

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
JUSTICE SUJOY PAUL**

ON THE 10th OF AUGUST, 2023

WRIT PETITION No. 22214 of 2019

BETWEEN :-

**VAIBHAV POOREY S/O DR. BHUPENDRA
POOREY, AGED ABOUT 38 YEARS,
OCCUPATION: COURT MOHARRIR COURT
MOHARRIR, II ADJ, KHARGONE, DISTT.
KHARGONE (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI ISHTEYAQ HUSAIN - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH
PRINCIPAL SECRETARY VALLABH
BHAWAN MANTRALAYA BHOPAL
(MADHYA PRADESH)**
- 2. DIRECTOR GENERAL OF POLICE
POLICE HEADQUARTERS, BHOPAL
(MADHYA PRADESH)**
- 3. INSPECTOR GENERAL OF POLICE,
BHOPAL ZONE BHOPAL (MADHYA
PRADESH)**
- 4. DEPUTY INSEPCTOR GENERAL OF
POLICE BHOPAL (MADHYA
PRADESH)**

5. SUPERINTENDANT OF POLICE,
BHOPAL (SOUTH) (MADHYA
PRADESH)

.....RESPONDENTS

((SHRI DEVDUTT BHAVE – PANEL LAWYER FOR THE RESPONDENT /
STATE)

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

ORDER

With the consent of parties, finally heard.

2. The challenge is mounted in this petition filed under Article 226 of the Constitution of India to certain orders mentioned in the relief clause but Shri Ishteyaq Husain, learned counsel for the petitioner confined his arguments against the orders passed in review dated 27.02.2012 (Annexure P-2) and orders affirming it dated 06.11.2012 (Annexure P-3) and 17.01.2017 (Annexure P-4). Learned counsel for the petitioner assailed it on twin grounds. *Firstly*, the petitioner was inflicted with a minor punishment of stoppage of one increment for one year without cumulative effect with effect from 30.11.2011 but after putting him to notice, the said punishment was converted into said punishment with cumulative effect. No reasons as required under Regulation 270(4) of M.P. Police Regulations are assigned. *Secondly*, by order dated 30.11.2011 a minor punishment was imposed whereas the punishment enhanced / converted by order dated 27.02.2012 is a major punishment. In a minor penalty proceedings, a major punishment cannot be imposed. By placing reliance on **M.M. Mudgal**

v. **State of M.P., 2012 SCC OnLine MP 6899**, it is urged that for these reasons impugned order of renew may be set aside.

3. Shri Devdutt Bhave, learned P.L. for the State supported the impugned order.

4. No other point is pressed by learned counsel for the parties.

5. I have heard the learned counsel for the parties and perused the record.

6. The judgment of this Court in **M.M. Mudgal (Supra)** is based on a Supreme Court judgment reported in **1991 Supp (1) SCC 504 (Kulwant Singh Gill Vs. State of Punjab)** the stoppage of increment with cumulative effect was held to be a major punishment.

7. A plain reading of review order dated 27.02.2012 shows that the competent authority opined that petitioner when put to show cause notice could not show any valid reason as to why the proposed punishment can be reduced and thereafter decided to enhance the punishment. Clause (4) of Regulation 270 reads as under :-

“(4) The revising authority may for reason to be recorded in writing exonerate or may remit vary of enhance the punishment imposed or may order a fresh enquiry of the taking of further evidence in the case.”

(Emphasis Supplied)

8. The revising authority as per this sub-clause was required to record reason as to why he wanted to enhance the punishment. A microscopic reading of impugned order dated 27.02.2012 shows that the argument of Shri Husain has substance and said authority has not

assigned any reason whatsoever for enhancement of the punishment. The reason that petitioner has not assigned any reason as to why enhanced punishment should not be imposed, cannot be treated to be a reason for enhancing the punishment originally imposed.

9. *Secondly*, in para-7 of **M.M. Mudgal (supra)** this Court opined as under :-

“7. Undisputedly the punishment order was issued against the petitioner after giving him a show cause. Though as per the law laid-down by the Apex Court, penalty of withholding of increment of pay with cumulative effect is deemed to be a major penalty but in the rules the same is treated as a minor penalty. Since it is not clarified whether withholding of increment or stagnation allowance, as enumerated in Rule 10(iv) of the Rules, with cumulative effect is also a minor penalty, the law laid-down by the Apex Court is required to be kept in mind and if the said law is made applicable, withholding of increment of pay with cumulative effect is deemed to be a major penalty. This has to be held so because the penalty if imposed with cumulative effect will not only cause prejudice, monetary loss to the Government employee while in service but the loss will also be caused after the retirement of the employee concerned and even the family pension will also be affected. Looking to such long effect of the penalty, it cannot be treated to be a minor penalty at all. Law in this respect has been well settled long back by the Apex Court in the case of *Kulwant Singh Gill v. State of Punjab*, 1991 Supp (1) SCC 504, wherein the Apex Court has categorically held that if a penalty is imposed in such a manner, affecting the rights during service and even after service, it has to

be treated as major penalty, which cannot be imposed without conducting a fullfledged enquiry as enumerated under Rule 14 of the Rules. Admittedly no charge-sheet was issued to the petitioner and only a show cause under Rule 16 of the Rules was given to him, which means that only a summary enquiry was conducted for imposition of a minor penalty. In the garb of minor penalty, a major penalty should not have been imposed on the petitioner.”

(Emphasis Supplied)

10. Thus, the aforesaid ground taken by petitioner also has substance. A minor penalty cannot converted into a major penalty of stoppage of increment with cumulative effect without holding any full fledged departmental enquiry. For these cumulative reasons, the impugned order of review dated 27.02.2012 (Annexure P-2) is set aside. The orders dated 06.11.2012 (Annexure P-3) and 17.01.2017 (Annexure P-4) affirming the review order dated 27.02.2012 are also set aside. It is made clear that this Court has not interfered in the order dated 30.11.2011 (Annexure P-1).

11. Petition is **allowed** to the extent indicated above.

**(SUJOY PAUL)
JUDGE**