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IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

ON THE 12th OF OCTOBER, 2023

WRIT PETITION No. 12985 of 2022

BETWEEN:-

**SANJAY S/O SHANKARLAL CHOUHAN, AGED ABOUT 43
YEARS, OCCUPATION: NOTHING VILLAGE AND
TEHSIL HAT PIPLIYA (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI ASHUTOSH NIMGAONKAR-ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH PRINCIPAL
1. SECRETARY COOPERATION MANTRALAYA,
VALLABH BHAWAN (MADHYA PRADESH)**

**COMMISSIONER SOCIETIES CO OPERATIVE
2. SOCIETIES VINDHYACHAL BHAWAN GR. FLOOR
(MADHYA PRADESH)**

**3. DEPUTY REGISTRAR CO OPERATIVE SOCIETIES
DEWAS DISTRICT A.B. ROAD (MADHYA PRADESH)**

**UNNAT KRISHI SEVA SAHAKARI SANSTHA MYDT.
4. THROUGH OFFICER IN CHARGE HAT PIPLIYA
(MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI TARUN KUSHWAH-ADVOCATE)

(BY SHRI SHARAD PAWAR-ADVOCATE/ RESPONDENT R-4)

WRIT PETITION No. 12987 of 2022

BETWEEN:-

**SANJAY S/O KAILASHCHANDRA PATIDAR, AGED
ABOUT 43 YEARS, OCCUPATION: NOTHING VILLAGE
AND TEHSIL HAT PIPLIYA (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI ASHUTOSH NIMGAONKAR-ADVOCATE)

AND

- THE STATE OF MADHYA PRADESH PRINCIPAL
1. SECRETARY COOPERATION MANTRALAYA,
VALLABH BHAWAN (MADHYA PRADESH)
 2. COMMISSIONER SOCIETIES CO OPERATIVE
SOCIETIES VINDHYACHAL BHAWAN GR. FLOOR
(MADHYA PRADESH)
 3. DEPUTY REGISTRAR CO OPERATIVE SOCIETIES
DEWAS DISTRICT A.B. ROAD (MADHYA PRADESH)
 4. UNNAT KRISHI SEVA SAHAKARI SANSTHA MYDT.
THROUGH OFFICER IN CHARGE HAT PIPLIYA
(MADHYA PRADESH)

....RESPONDENTS

(BY SHRI TARUN KUSHWAH-ADVOCATE) .

(BY SHRI SHARAD PAWAR-ADVOCATE /RESPONDENT [R-4].

This petition coming on for orders this day, the court passed the following:

ORDER

The petitioners have filed these petition being aggrieved by the order dated 10.05.2022 whereby they have been terminated from services in exercise of power under the provision of Sewa (Niyojan, Nibandhan Tatha Karya Sthiti) Niyam (henceforth "Niyam").

2. Vide judgment dated 29.10.2021 passed by Second Additional Session Judge, Bagli, District Dewas in S.T. No.54/2015, these petitioners were convicted and sentenced for the offence punishable under Section 120(B) (1), 467, 468, 471 and 409 of IPC. Against the said judgment, these petitioners have preferred an Criminal Appeal No.6813/2021 in which jail sentence has been suspended by this Court.

3. The Deputy Registrar Cooperative, Dewas vide letter dated 02.02.2022 sought an opinion from District Prosecution Officer,

District Dewas in respect of disciplinary action to be taken against the petitioners of conviction after the judgment dated 29.10.2021. Vide reply dated 12.04.2022 District Prosecution Officer, District Dewas gave an opinion that these petitioners are liable to be punished under Section 10 (9) of M.P. Civil Services (Classification Control and Appeal) Rules 1966 (henceforth "CCA, Rules, 1966") as in Criminal Appeal No.6813/2021, only the sentence has been stayed. After the aforesaid opinion, vide letter dated 26.04.2022, the Deputy Registrar, directed the respondent No.2 to take disciplinary action under Rule 23 (iii) of CCA Rules,1966. In compliance of the aforesaid, vide order dated 10.05.2022, the petitioners have been terminated from the services, hence, these petitions before this Court.

4. The petitioners are challenging the impugned order *inter alia* on the ground that they have been terminated from the services without conducting any enquiry as contemplated under the Rule 28 of the Niyam. They submits that admittedly the conviction by any court of law is a major misconduct but under Section 25 of Niyam there are four types of punishment provided and it is discretion of Disciplinary Authority to decide which punishment would be appropriated for delinquent in proportionate to major misconduct committed by the delinquent and that can be done only after conducting the Departmental Enquiry as contemplated under Section 28 of the Niyam. It is further submitted the provisions of CCA, Rules, 1966 does not in this case because the employees of Societies are governed by their own Services Rules and in which there is no such dispensation of the Departmental Enquiry upon conviction.

5. Government Advocate as well as counsel for the respondent No.3 submit that Deputy Director directed to respondent No.3 to take disciplinary action and accordingly impugned order has been passed by terminating the petitioners from services. It is not in dispute that the petitioners have been convicted by the court of law for the offence under Indian Penal Code which is moral turpitude, therefore, except termination there is no lesser punishment which can be imposed. Even if the enquiry is conducted that would be futile exercise because the petitioners are not disputing the conviction and this Court has only stayed the sentence not conviction, hence, termination/dismissal is the only penalty for them, thus Writ Petition is liable to be dismissed.

6. The aforesaid facts are not in disputed, only interpretation of Rule 28 of Niyam is required to be done. Vide letter dated 26.04.2022, the Deputy Director only informed the Administrator about the conviction of the petitioners and directed to initiate disciplinary proceedings against these petitioners. Deputy Director did not direct to the Administrator to directly pass an order of termination without enquiry.

7. Rule 24 provides the minor misconduct. For committing the major misconduct, the punishment is provided under Rule 25 which is reproduced below:

25. गम्भीर दुराचरण हेतु दण्ड :-

गंभीर दुराचरण के लिये दोषी पाये गये कर्मचारी को उसके द्वारा संस्था को पहुंचाये गये नुकसान की वास्तविक राशि की वसूली के अलावा उसके आचरण की गम्भीरता के अनुसार निम्नलिखित में से कोई एक दंड दिया जा सकेगा :-

(अ) वर्तमान धारित पद से निम्न पद श्रेणी में पदावनत करना एवं तदनुसार वेतनमान निर्धारण करना।

(ब) अनिवार्य सेवा-निवृत्ति।

(स) सेवा से पृथक करना, (Termination) जो कि भावी नियोजन के लिये निरर्हता

न होगी।

(द) संचयी अथवा असंचयी प्रभाव से वार्षिक वेतन वृद्धि रोकना।

(इ) सेवा से पदच्युत किया जाना (Dismissal) जो कि भावी नियोजन के लिये निरर्हता होगी।

8. Rule 28 provides the procedure for to be followed before imposing major punishment and which specifically says that the employee on charges of major misconduct shall not be punished unless the misconduct is proved by Departmental Enquiry by Authorized Officer and thereafter complete procedure is provided.

Rule 28 is reproduced below:

28. किसी कर्मचारी को उस पर आरोपित गंभीर दुराचरण के लिये तब तक दण्डित नहीं किया जावेगा जब तक कि जांच हेतु अधिकृत अधिकारी द्वारा निम्नानुसार जांच करके कर्मचारी के विरुद्ध दुराचरण का दोष सिद्ध नहीं कर दिया जाता :-

(i) सक्षम अधिकारी अथवा उसके द्वारा अधिकृत अधिकारी कर्मचारी को परिशिष्ट 4 में दिये प्रारूप में गंभीर दुराचरण के लिये आरोप पत्र देगा और साधारण दुराचरण के लिये परिशिष्ट 5 में दिये प्रारूप में आरोप पत्र देगा। आरोप पत्र में दुराचरण का तथा उसके विरुद्ध परिस्थितियों का स्पष्ट उल्लेख किया जावेगा और उसका स्पष्टीकरण मांगा जावेगा।

(ii) कर्मचारी को उसका स्पष्टीकरण प्रस्तुत करने हेतु समय, जो कि कारण बताओ सूचना पत्र में निर्दिष्ट होगा, दिया जावेगा।

(iii) कर्मचारी को अपना बचाव स्वयं करने अथवा इस हेतु संस्था के किसी अन्य कर्मचारी की सहायता लेने की अनुमति होगी। किन्तु किसी बाहरी व्यक्ति को कर्मचारी के बचाव हेतु पैरवी करने की अनुमति नहीं होगी।

(iv) कारण बताओ सूचना पत्र का उत्तर प्राप्त होने पर, उसका दस्तावेजीय परीक्षण किया जावेगा एवं उत्तर संतुष्टिकारक नहीं पाये जाने की स्थिति में निम्नानुसार विभागीय जांच की कार्यवाही प्रारंभ की जाएगी।

(v) सक्षम अधिकारी द्वारा आरोपों की विभागीय जांच हेतु ऐसे व्यक्ति की नियुक्ति की जावेगी, जो आरोपी कर्मचारी से पदनाम में वरिष्ठ हो साथ ही आरोपों के पक्ष समर्थन में तथ्य प्रस्तुत करने हेतु प्रस्तुतकर्ता अधिकारी की नियुक्ति की जायेगी। सक्षम अधिकारी अथवा अधिकृत अधिकारी द्वारा आरोपी कर्मचारी को आरोपों का स्पष्ट उल्लेख करते हुए एवं दस्तावेज व गवाह की सूची जो आरोपों की पुष्टि करते हों, संलग्न करते हुए आरोप पत्र जारी किया जावेगा एवं उसका उत्तर प्राप्त किया जावेगा।

(vi) यदि आरोपी अधिरोपित आरोपों को अस्वीकार करता है तो प्रस्तुतकर्ता अधिकारी आरोपों को सिद्ध करने हेतु गवाह एवं आवश्यक दस्तावेज प्रस्तुत करेगा।

(vii) प्रस्तुतकर्ता अधिकारी के पक्ष समर्थन पूर्ण होने के उपरांत आरोपी कर्मचारी को अपने बचाव में पक्ष समर्थन हेतु तथ्य एवं गवाह प्रस्तुत करने का समुचित अवसर प्रदान किया जावेगा।

(viii) जांच अधिकारी, विभागीय जांच प्रक्रिया का पालन करते हुए उभय पक्षों द्वारा प्रस्तुत साक्ष्यों व तथ्यों की विवेचना कर जांच प्रतिवेदन प्रस्तुत करेगा।

(ix) जांच अधिकारी से प्रतिवेदन प्राप्त होने पर आरोप प्रमाणित हो जाने के

आधार पर सक्षम अधिकारी द्वारा गंभीर दुराचरण हेतु प्रावधानित दण्ड प्रस्तावित करते हुए अंतिम कारण बताओं सूचना पत्र व्यक्तिगत सुनवाई की तिथि निर्धारित करते हुए जारी किया जावेगा।

(x) आरोपित कर्मचारी द्वारा अंतिम कारण बताओं सूचना पत्र के प्रति उत्तर में लिखित अथवा मौखिक रूप से प्रस्तुत तथ्यों को लिपिबद्ध कर एवं जांच प्रतिवेदन में उल्लिखित तथ्यों का संपरीक्षण कर आरोप प्रमाणित पाये जाने के आधार पर सक्षम अधिकारी गंभीर दुराचरण हेतु प्रावधानित दण्ड में से दण्ड का निर्धारण करेगा एवं तदनुसार दण्डादेश जारी करेगा।

9. Shri Nimgaonkar, learned counsel for the petitioners rightly submits that even if there is admitted major misconduct but still the the Competent Authority is required to decide that as to what would be appropriate punishment under Rule 25. The entire material is liable to be considered in Departmental Enquiry before passing any order of punishment. even if the employee has been convicted by Criminal Court.

10. There is no such provision under the Rules for dispensation of enquiry has provided Rule 19 of CCA Rules, 1966. Upon conviction the enquiry cannot be dispensed with for termination of the employee under Niyam. It is also settled law that the standard of proving charge in Departmental Enquiry and in Criminal Trial are altogether different. The findings recorded by the Criminal Court may not influence the Disciplinary Authority to impose punishment of termination from service as the Rule 25 provides four types of punishment in case of major misconduct.

11. An objection is also raised about the maintainability of Writ Petition for want of remedy under Section 55 (2) of the Cooperative Societies Act. Under Section 55 (2), the dispute is liable to be raised before the Deputy Registrar but in the present case, the Deputy Registrar vide letter dated 02.02.2022 directed to Administrator to take action, therefore, he had already made up his mind for taking disciplinary action, however, the Deputy Registrar has only directed

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to take disciplinary but did not propose any punishment. Even if the dispute is raised, the Deputy Registrar will remand back to Disciplinary Authority for taking disciplinary action, thus this objection is rejected. Only the Society /Bank is competent to conduct the Departmental Enquiry not Deputy Registrar.

12. In view of above, both the Writ Petition are allowed. Impugned order dated 10.05.2022 is quashed. Matter is remanded back to initiate the procedure available under Rule 23 of the Niyam.

Certified copy as per rules.

Let copy of this order be retained in connected Writ Petition.

(VIVEK RUSIA)

JUDGE

praveen