(emphasis supplied)*

**10]** A perusal of the aforesaid Rules regarding repeal of existing Rules clearly reveals that it has already repealed the Rules of 1978, and the only saving is that any order made or any action taken under the old Rules so repealed shall be deemed to have been made or fallen under the corresponding provisions of these Rules. The Rules of 2008 have come into force on 22.06.2009, whereas the order of suspension has been passed by the respondents on 17.06.2020. Thus, by no stretch of imagination, it can be said that the respondent No.5 had any authority to pass the order of suspension by invoking the old Rules of 1978. In such circumstances, the impugned order dated 17.06.2020 being passed by the respondent no.5 without jurisdiction, cannot be sustained in the eyes of law and is hereby *quashed*.

**11]** It is also found that so far as the decision rendered by the Supreme Court in the case of **Ajay Kumar Choudhary (supra)** is concerned, the relevant paras of the same read as under :-

“5. This has led to the filing of the Appeal before this Court. In the

hearing held on 11.07.14, it was noted that by letter dated 13.6.2014 the suspension of the Appellant had been continued for a period of 90 days with effect from 15.6.2014 (i.e. the fourth extension), and that investigation having been completed, sanction for prosecution was to be granted within a period of two weeks. When the arguments were heard in great detail on 9th September, 2014 by which date neither a Chargesheet nor a Memorandum of Charges had been served on the Appellant. It had been contended by learned counsel for the Appellant that this letter, as well as the preceding one dated 8.10.2013, had been back-dated. We had called for the original records and on perusal this contention was found by us to be without substance.

6. The learned Additional Solicitor General has submitted that the original suspension was in contemplation of a departmental inquiry which could not be commenced because of a directive of the Central Vigilance Commission prohibiting its commencement if the matter was under the investigation of the CBI. The sanction for prosecution was granted on 1.8.2014. It was also submitted that the Chargesheet was expected to be served on the Appellant before 12.9.2014, (viz., before the expiry of the fourth extension). However, we need to underscore that the Appellant has been continuously on suspension from 30.9.2011.

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21. We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet is served a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any Department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.”

(emphasis supplied)

12] Thus, the Supreme Court has set out the time frame within



which an order of suspension can remain valid and according to it, if the charge-sheet is not filed within three months' time from the date of suspension, it shall not extend beyond the period of three months and if the memorandum of charge-sheet is served, a reasoned order must be passed for the extension of the suspension. In the present case, the charge-sheet has not been furnished to the petitioner within three months' time and instead, it has been served after a period of 1 year and two months, whereas the order of suspension has also not been continued by passing any reasoned order. Thus, on this count also the impugned order is liable to be set aside.

**13]** In such circumstances, on both the aforesaid counts, **this petition stands allowed, and the impugned order dated 17.06.2020 as also the order dated 30.01.2021 are hereby set aside.** The respondents are also directed to regularize the services of the petitioner and all the consequential benefits be extended to the petitioner.

**14]** With the aforesaid, writ petition stands *allowed* and *disposed of*.

**(SUBODH ABHYANKAR)**  
**JUDGE**

**Bahar**