

HIGH COURT OF MADHYA PRADESH : JABALPUR

W.P. No.7440/2013

Asif Mohd. KhanPetitioner

Versus

The State of M.P. and othersRespondents

W.A. No.607/2015

Dheer Singh YadavAppellant

Versus

State of M.P. and anotherRespondents

W.A. No.652/2015

Smt. Alice SudhakaranAppellant

Versus

The State of M.P. and othersRespondents

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Coram:

Hon'ble Shri Justice A. M. Khanwilkar, Chief Justice

Hon'ble Shri Justice Rajendra Menon

Hon'ble Shri Justice S.K. Seth

Whether approved for reporting : Yes.

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Shri Anshuman Singh and Shri Rahul Diwakar, Advocates
for the petitioner in W.P. No.7440/2013.

Shri Prashant Sharma, Advocate for the appellant in W.A.
No.607/2015.

None appears for the appellant in W.A. No.652/2015.

Shri Amit Seth, Govt. Advocate for the respondents/State.

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Reserved On : 08.09.2015

Date of Decision : 14.09.2015

J U D G M E N T
{14th September, 2015}

Per: A.M. Khanwilkar, Chief Justice:

These matters have been referred for consideration - of question which is overlapping and, therefore, have been listed together for analogous hearing.

2. The leading writ petition (W.P. No.7440/2013) has been filed at the Principal Seat at Jabalpur. When the said writ petition was listed for admission, the learned Single Judge by a speaking order dated 26.04.2013 opined that the legal position expounded in the case of **Kendriya Vidyalaya Sangthan and others vs. Dr. R.K. Shastri and another**¹, will have no application to the fact situation of the case under consideration. Notwithstanding this opinion, the learned Single Judge referred the matter to Larger Bench for consideration. In such situation, it was open to the Full Bench to observe that the matter should proceed before the Single Judge on the basis of opinion already

¹ 2005(4) MPHT, 352 (DB)

recorded and no question arises for consideration of the Full Bench.

3. However, we may still have to consider the matter because of the companion Writ Appeal No.607/2015 (renumbered – originally W.A. No.196/2013 filed before the Bench at Gwalior), which has been placed for analogous hearing. This writ appeal has been filed by the employee whose writ petition No.1673/2013 filed before the Bench at Gwalior was dismissed by the learned Single Judge vide order dated 15.04.2013² on the finding that the judgments of this Court in **Dr. R.K. Shastri (supra)** and another decision of the Division Bench in **Union of India and others vs. Sri Vilas Ramesh Chand Tarhate**³, were distinguishable on the facts of that case and cannot be applied as binding precedents. The learned Single Judge rejected the challenge to the order of the Commissioner, Higher Education, revoking the suspension of the writ petitioner and by the same order posting him to a place (Government College, Chanderi, District Ashok Nagar) other than the place where he was

² 2013 (3) MPLJ 126

³ ILR (2003) MP 491

working when placed under suspension (as Lab Technician in Government Excellence Science College, Gwalior). The learned Single Judge opined that the Commissioner, Higher Education had power to pass such a composite order and the analogy from the observations made in Dr. R.K. Shastri's case cannot be applied, which observations were on the facts of that case. The writ petitioner questioned the said decision by filing the Writ Appeal No.196/2013, before the Bench at Gwalior. The Division Bench while considering the said appeal on admission, however, was of the opinion that there was conflict between the opinion expressed in the two Division Bench judgments referred to above [Dr. R.K. Shastri (supra) and Sri Vilas Ramesh Chand Tarhate (supra)]. Accordingly, the Division Bench vide order dated 04.04.2014, directed the Registry to place the matter before the Chief Justice for constitution of a Larger Bench and formulated two questions to be answered by the Larger Bench, namely:-

“(1) Whether it is necessary to post an employee on the same place after revocation of order of suspension from where he was suspended?

(2) Whether the law laid down by the Division Bench of

this court in **Kendriya Vidyalaya Sangthan Vs. Dr. R.K. Shastri** reported in **2005(4) M.P.H.T. 352 (DB)** is correct or not?”

4. In addition to the two cases, the third matter being Writ Appeal No.652/2015 (renumbered – originally W.A. No.146/2015 filed before the Bench at Gwalior), arises from the decision of the learned Single Judge at Gwalior Bench dated 17.06.2015 in Writ Petition No.3487/2015(S). The learned Single Judge dismissed even this writ petition following the earlier decision in **Dheer Singh Yadav vs. State of M.P. and another** (renumbered W.A. No.607/2015 – second matter). When writ appeal against this decision was notified for admission on 02.07.2015, the Division Bench noted the fact stated across the Bar that the question involved in the writ appeal was similar to one already referred to the Larger Bench by another Division Bench on 04.04.2014, mentioned hitherto. In view of this submission, the Division Bench directed the Registry to place the papers of even this writ appeal along with other matters already referred to a Larger Bench, for analogous hearing. As a result of which, the said writ appeal, has been transferred to the Principal Seat at Jabalpur and renumbered as

W.A. No.607/2015 and posted for analogous hearing.

5. Accordingly, we are required to answer the two questions formulated by the Division Bench vide order dated 04.04.2014 in W.A. No.607/2015 (renumbered – original W.A. No.196/2013 of Gwalior Bench).

6. We may usefully refer to the broad facts involved in the said appeal. The appellant – Dheer Singh Yadav filed writ petition before the Bench at Gwalior being W.P. No.1673/2013 under Article 226 of the Constitution of India to question the order dated 06.03.2013 issued under the signature of Commissioner, Higher Education, Madhya Pradesh to the extent of posting him at Government College, Chanderi, District Ashok Nagar instead of reinstating him at the place where he was working at the time when he was placed under suspension in lieu of disciplinary proceedings instituted against him, at Government Excellent Science College, Gwalior. As the said appellant was placed under suspension, he had challenged that decision first by way of W.P. No.3022/2012 which was disposed of with direction to the Authorities to conclude the disciplinary

enquiry pending against him preferably within eight months. According to the said appellant, since the enquiry was not concluded within stipulated time, the suspension order stood revoked automatically and in which case the writ petitioner was entitled to join at Gwalior where he was working at the relevant time when he was placed under suspension. This plea was considered by the learned Single Judge and negatived.

7. The learned Single Judge then posed question as to whether, as a matter of right, the petitioner can claim the same place of posting, from where he was placed under suspension. After analyzing the decision of Dr. R.K. Shastri (supra), the learned Single Judge opined that the only substantive or statutory right of the petitioner was to occupy a substantive post which he was holding before suspension, on revocation of the suspension. However, he had no legal or constitutional right to get reinstated at the same place where he was posted when placed under suspension. On this opinion, the learned Single Judge proceeded to hold that the Commissioner did not commit any error in reinstating the said appellant at a different place at Chanderi, instead of Gwalior.

8. While dealing with the decision of Dr. R.K. Shastri's case, the learned Single Judge, in substance, noted that the said decision was essentially in the context of Rule 27 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and for which reason, observed that sub-rule (1) of the said Rule does not vest wide or discretionary power on the Appellate Authority while dealing with appeals against orders of suspension. The jurisdiction of the Appellate Authority is limited to either confirm the suspension or to revoke the same. Thus, the dictum of the Division Bench in Dr. R.K. Shastri's case has been distinguished. Even the opinion of another Division Bench in the case of Sri Vilas Ramesh Chand Tarhate (supra) has been discussed by the learned Single Judge, as not applicable to the facts of the present case.

9. The learned Single Judge further noted that there was no conflict between the view expressed in the decision of Sri Vilas Ramesh Chand Tarhate (supra) and Dr. R.K. Shastri (supra) and that those decisions were on peculiar factual matrix in the concerned case. The learned Single Judge noticed the observations in Sri Vilas Ramesh Chand Tarhate (supra) that

revocation of the order of suspension does not confer a premium on the officer concerned to treat it as a privilege and put forth a claim as a matter of right to be retained at the place where he was posted. On the other hand, the *ratio decidendi* in the case of Dr. R.K. Shastri, was about the competence of the Appellate Authority under CCS (CCA) Rules to revoke the suspension and on revocation to post the employee elsewhere itself. The learned Single Judge then observed that those decisions were inapplicable to the facts of the case before him.

10. The Division Bench vide order dated 04.04.2014, however, was of *prima facie* opinion that the legal position expounded in the case of Dr. R.K. Shastri will bind the Authority and, as a result, the appellant (writ petitioner) was required to be first posted at the same place from where he was suspended. But, after referring to the observations in the case of Sri Vilas Ramesh Chand Tarhate (supra), the Division Bench found that there was conflict in the opinion expressed by the two Division Benches. Further, the Division Bench noted that the judgment in the case of **Dr. R.K.Shastri** (supra) did not consider the dictum of the Division Bench in Sri Vilas Ramesh Chand Tarhate

(supra) and furthermore, whether the employee has lien also against the post where he was posted, in view of the definition of expression “lien” also required consideration.

11. Considering the nature of questions to be examined by us, it is not necessary to advert to the facts of the other two cases before us, nor to give a finding on merits one way or the other in any of these cases. We would prefer to examine the question in abstract and not specific to the facts of the cases before us. As a matter of fact, both the questions, in one sense, are overlapping.

12. The principal decision pressed into service on behalf of the petitioners/appellants, is the case of Dr. R.K. Shastri (supra). It is well established position that the legal precedent must be analyzed in the context of the matter in issue therein and would be binding precedent for similar fact situation. The Constitution Bench of the Supreme in the case of **Islamic Academy of Education Vs. State of Karnataka**⁴ has restated the well settled legal principle – that *ratio decidendi* of a judgment to be culled out only on reading the entire judgment. Further, the observation in a judgment cannot be read in isolation or by reading a line

⁴ (2003) 6 SCC 697

here and there.

13. Keeping this principle in mind, we must revert to the case of Dr. R.K. Shastri. In that case, the writ petition arose from the decision of the Central Administrative Tribunal, Jabalpur in Original Application No.487/2002 - which had considered the challenge for quashing the order dated 6/8-7-2002 to the extent it transferred the respondent No.1 to Kendriya Vidyalaya, Karimganj in Assam on the condition that his suspension will be revoked on joining at Kendriya Vidyalaya, Karimganj. The first respondent, in the writ petition (Dr. R.K. Shastri) was working as a Trained Graduate Teacher (Sanskrit) at Kendriya Vidyalaya No.2, Bhopal, when he was placed under suspension pending enquiry by the third petitioner vide order dated 13.07.2001, with a stipulation that his headquarter during the suspension will be Kendriya Vidyalaya, Bairagarh, Bhopal. The first respondent had filed appeal against the order of suspension on 05.11.2001, to the second petitioner. The second petitioner, in the said appeal, revoked the suspension of the first respondent vide order dated 6/8-7-2002 and by the same order posted the first respondent to Kendriya Vidyalaya, Karimganj, Assam instead of

directing reinstatement at the same place where he was working at Bhopal, without prejudice to the disciplinary proceedings pending against him.

14. In the context of these facts, the question considered by the Division Bench was whether the Appellate Authority (second petitioner) was competent in subjecting the revocation of suspension to a condition that revocation will come into effect only on employee reporting duty at a far away place of transfer.

15. The service of the first respondent in the said writ petition, undoubtedly, was governed by the provisions of CCS (CCA) Rules. After analyzing the provisions of the said Rules, and in particular Rule 27, the Division Bench in paragraphs 9.2 and 9.3 observed thus:-

“9.2. Rule 27 relating to consideration of appeals contains three distinct provisions. Sub-rule (1) deals with appeals against suspension. Sub-rule (2) deals with appeals against imposition of penalty. Sub-rule (3) deals with appeals against other orders specified in Rule 23. While Sub-rule (2) enables the Appellate Authority to issue such directions as it may deem fit in the circumstances of the case and Sub-rule (3) enables the Appellate Authority to make such orders as it may deem just and reasonable, significantly Sub-rule (1) does not vest any such wide or discretionary power on the Appellate Authority while dealing with appeals against orders of suspension. Sub-rule (1) merely enables the Appellate Authority to either confirm the suspension or revoke the suspension. Rule

27(1) controls the manner of consideration and disposal of an appeal against suspension. Having regard to Sub-rule (1) of Rule 27, the Appellate Authority has no power, while considering an appeal against an order of suspension or while revoking the suspension, to direct transfer of an employee or making the revocation or suspension subject to the employee reporting at the place of transfer.

9.3. The reason behind Sub-rule (1) of Rule 27 not giving the wide latitude or discretion to the Appellate Authority, as done under Sub-rule (2) or (3) of Rule 27, is obvious. Suspension pending enquiry is not a punishment. But it causes prejudice and hardship to the employee as it prevents him from performing his legitimate duties and earning his salary and subjects him to a payment of a subsistence allowance far below his salary and further subjects him loss of reputation. An appeal is provided only to consider whether the suspension should be confirmed or not. Therefore, the question of Appellate Authority transferring the suspended employee as a condition of revocation, or making the revocation subject to the employee reporting at the place of transfer, does not arise.”

(emphasis supplied)

16. On a bare reading of this analysis, it is crystal clear that the Division Bench in this case considered only one aspect of the matter – with reference to the power of the Appellate Authority flowing from Rule 27 of CCS (CCA) Rules. No more and no less. This decision of the Division Bench, therefore, is an authority on the question framed in paragraph 8 of the reported decision - as to the scope of “power of the Appellate Authority”. The Division Bench found that the “Appellate Authority” had no power to direct transfer of an employee or making the

revocation of suspension subject to the employee reporting to duty at a different place than the place where he was working when placed under suspension.

17. This reported decision will be of no avail in cases where a composite order is passed by the Authority itself, if competent to pass such an order. In other words, if the Authority, who passes a composite order of revocation of suspension and of posting the employee at some other place, has power to do so, that will be permissible in law. For, there is no express provision in the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966, which prohibits issuance of a composite order by the Authority otherwise competent to pass such order of revocation of suspension as well as to transfer the employee to some other place.

18. Before we turn to the other decision, we may reproduce paragraphs 11 and 12 of the same reported decision in Dr. R.K. Shastri's case (supra), for answering the argument canvassed by the appellants/petitioners. The same reads thus:-

“11. It is well settled that when an employee is kept under suspension pending enquiry, he retains his lien over the post from which he is suspended. It is also a settled

position that the station of posting immediately before suspension would be the headquarter *vis-a-vis* the suspended employee, unless the Competent Authority changes the headquarter of the suspended employee in public interest. It is also well settled that any vacancy caused on account of suspension pending enquiry, is to be filled by a reservist and where a reservist is not available by officiating appointment. Therefore on revocation of suspension, the employee becomes entitled to report back to his place of posting from where he was suspended. Once he reports back to duty, the employer may, in exercise of power of transfer, transfer him. Therefore, we agree with the finding of the Tribunal that the order of the Appellate Authority dated 6/8-7- 2002 to the extent it posts the first respondent to Karimganj and makes the revocation of suspension effective from the date of reporting at K.V., Karimganj, is invalid and liable to be quashed.

12. It follows therefore that the suspension stood revoked with effect from 8-7-2002 and the petitioners could not have been relieved him from Bhopal. As a consequence of revocation of suspension and as a consequence of the action of the petitioners in not permitting him to report back to duty at Kendriya Vidyalaya No. 2 Bhopal, the first respondent will be entitled to all consequential benefits. He will be deemed to be on duty at K.V. No. 2, Bhopal from 8-7-2002 will all monetary benefits. In so far as order dated 7-11-2003 passed during the pendency of this petition, it has no legal sanctity. As a consequence of upholding of the order of the Tribunal, the said order becomes ineffective.”

(emphasis supplied)

19. In our opinion, the observations in paragraph 11 cannot be divorced from the factual matrix considered by the Division Bench. These observations are obviously in the context of facts of that case and would be binding precedent only in that regard. No doubt, the Division Bench has observed that the position

stated in these paragraphs is well settled position. However, with due respect, we find that there is no express or even implied legal provision to reinforce the proposition that the employee has a right muchless vested right to be reinstated at the same place where he was working when suspended, nor any binding precedent. None of that has been brought to our notice, much less an express provision in the Act or the Rules governing the services of the appellants/petitioners, which would preclude or prohibit the Appropriate (Competent) Authority from passing a composite order of revoking the suspension as well as transferring the employee to another place instead of reinstating him at the same place. If the Competent Authority is free to change the headquarter of the suspended employee in public interest, it is too much to suggest that it cannot do so whilst revoking the suspension.

20. No other legal precedent, besides the case of Dr. R.K. Shastri (supra), has been brought to our notice, which will reinforce the statement found in paragraph 11 of the reported decision - to the effect that after the revocation of suspension, the employee becomes entitled to report back to his place of

posting from where he was suspended. In our view, there is marked difference between having lien on a “post” held substantively whilst under suspension, than the entitlement of being “posted” at an appropriate place after revocation of suspension. We may, however, agree with the observation that it is settled position that the station of posting immediately before suspension would be the headquarter *vis-à-vis* the suspended employee, unless the Competent Authority changes the headquarter of the suspended employee in public interest. Similarly, there is no difficulty in accepting the position mentioned in paragraph 11 that an employee placed under suspension pending enquiry retains his lien over the “post” from which he was suspended. But, it does not follow that he has a vested right to be reinstated at the same place or location and nowhere else, as a rule.

21. To put it differently, it is not possible to countenance the argument that the Appropriate Authority cannot exercise power to pass a composite order to revoke suspension and to simultaneously transfer the employee to another place in public interest. For, the Appropriate Authority has power to transfer the

employee subordinate to him as per the governing service conditions, after revocation of his suspension. Indeed, whether such transfer is just and proper can be tested on well settled legal principles.

22. We may observe that in service jurisprudence the field regarding appointment or termination including the lien on the “post” held substantively on which the person is appointed, is, one field. The other field is about the matters of disciplinary enquiry – to wit, suspension and including revocation of suspension. The third field is about the service conditions such as transfer, being incidence of service. The Authorities, for each of these fields, may be different or it is possible that in a given case, it can be the same Authority. It is also possible that the Authority who may place the employee under suspension may be different than the Authority empowered to transfer that employee. Absent explicit exclusion of power, composite order of revocation of suspension and transfer to another place can certainly be passed by the concerned Authority competent to pass order on those matters. Similarly, if the composite order were to be passed by the Superior Authority, to which that

Authority (who has power to suspend and/or to revoke suspension and/or to transfer) is subordinate, there is no reason why a composite order cannot be passed by the Superior Authority.

23. A priori, the test for deciding whether the composite order is valid or otherwise, would depend on the fact as to whether the Authority, who has passed the order, was competent to exercise such power - on both the matters - relating to revocation of suspension and also of transfer of the concerned employee. It may be possible that the same Authority may be the Appellate Authority. While entertaining appeal of the employee, however, the jurisdiction to be exercised is limited of an Appellate Authority under Rule 27. That jurisdiction would be governed by the provisions providing for remedy of appeal against the order of suspension. In that situation, it may be possible to suggest that the Appellate Authority must first set aside the suspension order and direct reinstatement of the employee at the same place where he was working at the time of suspension and then by a separate order the employee may be transferred to another place in public interest. This situation will be governed

by the principle expounded in Dr. R.K.Shastri's case (supra).

24. To put it differently, there may be different factual matrix which may be germane to answer the question about the competency of the Authority who passed the composite order. That would depend on the facts of each case and will have to be decided in the context of the governing provisions pertaining to matters of suspension and transfer and indeed on the touchstone of competency of the Authority to pass such an order, as the case may be.

25. The argument of the appellants/petitioners, however, is that the revocation of suspension can be in three different situations. One, by operation of law, in view of the deeming provision contained in Rule 9(5)(a) of the Rules of 1966. The second situation may be by issuance of revocation order by the Appropriate Authority under Rule 9(5)(b) of the Rules of 1966; and the third situation may arise when the Appellate Authority allows the appeal against the order of suspension and as a result of which sets aside the same.

26. No doubt, the three situations referred to above, are mutually exclusive. However, the scheme of the Rules of 1966

do not prohibit, either expressly or impliedly, passing of a composite order by the Authority who is empowered under the Rules to revoke the suspension as also to transfer the concerned employee.

27. Indeed, in the case of revocation of suspension by virtue of Rule 9(5)(a), it would be a case of revocation in law - *de jure*. Whereas, revocation of suspension by the Appropriate Authority under Rule 9(5)(b) may be a case of revocation in fact – *de facto*. The same may be true about the order passed by the Appellate Authority of setting aside the suspension order. Nevertheless, in absence of any express provision in the Rules of 1966, prohibiting the Appropriate Authority, competent to suspend subordinate employee and including to revoke the suspension as also to transfer the concerned employee, it is not open to doubt the existence of power to pass a composite order of revoking suspension as also to simultaneously transfer the employee to another place in public interest. Taking any other view would be a pedantic approach and only necessitating multiplicity of orders (ministerial work), to be passed by the same Authority.

28. Suffice it to observe that the decision of Dr. R.K. Shastri is not an authority on the proposition that it is mandatory even for the Competent Authority to post the employee at the same place after revocation of the order of suspension from where he was suspended. It is, however, an authority on the proposition about the limited power invested in the Appellate Authority - either to uphold the suspension or not and confirm or revoke the order accordingly, as per Rule 27 of the Rules of 1966.

29. In the present cases, it is not necessary for us to examine the wider question as to whether, if the Appellate Authority is the same as Authority competent to transfer the employee, can it pass a composite order indicating that it was exercising both powers simultaneously. Therefore, we leave that question open.

30. That takes us to the question of law as to whether there is any conflict of opinion in the decisions of coordinate Benches (Division Benches) of this Court in Dr. R.K. Shastri (supra) and Sri Vilas Ramesh Chand Tarhate (supra). In the case of Sri Vilas Ramesh Chand Tarhate (supra), the writ petition was filed for challenging the order passed by the Central Administrative Tribunal, Jabalpur. The said Vilas had filed Original Application

questioning the soundness of order dated 19.07.2001 by which he was transferred from Jabalpur to Mumbai. It was not a case of composite order as such. In that case, the suspension order was passed against Vilas on 15.06.2001. Charge-sheet was issued against him. He offered explanation after receipt of the charge-sheet. After some time the suspension was revoked. After revoking the order of suspension Vilas was transferred from Jabalpur to Mumbai by order dated 19.07.2001. The challenge to the transfer order was essentially on the ground of *mala fide* exercise of power by the Authority and not because of public interest or administrative exigency. The observations in this decision, therefore, must be understood in the context of the said controversy.

31. As the decision in Sri Vilas Ramesh Chand Tarhate (supra) is not strictly on the question considered in Dr. R.K. Shastri (supra), the question of there being any conflict in the opinion on the same issue will not arise. The controversy considered in the case of Sri Vilas Ramesh Chand Tarhate (supra) was on the touchstone of *mala fide* exercise of power by the concerned Authority, as can be discerned from the following observations

at page nos.497 and 498 of the judgment reported in (2003) ILR
491:-

“In view of the aforesaid enunciation of lawTo put it differently, if *malafide* would have been established possibly the concept of punitive nature of transfer would have gained ground but if the disciplinary authority thought it appropriate that a particular officer should be kept away from the scene of occurrence it cannot be said that the order of transfer being punitive is liable to be quashed. If such a logic is adopted the effect would be catastrophic and the public administration will be in a state of total chaos. A person which has been charge- sheeted may conceive the notion that he will remain embedded where charge-sheet has been served against him. This can never be the case and should never be the one.

The next limb of submission by Mrs. Menon is that the order of transfer was passed only to accommodate Mr. S.K. Singh. The said argument is in the compartment for assailing the order of transfer on the ground of *malafide*. On a perusal of the order passed by the Tribunal and the documents which have been brought on record we are not able to attach any significance to the said submission. There may be cases where one particular employee is transferred some one has to be posted in his place unless there are overwhelming circumstance to show that whole thing has been contrived to adjust or accommodate the said employee. The present factual matrix does not so exposit. The respondent No. 1 was transferred because of the allegations made against him. When a public officer is visited with a charge-sheet on the basis of certain serious allegations, the department may in its wisdom would like to transfer him to another place. True it is, in the case at hand an order of suspension was passed and later on it was revoked, but revocation of the order of suspension does not confer a premium on the officer concerned to treat it as a privilege and put forth a claim as a matter of right to be retained at the place where he was posted.

In view of the aforesaid analysis we are of the considered opinion that the decision rendered by the Tribunal is absolutely vulnerable and sensitively susceptible and we unhesitatingly quash the same.”

(*emphasis supplied*)

32. We accordingly disagree with the view expressed that there is conflict of opinion in the two decisions of the Division Bench, referred to above.

33. The next question is: whether the lien would be on the post held substantively or against the place where he was working. This doubt can be straightaway answered on the basis of the definition of expression “lien” given in Rule 9(13) of the Madhya Pradesh Fundamental Rules. Expression “lien” reads thus:-

“**Lien**” means the title of a Government servant to hold substantively, either immediately or on the termination of a period or periods of absence, a permanent post including a tenure post, to which he has been appointed substantively.”

34. In view of this express provision, it is not open to contend that the lien would be against the place where the employee was working at the relevant time when he was placed under suspension. In the case of **Haribans Mishra Vs. Rly. Board**⁵, the Supreme Court has held that lien can be on a post and not a lien on a place.

35. Indubitably, even if the employee is placed under

⁵ (1989) 2 SCC 84 (Para 15)

suspension, he would continue to hold his lien on the “post” on which he was “appointed substantively”, until reinstated after revocation of suspension. However, there can be no vested right to continue at a place where the employee was posted at the time of suspension. Any other view would be antithesis to the rule of transfer being an incidence of service. It may be a case of transfer and posting at a different place, by the Competent Authority. That may be open to challenge on permissible grounds.

36. A priori, the mere fact that the transfer has been ordered simultaneously with revocation of suspension, by passing a composite order, that per se cannot be the basis to question the authority of the Competent Authority. What needs to be established in such a case, is, whether the Authority who passed the composite order, had limited power and could not have passed such a composite order on both the matters - of revocation of suspension as also transfer, to successfully challenge the order.

37. We agree with the view expressed by the learned Single Judge in Dheer Singh Yadav (supra) that the judgment in Dr. R.K. Shastri (supra) must be read only in the context of power

to be exercised by the “Appellate Authority” under the statutory Rules. Further, we agree with the view taken by the learned Single Judge, that it is not impermissible for the original Authority to pass a composite order of revocation of suspension and transfer. Similarly, we agree with the view of the learned Single Judge that the analogy of the principle stated in Dr. R.K. Shastri’s case with reference to the limited power of the Appellate Authority, will be of no avail qua the original Authority competent to pass such orders. Further, we agree with the learned Single Judge that there is no conflict in the view expressed in Sri Vilas Ramesh Chand Tarhate (supra) and Dr. R.K. Shastri (supra).

38. Our attention was also invited to an unreported decision of another learned Single Judge of this Court in the case of **Ramashankar Mishra vs. State of M.P. and another**⁶. The learned Single Judge in this judgment has taken the same view that the decision in Dr. R.K. Shastri (supra) is with reference to the power of the Appellate Authority and not with reference to Rule 9(5) of the Rules of 1966. The learned Single Judge has

⁶ W.P. No.12219/2014 decided on 11.8.2014

rightly highlighted the observation in paragraph 11 in the case of Dr. R.K. Shastri (supra) that once the employee reports back to duty, the employer may, in exercise of power of transfer, transfer him. The learned Single Judge has also noticed the exposition of coordinate Bench in the case of Dheer Singh Yadav (supra) which had distinguished the judgment of Dr. R.K. Shastri on facts.

39. Reference was also made to the unreported decision in the case of **V.K. Chouksey vs. State of M.P. and others**⁷ in support of the argument that after the suspension is revoked the employee must be first reinstated at the same place and then transferred, if necessary. From the bare reading of this order, it is noticed that the order was passed merely following the dictum in Dr. R.K. Shastri's case, without analyzing any other aspect.

40. The counsel for the State then invited our attention to the decision of the Supreme Court in the case of **The Government of India, Ministry of Home Affairs and others vs. Tarak Nath Ghosh**⁸, in particular, paragraph 8 thereof. This decision amplifies the situation when the action of suspension from

⁷ W.P. No.8311/2012 decided on 7.12.2012

⁸ AIR 1971 SC 823

service is necessitated and including the consequences of suspension.

41. Taking overall view of the matter, therefore, we answer the two questions referred to us for consideration. We hold that the question as to whether it is necessary to post an employee at the same place after revocation of order of suspension from where he was suspended, may have to be answered on case to case basis in the context of existence or non-existence of the authority/power in the Authority passing the order in question. If the Authority is competent to revoke suspension as also to transfer the employee, it is open to such Authority to pass a composite order, if the situation so warrants. Whether the transfer can stand the test of judicial scrutiny, will be an independent issue to be decided on the settled legal principles. There is nothing in the Rules of 1966 or the Madhya Pradesh Fundamental Rules which prohibits the Competent Authority from passing a composite order of revocation of the suspension and transfer at a different place.

42. We further hold that the dictum of the Division Bench in the case of Dr. R.K. Shastri (supra) to the effect that the power

of the Appellate Authority while deciding the challenge to the order of suspension is circumscribed by Rule 27 of the Rules, is correct and needs no reconsideration. However, at the same time, we hold that the wide observations found in paragraph 11 of the same judgment, may have to be understood in the context of the question considered in the fact situation of that case.

43. We accordingly answer the questions referred to us on the above terms and direct the Registry to place the matter before the appropriate Bench for consideration. The two writ appeals (W.A. No.607/2015 and W.A. No.672/2015) be transmitted back to the Gwalior Bench and the writ petition (W.P. No.7440/2013) be placed before the Single Judge forthwith.

44. While parting we place our appreciation on record for the able assistance given by the counsel appearing for the respective parties and in particular in completing the arguments in the given time frame.

(A.M. Khanwilkar)
Chief Justice

(Rajendra Menon)
Judge

(S.K. Seth)
Judge