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**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR  
BEFORE  
JUSTICE SUJOY PAUL  
ON THE 13<sup>th</sup> OF SEPTEMBER, 2023  
WRIT PETITION No. 1859 of 2021**

**BETWEEN:-**

**DINESH KUMAR BILTHARE S/O SHRI NANDKISHORE  
BILTHARE, AGED ABOUT 60 YEARS, OCCUPATION:  
SERVICE BAMORI (DEVPUR) TEHSIL WAKSHWAHA  
DISTT. CHHATARPUR (MADHYA PRADESH)**

**.....PETITIONER**

***(BY MS. SHOBHNA SHARMA - ADVOCATE )***

**AND**

- 1. THE STATE OF MADHYA PRADESH THR.  
PRINCIPAL SECRETARY EDUCATION  
DEPARTMENT VALLABH BHAWAN BHOPAL (M.P.)  
(MADHYA PRADESH)**
- 2. THE COLLECTOR CHHATARPUR DISTT.  
CHHATARPUR (MADHYA PRADESH)**
- 3. DISTRICT EDUCATION OFFICER SCHOOL  
EDUCATION DEPARTMENT DISTT. CHHATARPUR  
(MADHYA PRADESH)**
- 4. THE PRINCIPAL GOVT. HIGHER SECONDARY  
SCHOOL WAKSHWAHA SCHOOL EDUCATION  
DEPARTMENT DISTT. CHHATARPUR (MADHYA  
PRADESH)**

**.....RESPONDENTS**

***(BY MS. SHIKHA SHARMA - PANEL LAWYER )***

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

**ORDER**

With the consent, finally heard.

2. The challenge mounted in this petition filed under Article 226 of the Constitution is to the order dated 27.11.2020 (Annexure P-6) whereby petitioner, a teacher, is removed from service under Rule 19(1) of M.P. Civil Services ( Classification, Control and Appeal) Rules, 1966 (for brevity, CCA Rules).

3. The admitted facts between the parties are that petitioner was convicted by the Court in case No. 141/15 for committing offence under Section 324 of IPC and directed him to undergo 6 months R.I. with fine of Rs. 1,000/- The petitioner preferred revision against the aforesaid judgment dated 17.03.2016 and sentence was suspended. No stay was granted against the conviction.

4. The department issued a notice dated 23.05.2019 to the petitioner and reminder notice dated 09.12.2019 on the basis of judgment of conviction dated 17.03.2016. The petitioner filed his reply. The respondents by the impugned order dated 27.11.2020 opined that petitioner's reply is not satisfactory. The petitioner was convicted and this Court has only suspended the sentence and not granted any interim relief against conviction. Thereafter the department decided to punish the petitioner by removing him from service in exercise of power under Rule 19(1) of CCA Rules.

5. Ms. Shobhana Sharma, learned counsel for the petitioner by placing reliance on judgment of Apex Court in **State of Madhya Pradesh and Ors. Vs. Hazarilal, (2008) 3 SCC 273** and the judgement of Division Bench of this Court in **WP No. 1605 of 2018 (Rajendra Prasad Chourey Vs. Union of India and Ors.)** dated 27.01.2023 submits that in the impugned order no reasons are assigned as to why any other punishment or even a minor punishment could not have been imposed considering the nature and gravity of

the matter. In the facts and circumstances of the case, it was not necessary to impose the punishment of 'removal'. The said punishment is harsh and excessive.

6. Ms. Shikha Sharma, learned panel lawyer supported the impugned order and submits that procedure prescribed under Rule 19(1) of CCA Rules has been followed. There is no procedural impropriety and principles of natural justice were scrupulously followed. Thus, petition is devoid of substance.

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

8. I have heard the parties at length and perused the record.

9. The doctrine of proportionality exists in India from time immemorial. This doctrine is applied by Courts in criminal cases on regular basis. The principle is that one cannot be visited with an extreme order / punishment which is not commensurate to the conduct / misconduct / offence. It is noteworthy that first separate rock edict of emperor **Ashoka** at **Dholi** shows that Ashoka expressed his anxiety that undeserved and harsh punishment should not be imposed.

**Dharmakosa** contains a *Shloka* :

अपराधानुरूपं च दण्डं दण्डयेषु दापयेत् ।

सम्यग्दण्डप्रणयनं कुर्यात् ।

द्वितीयमपराधं न कस्यचित् क्षमेत् ।

Let the king inflict punishments upon the guilty (i) corresponding to the nature (gravity) of the offence (ii) according to justice and (iii) not pardon anyone who has committed the offence for the second time.

10. The point involved in this case is no more *res integra*. The Constitution Bench of Supreme Court in **Union of India and another vs.**

**Tulsiram Patel, (1985) 3 SCC 398** opined that even if an employee is convicted under some provision of penal laws / IPC, it is not mandatory or obligatory on the part of the department to impose the punishment of removal or dismissal from service. The competent authority needs to apply its mind whether the conduct which led to conviction is such grave which warrants punishment of 'dismissal' or 'removal' only. In a given case, it is open to the department to impose even a lesser / minor punishment. The *dicta* of **Tulsiram Patel (supra)** was followed in **Hazarilal (supra)** and it was held that while taking decision under Rule 19(1) of CCA Rules, authority is required to examine the gravity of conduct which led to conviction minutely and punishment orders cannot be passed in a routine manner. Relevant para reads thus:

"7. By reason of the said provision, thus, "the disciplinary authority has been empowered to consider the circumstances of the case where any penalty is imposed on a government servant on the ground of conduct which has led to his conviction on a criminal charge", but the same would not mean that irrespective of the nature of the case in which he was involved or the punishment which has been imposed upon him, an order of dismissal must be passed. Such a construction, in our opinion, is not warranted."

**(Emphasis Supplied)**

The Division Bench of this Court in **Rajendra Pasad Chourey (supra)** has taken the same view.

**11.** If the impugned order dated 27.11.2020 (Annexure P-6) is minutely examined, it will be clear like cloudless sky that there is no iota of reason assigned in the entire order as to why the punishment of 'removal' from service was found to be adequate for committing the offence under Section 324 of IPC. The disciplinary authority was required to examine the gravity of conduct

which led to conviction on the principles of proportionality. There is no finding that the conduct which led to conviction was so grave that no such other punishment would be commensurate to the offence / conduct. Thus, the order dated 27.11.2010 is **set aside**. The District Education Officer, Chhatarpur is directed to re-consider the punishment on the anvil of doctrine of proportionality and pass a fresh order in accordance with law within 30 days from the date of production of copy of this order.

**12.** The Petition is **disposed of**.

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**(SUJOY PAUL)**  
**JUDGE**