

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

BEFORE

**HON'BLE SHRI JUSTICE RAVI MALIMATH,
CHIEF JUSTICE**

&

HON'BLE SHRI JUSTICE VISHAL MISHRA

ON THE 6th OF JULY, 2023

WRIT APPEAL No. 429 of 2022

BETWEEN:-

1. THE STATE OF MADHYA PRADESH THROUGH THE PRINCIPAL SECRETARY VALLABH BHAWAN, BHOPAL (M.P.)
2. DIRECTOR GENERAL OF POLICE MADHYA PRADESH POLICE HEADQUARTERS DISTRICT BHOPAL (M.P.)
3. ADDITIONAL DIRECTOR GENERAL, SAF POLICE HEADQUARTERS DISTRICT BHOPAL (M.P.)
4. DEPUTY INSPECTOR GENERAL POLICE, SAF (CENTRAL ZONE) DISTRICT BHOPAL (M.P.)
5. COMMANDANT 26TH BATTALION SAF, GUNA, DISTRICT GUNA (M.P.)

.....APPELLANTS

(BY SHRI B.D. SINGH - DEPUTY ADVOCATE GENERAL)

AND

RAM BHAGWAN PATHAK S/O LATE SHRI RAMYASH PATHAK, AGED ABOUT 58 YEARS, OCCUPATION: POLICE SUB INSPECTOR, 26TH BATTALION SAF SAINIK COLONY, BADKHAR, NEAR TAKSHSILA SCHOOL, SATNA (MADHYA

PRADESH)

.....RESPONDENT

(BY SHRI K.C. GHILDIYAL - SENIOR ADVOCATE WITH SHRI ADITYA VEER SINGH - ADVOCATE)

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*This appeal coming on for orders this day, **Hon'ble Shri Justice Ravi Malimath, Chief Justice** passed the following:*

ORDER

I.A. No.8256 of 2022 is an application for vacating the interim order dated 05.05.2022. In terms whereof, the impugned order passed by the learned Single Judge was stayed. However, on request of learned counsels, the matter is taken up for final disposal.

2. Assailing the order dated 02.03.2022 passed by the learned Single Judge in allowing the W. P. No.1890 of 2022, the State and its functionaries are in appeal.

3. The case of the writ petitioner is that he was working as an Assistant Sub-Inspector and posted with the 26th Battalion SAF, Guna. A complaint was made by one Smt. Sunita Sharma to the Commandant to the effect that she was a divorcee and the petitioner after marrying her at a temple had established physical relationship with her. The same lasted for almost 8 years. The petitioner was not discharging his obligations towards her. Based on the complaint, a preliminary enquiry was conducted by the Deputy Commandant. The complaint was found to be false. A similar complaint was also made to the Superintendent of Police who conducted an enquiry through the City Superintendent of Police. The report submitted on 05.11.2019, held the petitioner guilty of sending obscene messages to the

complainant, chatting with her on mobile, establishing illicit relationship with her etc. On the basis of the said report, a charge sheet was issued to the petitioner and a departmental enquiry was initiated. He was found guilty of the charges except establishing intimate relations. The disciplinary authority disagreed with the finding of the enquiring officer and held that the petitioner is guilty of all the charges. The penalty of removal from service was imposed on the petitioner. Aggrieved by the same, an appeal was filed wherein the penalty of removal from service was modified to that of compulsory retirement. Questioning the same, the instant writ petition was filed.

4. It was contended by the petitioner that the charge framed against him does not fall under the definition of 'misconduct'. Reliance was placed on Rule 64(3) of the M.P. Police Regulations to the said extent. The learned Single Judge came to the view that the conduct of the petitioner outside his normal course of duty cannot be considered to be as misconduct. Therefore, the impugned orders of the disciplinary authority and the appellate authority were set aside. The respondents were directed to reinstate the petitioner without any backwages. Aggrieved by the same, the State have filed this appeal.

5. The learned Deputy Advocate General submits that the order passed by the learned Single Judge is erroneous. The learned Single Judge misguided himself in adopting a technical view while considering the case of the petitioner based on the definition of 'misconduct'. The act committed by the petitioner is grave and obscene. He had an illicit relationship with the lady for almost 8 years. Therefore, the same amounts to 'misconduct'. The disciplinary authority has held the charges to be proved. Therefore, the

finding of the learned Single Judge being erroneous requires to be set aside by dismissing the writ petition.

6. The same is disputed by Shri K.C. Ghildiyal, learned senior counsel appearing for the counsel representing the respondent/writ petitioner in the appeal. He contends that there is no error committed by the learned Single Judge that calls for any interference. The learned Single Judge has rightly appreciated the material as well as law. That the observations made by the learned Single Judge are based on the facts and circumstances involved and hence, no interference is called for.

7. Heard learned counsels.

8. We have considered the order passed by the learned Single Judge. We are rather in awe of some of the observations made therein. One of the observations made by the disciplinary authority is with regard to the exploitation of woman. The learned Single Judge holds that such observation of exploitation of woman is erroneous and perverse. We fail to understand as to how the observation made by the authority regarding exploitation of woman can be considered to be perverse. We do not accept the view expressed by the learned Single Judge on this account.

9. The finding of the learned Single Judge that matters of immorality, are only matters of personal belief, in our considered view, is also not acceptable. The question of morality is universal. A society is bound to decay if it fails to maintain standards of decency and morality. It cannot be moral for one person and immoral for another. Therefore, to hold that questions of morality are matters of personal belief are wholly out of context. We do not find any reasoning to sustain such a finding of the learned Single Judge.

10.(a) The entire finding of the learned Single Judge is based only on the definition of ‘misconduct’. ‘Misconduct’ has been defined in Rule 64(3) of the Madhya Pradesh Police Regulations which reads as follows:-

“(3) He shall conform himself implicitly to all rules which shall, from time to time, be made for the regulation and good order of the service, and shall cultivate a proper regard for its honour and respectability.”

(b) On considering the same, we are of the view that based on the facts and circumstances involved in the case, the acts committed by the petitioner necessarily fall under the definition of misconduct. Technicalities in law cannot be resorted to in order to plead the case as sought to be pleaded herein. A misconduct is a misconduct at any point of time. Placing reliance on the rules to the contrary cannot be accepted. Rules are intended to aid the dispensation of justice. Rules, procedures and statutes have been created in order to ensure that the truth in every case is found out at the earliest point of time, inasmuch as, there can be no justice without truth. The intention of framing rules is to ensure that everybody conforms to doing that which is right and refraining from doing that which is wrong. They are intended to assist in the dispensation of justice, rather than creating a clog. The rules cannot be used to the advantage of a wrongdoer but should be interpreted in favour of what is right and what is wrong.

11. The further observation that the intention of the Rule is not based on morals or immorals of the officer, in our considered view, is also incorrect. Law cannot be devoid of morality. The question of morality is inbuilt in every human being including a government servant.

12. In times of yore when there was no written law, justice was being rendered on the basis of good conscience and best judgment. Decisions were

rendered on what is right and what is wrong, what is moral or what is immoral. It is only much thereafter that laws were enacted. Various laws like the criminal law, the civil law and the other laws were all enacted for the very same purpose. The underlying object of law is to be righteous, to be good, to be just and fair. This flows from one's good conscience and best judgment. This only means that when any act is questioned, it is to be ascertained as to whether it is done in a righteous manner or not. Therefore, the source of all law is the righteous path. When the righteous path is deviated, wrong happens. Therefore, it can never ever be said that even though an act is immoral, however since the same is not defined in any law the wrongdoer goes scot free. Therefore, if there is a lacunae in a law, the benefit of it can never be extended to either one of the parties. Justice has to be rendered based on righteousness. This is the underlying principle of all societies throughout the world. The path of righteousness does not belong to any country, race or religion. They are universal. They apply to mankind. An act is moral or immoral, good or bad in any part of the world. What is moral in one country cannot become immoral in another country and vice versa. Therefore, the essence of every law is righteousness.

13. A similar sentiment was expressed by the Hon'ble Supreme Court in the case of State of Maharashtra and others Vs. Prabhu reported in (1994) 2 SCC 481 wherein in para 5, it was stated as follows:-

“..... It shakes the confidence and faith of the society in the system and is prone to encouraging even the honest and sincere to deviate from their path. It is the responsibility of the High Court as custodian of the Constitution to maintain the social balance by interfering where necessary for sake of justice and

refusing to interfere where it is against the social interest and public good.”

14.(a) Our National motto is "*Satyameva Jayate*" (सत्यमेव जयते), that is, Truth Alone Triumphs. The Justice Malimath Committee on *Reforms of the Criminal Justice System* has emphasized the importance of truth in the justice delivery system. The relevant extract of the Report reads as follows:

“2.16.9. Truth being the cherished ideal and ethos of India, pursuit of truth should be the guiding star of the Criminal Justice System. For justice to be done truth must prevail. It is truth that must protect the innocent and it is truth that must be the basis to punish the guilty. Truth is the very soul of justice. Therefore truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the courts to become active seekers of truth. It is of seminal importance to inject vitality into our system if we have to regain the lost confidence of the people. Concern for and duty to seek truth should not become the limited concern of the courts. It should become the paramount duty of everyone to assist the court in its quest for truth.”

(b) The aforesaid observation of the Justice Malimath Committee has been reiterated by the Hon'ble Supreme Court in the case of Maria Margarida Sequeira Fernandes vs. Erasmo Jack Sequeira reported in (2012) 5 SCC 370 with reference to para 33 thereof, which reads as follows:-

“33. The truth should be the guiding star in the entire judicial process. Truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to seriously engage themselves

in the journey of discovering the truth. That is their mandate, obligation and bounden duty. Justice system will acquire credibility only when people will be convinced that justice is based on the foundation of the truth.”

15.(a) The motto of the Hon’ble Supreme Court of India is “*Yato Dharmastato Jayah*” (यतो धर्मस्ततो जयः) which means “where there is Dharma, there will be victory”. In other words, victory can only be achieved by following the path of Dharma. This rather supports the view as stated hereinabove with regard to righteous behavior. Every individual is expected to act in a right and just manner. It underlines the significance of Dharma in the Indian judicial system.

(b) The Hon’ble Supreme Court in the case of A.S. Narayana Deekshitulu vs. State of A.P. and others reported in (1996) 9 SCC 548 has explained the concept of Dharma, which reads as follows:

“60. Therefore, dharma embraces every type of righteous conduct covering every aspect of life essential for the sustenance and welfare of the individual and the society and includes those rules which guide and enable those who believe in God and heaven to attain moksha (eternal bliss). Rules of dharma are meant to regulate the individual conduct, in such a way as to restrict the rights, liberty, interest and desires of an individual as regards all matters to the extent necessary in the interest of other individuals, i.e., the society and at the same time making it obligatory for the society to safeguard and protect the individual in all respects through its social and political institutions. Shortly put, dharma regulates the mutual obligations of individual and the society. Therefore, it was stressed that protection of dharma was in the

interest of both the individual and the society. A “state of dharma” was required to be always maintained for peaceful co-existence and prosperity of all.

61. *Though dharma is a word of wide meaning as to cover the rules concerning all matters such as spiritual, moral and personal as also civil, criminal and constitutional law, it gives the precise meaning depending upon the context in which it is used. When dharma is used in the context of duties of the individual and powers of the King (the State), it means constitutional law (Rajadharma). Likewise when it is said that Dharmarajya is necessary for the peace and prosperity of the people and for establishing an egalitarian society, the word dharma in the context of the word Rajya only means law, and Dharmarajya means rule of law and not rule of religion or a theocratic State. Dharma in the context of legal and constitutional history only means Vyavaharadharma and Rajadharma evolved by the society through the ages which is binding both on the King (the ruler) and the people (the ruled).”*

16. The conduct of an individual has to be a righteous conduct. An immoral conduct cannot be pleaded on the ground that according to law, it is not defined. If law is silent on any issue, in that event, justice would have to be rendered on the basis of righteousness or on best judgment. Best judgment again goes back to righteousness and good behavior. Therefore, when the law is silent on a particular issue what aids in the dispensation of justice is nothing else but righteousness.

17. The High Court possesses an inherent power to render justice, to do what is right and undo what is wrong. It needs to do that which are

necessary to secure the ends of justice and prevent the abuse of law. The inherent power is to be used in order to achieve justice. Such power requires to be exercised based on the facts and circumstances involved in each case. Whenever there is absence of any provision in a law, the inherent power of the Court can be invoked to achieve the ends of justice provided such acts are not expressly prohibited by statute or otherwise. The exercise of such power necessarily depends on the discretion and wisdom of the Court. Therefore, when there is a lacunae in the law, it is not a dead end. The inherent power has to be invoked in order to do justice in the matter.

18. In the instant case, the petitioner is none other than a police officer serving the State. Therefore, a minimum degree of morality is called for. We say so because the purpose of law is not only to regulate the Society or run the government but also to ensure that persons possessing moral values occupy offices in all the three wings of the government to provide selfless service to the country. This is not a case where it could be disputed that the act of the particular person is moral or immoral. The petitioner having lived with the lady for almost 8 years as husband and wife and thereafter not taking care of her and committing various acts itself is an immoral act committed by him. He made her to believe that his wife is living away from him.

19. Hence, for all these reasons, we are of the considered view that the order passed by the learned Single Judge is unsustainable and liable to be set aside. The order of the disciplinary authority holding that all the charges have been proved, is upheld. The order of punishment passed by the appellate authority, modifying the punishment of removal from service to compulsory retirement, is set aside.

20. Furthermore, we are of the view that the appellate authority may not have been justified in reducing the punishment imposed on the petitioner from dismissal to that of compulsory retirement. Misplaced sympathy is uncalled for. The wrong that the victim has suffered has to be considered while imposing a punishment. In the given facts and circumstances of the case, we are of the view that the petitioner is liable for a higher punishment. However, time and again the Hon'ble Supreme Court have held that in matters of imposition of penalty it is not for the courts to determine what is the extent of penalty to be awarded. In this regard, reliance is placed on the judgment of the Hon'ble Supreme Court in the case of Anil Kumar Upadhyaya vs. The Director General, SSB and others, reported in (2022) SCC Online SC 478 whereby the Hon'ble Supreme Court referred to its earlier decision in B.C. Chaturvedi vs. Union of India reported in (1995) 6 SCC 749 wherein, with reference to para 18 it was observed and held as follows:

“18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the

litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

21. If at all the Court is of the view that the punishment is disproportionate, then the same requires to be reconsidered by the disciplinary authority. Hence, we are of the considered view that the appellate authority reconsiders the order of punishment.

22. For all these reasons, the appeal is allowed. The order dated 02.03.2022 passed by the learned Single Judge in W. P. No.1890 of 2022 is modified to the aforesaid extent. The matter is remitted to the appellate authority for reconsideration only with regard to the quantum of punishment awarded to the petitioner.

23. I.A. No.8256 of 2022 is accordingly disposed off.

(RAVI MALIMATH)
CHIEF JUSTICE

(VISHAL MISHRA)
JUDGE

Loretta,
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