

HIGH COURT OF MADHYA PRADESH : JABALPUR.

**Division Bench : Hon'ble Shri Justice J.K. Maheshwari &
Hon'ble Smt. Justice Anjali Palo**

W.P.No. 11740/2018

Basant Kumar Gupta

Vs.

The State of Madhya Pradesh and others.

W.P.No. 26640/2018

Sunil Samadhiya

Vs.

The High Court of M.P.and others.

W.P.No. 173/2019

Santosh Rathore

Vs.

The High Court of M.P. & another

W.P.No. 181/2019

Anwal Ali

Vs.

The High Court of M.P.and others.

W.P.No. 236/2019

Kamal Ginnare

Vs.

The State of M.P.and others.

W.P.No. 240/2019

Devlal Sarvar

Vs.

The State of M.P.and others.

W.P.No. 1983/2019

Dongar Singh Mandloi

Vs.

The High Court of M.P.and others.

W.P.No. 2105/2019

Vinod Mishra

Vs.

The High Court of M.P. and others.

W.P.No. 3496/2019

Akram Hussain & others

Vs.

The High Court of M.P. and others.

Shri Ram Sahodar Tiwari, Shri Amit Seth, Shri Ankit Saxena, Advocates for the petitioners., counsel with the petitioner.

Smt. Amrit Ruprah, Shri Vivek Ranjan Pandey, Government Advocate, Shri Siddharth Gupta, Shri Amit Garg and Shri Raghvendra Kumar, Advocates for the respondents.

ORDER
(7.8.2019)

As Per : J.K. Maheshwari, J.

1. This order shall govern the disposal of all the aforesaid writ petitions as in all these cases the orders passed by the District Judge confirmed in appeal imposing penalty as specified therein on the ground of having 3 or 4 children and treating the same as misconduct have been assailed including the quantum of penalty awarded disproportionately.
2. In W.P. No. 11740/2018 petitioner has assailed order Annexure P-1 dated 11.1.2017 passed by District Judge, Datia whereby penalty of withholding two increments with cumulative effect has been imposed on him on account of having 4 children along with the order Annexure P-2 dated 15.9.2017 passed by the High Court on administrative side dismissing the appeal filed by the petitioner against the order dated 11.1.2017. However, seeking quashment of both these orders and to grant consequential benefit, he has filed this petition.

3. In W.P. No. 26640/2018, petitioner has assailed order Annexure P-1 dated 6.3.2018 passed by District & Sessions Judge, Katni whereby penalty of withholding two increments with cumulative effect has been imposed on him on account of having 3 children along with the order Annexure P-3 dated 3/4-4-2018 passed by the High Court on administrative dismissing the appeal filed by the petitioner against the order dated 6.3.2018. However, seeking quashment of both these orders and to grant consequential benefit, he has filed this petition.

4. In W.P. No. 173/2019 petitioner has assailed order Annexure P-1 dated 7.6.2018 passed by District & Sessions Judge, Harda whereby penalty of withholding two increments with cumulative effect has been imposed on him on account of having 3 children along with the order Annexure P-2 dated 30.11.2018 passed by the High Court on administrative side dismissing the appeal filed by the petitioner against the order dated 7.6.2018. However, seeking quashment of both these orders and to grant consequential benefit, he has filed this petition.

5. In W.P. No. 181/2019 petitioner has assailed order Annexure P-1 dated 7.6.2018 passed by District & Sessions Judge, Harda whereby penalty of withholding two increments with cumulative effect has been imposed on him on account of having 3 children along with the order Annexure P-2 dated 30.11.2018 passed by the High Court on administrative side dismissing the appeal filed by the petitioner against the order dated 7.6.2018. However, seeking quashment of both these orders and to grant consequential benefit, he has filed this petition.

6. In W.P. No. 236/2019 petitioner has assailed order Annexure P-1 dated 7.6.2018 passed by District & Sessions Judge, Harda whereby penalty of withholding two increments with cumulative effect has been imposed on him on account of having 3 children along with the order Annexure P-2 dated 30.11.2018 passed by the High Court on administrative side dismissing the appeal filed by

the petitioner against the order dated 7.6.2018. However, seeking quashment of both these orders and to grant consequential benefit, he has filed this petition.

7. In W.P. No. 240/2019 petitioner has assailed order Annexure P-1 dated 7.6.2018 passed by District & Sessions Judge, Harda whereby penalty of withholding two increments with cumulative effect has been imposed on him on account of having 4 children along with the order Annexure P-2 dated 30.11.2018 passed by the High Court on administrative side dismissing the appeal filed by the petitioner against the order dated 7.6.2018. However, seeking quashment of both these orders and to grant consequential benefit, he has filed this petition.

8. In W.P. No. 1983/2019 petitioner has assailed order Annexure P-1 dated 7.6.2018 passed by District & Sessions Judge, Harda whereby penalty of withholding two increments with cumulative effect has been imposed on him on account of having 3 children along with the order Annexure P-2 dated 30.11.2018 passed by the High Court on administrative side dismissing the appeal filed by the petitioner against the order dated 7.6.2018. However, seeking quashment of both these orders and to grant consequential benefit, he has filed this petition.

9. In W.P. No. 2105/2019 petitioner has assailed order Annexure P-1 dated 6.4.2018 passed by District & Sessions Judge, Harda whereby penalty of withholding two increments with cumulative effect has been imposed on him on account of having 3 children along with the order Annexure P-2 dated 30.11.2018 passed by the High Court on administrative side dismissing the appeal filed by the petitioner against the order dated 6.4.2018. However, seeking quashment of both these orders and to grant consequential benefit, he has filed this petition.

10. In W.P. No. 3496/2019 petitioners have assailed order Annexure P-1 dated 24.11.2017 passed by District & Sessions Judge, Neemuch whereby penalty of withholding two increments with cumulative effect has been imposed on each of them on account of having 3 or 4 children along with the orders filed cumulatively

as Annexure P-2 passed by the High Court on administrative side dismissing the appeal filed by the petitioners against the order dated 24.11.2017. However, seeking quashment of these orders and to grant consequential benefit, they have filed this petition.

11. Common question, which arises for consideration before this Court is whether the employees serving in District Court establishments appointed in different years following different procedure would be dealt with by penalty as directed by the disciplinary authority as well as the appellate authority because of having 3 or 4 children.

12. In order to answer the aforesaid question, Clause (4) of Rule 22 of the Civil Services (Conduct) Rules, 1965 (hereinafter referred to as the Rules of 1965) is relevant whereby every government servant shall observe the policies regarding family welfare of the Government of India and the State Government. As per explanation, for the purpose of this sub-rule, Government servant having more than two children shall be deemed to be misconduct, if one of them is born on or after 26.1.2001. However, if we see the allegations as alleged against all the petitioners then it is apparent that either third or fourth child was born after 26.1.2001, therefore, in terms of the statutory provision on account of having third or fourth child, it would fall within the purview of deemed misconduct.

13. It is true that as and when their recruitment were made, specific condition showing the eligibility on account of having 3 or 4 children was not advertised. The said fact has also not been brought to the notice of this Court in the reply filed by the High Court. However, in the said context, the arguments advanced relying upon the Division Bench judgment of this Court in the case of **Manoj Kumar Versus State of M.P. & another** and another connected case decided on 23.2.2018 has been put forth wherein this Court in Paras 18 and 19 observed as under:-

18. Still further, the petitioners have not disputed such clause prior to the selection or even in the present writ petition. Having participated in the selection process wherein 1961 Rules were adopted in respect of selection process for the post of District Judge (Entry Level), the petitioners are estopped to challenge adoption of such clause for the purposes of eligibility and disqualification.

Having said so, we find that if such was the eligibility condition, it was mandatory for the High Court to seek information about the number of children in the application form itself. The eligibility of the candidate has to be satisfied before a candidate is permitted to appear in the examination and to undergo the selection process. Since the High Court has not sought the information in terms of 1961 Rules in the prescribed application form, it is not open to the High Court to declare a candidate ineligible for the reasons that the candidate has more than two children as such information was not elucidated in the application form.

19. The Supreme Court in Shri Krishnan's case (supra) has held that the Head of the Department nor the University Authorities took care to scrutinize the admission form then the question of the candidate committing fraud did not arise. Keeping in view the said principle, in the absence of any information sought from the candidate in respect of eligibility of having more than two children as on 26th January, 2001, it is the High Court which has failed to elucidate relevant information to determine eligibility of a candidate and disqualify the candidate from facing the selection process itself. Once the petitioners have been subjected to selection and subsequent appointment then to cancel the candidature is unreasonable action on the part of the High Court.

14. It is further required to be taken note of that the High Court of M.P. has published the Rules on 28.6.2019 known as *The Madhya Pradesh District Court Establishment (Recruitment and Conditions of Service) Rules, 2016* (hereinafter referred to as the Rules of 2016). Clause 38 of the Rules of 2016 deals with the residuary provision, which provides that in respect of all matters (not provided in

these rules) regarding the conditions of service of the members of the service, including matters relating to the Conduct, Control and Discipline, provisions of M.P. Civil Services (Conduct) Rules, 1965, M.P. Civil Services (CCA) Rules, 1966 and all other applicable to M.P. State Government employees shall apply subject to such modification, variation and exceptions by the High Court. However, with effect from the date of notification, these rules have been made strictly applicable but prior to same, recruitment of the petitioners of either class III or class IV category were governed by the rules of State Government. Under the terms of the Rules of 1965, having 3 or 4 children would be misconduct but has not been expressly communicated to which the exception can be carved out from the fact that the intimation regarding the said fact showing the eligibility which may be termed as misconduct is required to be adjudged on the basis of terms and conditions so mentioned in the advertisement at the relevant point of time.

15. Another relevant factor is that if we see the cases, some of the orders have been placed on record thereby the District Judges of different Districts have passed the orders. Some of them have not found the charges proved while some of them punished imposing penalty of Censure, some of them imposed the penalty of withholding one or two increments with non-cumulative effect, some of them have imposed the penalty of withholding two or three increments with cumulative effect and some of the District Judges have passed the order terminating the services of the employees on this count. However, looking to the said fact and the legal position as enumerated hereinabove and also looking to the fact that it is not clear that at the time of the recruitment of the petitioners by way of advertisement or otherwise on the basis of an application, conditions of having such misconduct as per applicability of the rules applicable to the employees of the State, have been advertised or not. In absence of having specific detailed reply and to maintain the parity in the matter of punishment to

Class III or Class IV employees looking to the deemed misconduct, we cannot let-off them but simultaneously the penalty as imposed of withholding two or three increments with cumulative effect or otherwise is disproportionate and against the principal of proportionality to the alleged misconduct, therefore, relying upon the judgment of the Supreme Court in the case of **Ranjit Thakur Versus Union of India and others** reported in **(1987) 4 SCC 611** without disturbing the findings on the point of misconduct on account of explanation of Clause (4) of Rule 22 of the Rules of 1965 and maintaining proportionality in the State to deal with the employees, who are in the employment, we hereby set aside the orders of penalty on quantum as imposed by the District Judges and also the orders passed by the appellate authority and it is directed that in order to maintain proportionality in all such cases which have been decided prior to commencement of the Rules of 2016, penalty of Censure be imposed by the District Judges to all such employees. Consequential effect of imposing penalty of Censure shall follow in view of interference made by this Court on the point of quantum of punishment. It is further directed that all the cases pending prior to 28.6.2019 before any of the District Judge shall be dealt with by the penalty as observed hereinabove. It is also directed that the appeal pending on administrative side before the Registry of this Court shall also be dealt with imposing the penalty of Censure following the consequence of such penalty and appropriate orders be passed. The concerned District Judges as well as Registrar General of this Court shall do the needful within two months from today.

16. With the aforesaid observations, all these petitions stand allowed in part and disposed of.

(J.K. Maheshwari)
Judge

(Smt. Anjali Palo)
Judge

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