

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

HON'BLE SHRI JUSTICE ANAND PATHAK

WRIT PETITION No. 29521 of 2022

Between:-

**DR. G.C. CHOURASIYA S/O SHRI G.R.
CHOURASIYA, AGED ABOUT 64 YEARS,
OCCUPATION -INCHARGE CHIEF MEDICAL
AND HEALTH OFFICER (SUSPENDED),
CHHINDWARA DIST. CHHINDWARA (MADHYA
PRADESH)**

.....PETITIONER

**(BY SHRI D.K. TRIPATHI – ADVOCATE)
AND**

- 1. STATE OF MADHYA PRADESH,
THROUGH ADDITIONAL CHIEF SECRETARY
PUBLIC HEALTH DEPARTMENT, MANTRALAYA,
VALLABH BHAWAN BHOPAL.**
- 2. SECRETARY CUM COMMISSIONER, PUBLIC
HEALTH AND FAMILY WELFARE DEPARTMENT,
SATPURA BHAWAN BHOPAL (MADHYA
PRADESH)**
- 3. DR. N.K. SHASTRI, OPHTHALMOLOGIST
INCHARGE BLOCK MEDICAL OFFICER,
SAUSAR DISTRICT CHHINDWARA (MADHYA
PRADESH)**

.....RESPONDENTS

**(BY SHRI SWAPNIL GANGULI – DY. ADVOCATE GENERAL
AND SHRI RAHUL DESHMUKH – ADVOCATE FOR**

RESPONDENT NO.3)

Reserved on	:	20-02-2023
Delivered on	:	06-07-2023

This petition having been heard and reserved for orders coming on for pronouncement this day, delivered the following:-

ORDER

1. The present petition is preferred by petitioner under Article 226 of the Constitution seeking following reliefs:

“In view of facts and grounds mentioned above the petitioners prays for following reliefs:

- I. to call for the relevant record.*
- II. to quash the impugned suspension order dated 09-12-2022 (Annexure P/1) & 12-12-2022 (Annexure P/2) and direct the respondents to permit the petitioner to continue as CM&HO, Chhindwara.*
- III. Any other relief together cost of the petition which this Hon'ble Court deem fit and proper under the facts and circumstances of this case may also be awarded in favour of the petitioner.”*

2. Petitioner is aggrieved by the order dated 09-12-2022 (Annexure P/1) passed by Additional Director (complaint), Health Services, M.P. whereby petitioner who was working as Radiologist/Chief Medical and Health Officer, District Chhindwara was placed under suspension. Petitioner is further aggrieved by the order dated 12-12-2022

(Annexure P/2) passed by the Collector, District Chhindwara whereby in place of petitioner respondent No.3 has been handed over the charge of CMHO, Chhindawara temporarily.

3. Precisely stated facts of the case are that petitioner is Radiologist and holding Class -I post. Vide order dated 26-06-2020 he took charge of CM&HO in pursuance of order dated 24-06-2020 issued by the Office of respondent No.2.
4. As submitted, on 22-09-2022 at public function at Ramakona, Hon'ble Chief Minister asked from the public in respect of issuance of Ayushman Cards. Someone stood and complained about non issuance of card to him. Reacting on it, immediately petitioner was removed from the post of CMHO by Chief Minister and charge has been given to respondent No.3, who was otherwise working under the petitioner as Block Medical Officer and is junior to him. Incidentally his block showed less progress of preparation of Ayushman Cards but it is the allegation of petitioner that due to high political approach he successfully removed the petitioner from the charge of CMHO.
5. Petitioner assailed the order dated 23-09-2022 by way of Writ Petition No.22256/2022 and vide order dated 10-11-2022 this Court was pleased to stay the order dated 23-09-2022 and petitioner was allowed to work as CMHO, Chhindwara and as pleaded in the petition, the said writ petition bearing No.22256/2022 is pending consideration.
6. It further appears that Hon'ble Chief Minister again visited Chhindwara under Mukhyamantri Jan Sewa Abhiyan on 09-12-2022

and from the stage he announced about the removal of petitioner from the post of CMHO on earlier visit but since petitioner continued to work due to Court order, therefore, in public meeting petitioner was placed under suspension by the Hon'ble Chief Minister which is reflected from the contents of impugned order. Petitioner has placed video clip of said public meeting through DVD and transcript and relevant extract of news item published in local news paper to demonstrate this fact. Therefore, this petition has been preferred directly by the petitioner without approaching the appellate authority against the suspension order.

7. It is the submission of learned counsel for the petitioner that impugned order has been issued by the Hon'ble Chief Minister and being guided by malafides, therefore, order is bad in law. While referring the impugned order he submits that suspension order has not been issued by the competent authority but by the Hon'ble Chief Minister and concerned authority did not apply its mind before passing order.
8. It is further submitted that the impugned suspension order is passed by the incompetent authority i.e. Joint Director (complaint) although by approval of respondent No.2 but the competent authority of petitioner is State Government i.e. Principal Secretary, Public Health Department. Petitioner is placed under suspension on a very vague reason and at the time of suspension neither any enquiry nor criminal case/trial was pending nor was in contemplation, therefore, impugned

suspension order is arbitrary and illegal exercise of power.

9. He relied upon the judgment of Division Bench of this Court in **Writ Appeal No.400/2022 (Shyam Kumar Singh Vs. The State of Madhya Pradesh & Anr.)** in which vide order dated 27-04-2022 Division Bench held that no transfer order can be sustained if it is made purely on the ground of recommendation made by Minister. Here, matter pertains to suspension and it cannot be issued at the instance of Elected Representative. He also relied upon judgment of Coordinate Bench of this Court in the case of **Nahid Jahan (Smt.) Vs. State of M.P. and other, 2017 SCC Online MP 2170**. He refers the interim order dated 21-12-2022 passed by Coordinate Bench of this Court wherein the effect and operation of the impugned orders dated 09-12-2022 and 12-12-2022 were stayed. In the said interim order, video clipping filed in a CD was seen in the Court by the Bench and given finding that picture showed that Hon'ble Chief Minister has suspended the petitioner and thereafter a formal order has been issued by the concerned authority. Therefore, he prayed for setting aside of impugned orders.
10. *Per contra*, learned counsel for the respondents/State filed reply and contested the case with vehemence. According to the respondents, performance of petitioner as CMHO was not up to mark and regular complaints were received with regard to his performance and behaviour as a public officer and same was evaluated by the authorities and thereafter he was placed under suspension. His

performance in various important projects of Central Government/State Government was not up to the mark. So far as competence of Additional Director /Commissioner (Health) is concerned, he submits that Commissioner is a competent authority to place the petitioner under suspension and referred the order dated 20-11-2016 passed in W.A.No.885/2015 (Dr. R.P. Shrivastava Vs. The State of Madhya Pradesh) passed by Division Bench of this Court to bring home the fact that Director/Commissioner (Health) is the competent authority to pass such order.

- 11.** As submitted, charge-sheet has already been issued contemplating three charges evaluating the performance of petitioner while he was discharging the duties as CMHO. As pleaded the said departmental enquiry is still pending consideration and scope of the charge-sheet and suspension order cannot be evaluated in a writ petition under Article 226 of the Constitution. He relied upon the judgment of Coordinate Bench in the matter of bunch of petitions in which W.P.No.17234/2021 (D.K. Tiwari Vs. Union of India) was the lead case.
- 12.** Learned counsel for the respondents also referred the fact that in similar circumstances when Commissioner Health suspended one Dr.A.K. Tiwari (incharge CMHO Betul) contending similar allegation about his suspension by the Hon'ble Chief Minister of the State holding a public meeting on 02-12-2022 and suspended him from the stage and when writ petition was filed at the instance of Dr. A.K.

Tiwari vide No.28852/2022 then said writ petition was disposed of with a direction to prefer an appeal. The State Government can always place the petitioner under suspension in view of charges contained into the charge-sheet. In absence of any substantial pleading, plea of malafide cannot be raised. Judgment of Division Bench of this Court in the case of **Omkar College of Nursing Sciences, Gwalior Vs. M.P. Nurses Registration Council, Bhopal and another, 2022 (3) MPLJ 448** was referred and submits that allegations of malafide cannot be considered unless and until person against whom allegations have been made is impleaded. He further relied upon **1992 Supplementary Vol.1 SCC 222 (State of Bihar Vs. P.P. Sharma)**. Learned counsel for respondents/State also relied upon **(2007) 8 SCC 150 (Mohd. Masood Ahmad Vs. State of U.P. and others)** and submits that transfer on the recommendation of MLA does not vitiate the transfer order. Therefore, taking analogy from the said judgment, it is argued that if the elected representative recommends for any adverse action then said order does not stand vitiated simply on this basis. He prayed for dismissal of petition.

13. Learned counsel for respondent No.3 also opposed the submissions of petitioner's counsel and prayed for dismissal of the petition.
14. Heard learned counsel for the parties at length and perused the documents appended thereto.
15. This is a case where petitioner who was working as in-charge CMHO at District Chhindwara was placed under suspension vide impugned

order dated 09-12-2022 (Annexure P/1) passed by the Additional Director (Complaints) and the said order has been ratified/approved by the Secretary cum Health Commissioner, Government of Madhya Pradesh.

16. When this petition was filed and matter was heard on the question of admission as well as on interim relief before the Coordinate Bench then the Bench vide order dated 21-12-2022 stayed the execution and operation of the impugned order dated 09-12-2022 and 12-12-2022, therefore, purportedly petitioner is working till date as in-charge CMHO because his suspension was stayed. In the said order dated 21-12-2022 Coordinate Bench has specifically held that video clipping filed in a CD was seen by the Court in which it is clearly seen that the Hon'ble Chief Minister has suspended the petitioner and thereafter formal order has been issued by the concerned authority. Therefore, sanctity of the proceeding cannot be put to doubt. Hon'ble Apex Court in the case of **D.P. Chadha Vs. Triyugi Narain Mishra and others, (2001) 2 SCC 221** while relying upon the earlier judgments of Apex Court in the case of **State of Maharashtra Vs. Ramdas Shrinivas Nayak and another, (1982) 2 SCC 463** and **Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, (1990) 1 SCC 361** held that record of the proceedings made by the Court is sacrosanct. The correctness thereof cannot be doubted merely for asking.

Therefore, the satisfaction arrived at by the Bench while going through the CD indicates that it was Hon'ble Chief Minister to

suspend the petitioner while addressing from the stage.

- 17.** Said aspect is further substantiated by the impugned order itself because the order starts with the fact that petitioner has been placed under suspension by the Hon'ble Chief Minister and no other reason has been assigned whether any enquiry, criminal case/trial were under contemplation or pending was not at all referred which is the sine-qua-non for placing a Government employee under suspension as per rule 9 of M.P. Civil Services (Classification Control and Appeal) Rules, 1966.
- 18.** In para 2 of the impugned order dated 09-12-2022 it appears that authority has come to the conclusion about the alleged conduct/misconduct of the petitioner on the basis of the fact that petitioner was found negligent in his working by the Hon'ble Chief Minister.
- 19.** Even if on the anvil of different orders placed before this Court to demonstrate that Health Commissioner is competent authority to place petitioner under suspension is assumed to be correct even then from the suspension order it appears that sheet anchor of suspension order is decision of the Hon'ble Chief Minister whereby he already placed the petitioner under suspension.
- 20.** In fact, impugned order dated 09-12-2022 reiterates the factum of suspension which has already been taken place by the order of Hon'ble Chief Minister that brings the impugned order into vulnerable zone for the simple reason that at the instance of higher authority if

even the competent authority passes the order then it is vitiated because Health Commissioner had no other option but to suspend the petitioner. In fact, the order is not being passed by the Health Commissioner/Additional Commissioner but it is simply a reflection of the decision already taken at higher level.

21. View of this Court is supported by the catena of judgments pronounced by the Hon'ble Apex Court from time to time. In **Commissioner of Police Vs. Gordhandas Bhanji, AIR 1952 SC 16**, Hon'ble Apex Court held as under:

“17. It is clear to us from a perusal of these rules that the only person vested with authority to grant or refuse a license for the erection of a building to be used for purposes of public amusement is the Commissioner of Police. It is also clear that under Rule 250 he has been vested with the absolute discretion at any time to cancel or suspend any license which has been granted under the rules. But the power to do so is vested in him and not in the State Government and can only be exercised by him at his discretion. No other person or authority can do it.”

22. The said view is reiterated in the case of **State of U.P. and others Vs. Maharaja Dharmander Prasad Singh and others, (1989) 2 SCC 505** wherein it has been held that if an authority hands over its discretion to another body it acts ultra vires. Such an interference by

a person or body extraneous to the power would plainly be contrary to the nature of the power conferred upon the authority.

23. This view further gets stamp of approval in the case of **Pancham Chand and others Vs. State of Himachal Pradesh and others, (2008) 7 SCC 117**. As per the facts of the said case, Chief Minister of Himachal Pradesh on his own approved the permit of bus operator who is having party affiliation and referred the matter to the Commissioner (Transport) to take further action. This action of Chief Minister was challenged and matter travelled to the Hon'ble Supreme Court where the Supreme Court held as under:

“18. The Act is a self contained Code. All the authorities mentioned therein are statutory authorities. They are bound by the provisions of the Act. They must act within the four corners thereof. The State, although, have a general control but such control must be exercised strictly in terms of Article 162 of the Constitution of India. Having regard to the nature and the manner of the control specified therein, it may lay down a policy. Statutory authorities are bound to act in terms thereof, but per se the same does not authorize any Minister including the Chief Minister to Act in derogation of the statutory provisions. Constitution of India does not envisage functioning of the Government through the Chief Minister alone. It speaks of Council

of Ministers. The duties or functions of the Council of Ministers are ordinarily governed by the provisions contained in the Rules of Business framed under [Article 166](#) of the Constitution of India. All governmental orders must comply with the requirements of a statute as also the constitutional provisions. Our Constitution envisages a rule of law and not rule of men. It recognizes that, how so ever high one may be, he is under law and the Constitution. All the constitutional functionaries must, therefore, function within the constitutional limits.

19. Apart from the fact that nothing has been placed on record to show that the Chief Minister in his capacity even as a Member of the Cabinet was authorized to deal with the matter of transport in his official capacity, he had even otherwise absolutely no business to interfere with the functioning of the Regional Transport Authority. Regional Transport Authority being a statutory body is bound to act strictly in terms of the provisions thereof. It cannot act in derogation of the powers conferred upon it. While acting as a statutory authority it must act having regard to the procedures laid down in the Act. It cannot bye-pass or ignore the same.

20. Factual matrix, as indicated hereinbefore, clearly goes to show that the fourth respondent filed the application before the Chief Minister straightaway. Office of the Chief Minister communicated the order of the Chief Minister, not once but twice. Respondent No.2 acted thereupon. It advised the Regional Transport Authority to proceed, after obtaining a proper application from respondent No.4 in that behalf. This itself goes to show that prior thereto no proper application was filed before the Regional Transport Authority. Such an interference on the part of any authority upon whom the Act does not confer any jurisdiction, is wholly unwarranted in law. It violates the constitutional scheme. It interferes with the independent functioning of a quasi judicial authority. A permit, if granted, confers a valuable right. An applicant must earn the same.”

- 24.** The Coordinate Bench of this Court in the case of **Makhano Kori Vs. State of M.P. and others, 2011 (1) MPLJ 663** reiterated in the same spirit that authority has to act within four corner of statute and not under the dictate of superior authority.
- 25.** Considering the mandate of Apex Court as discussed above, vulnerability of this order appears to be two fold. One -impugned order is being passed at the instance of higher authority who is head

of the Government (in State of Madhya Pradesh), therefore, the authority which passed the impugned order had no discretion left and another important aspect is the eclipse of Alternative Remedy because if now petitioner is relegated for appeal then it would be an empty formality and appellate authority would not have gone contrary to the authority who placed the petitioner under suspension.

26. Exigency of Alternative Remedy *vis -a -vis* petition under Article 226 of Constitution has been elaborately discussed in the case of **Nahid Jahan (supra)**, wherein the Coordinate Bench of this Court while relying upon the judgments of Apex Court in the case of **K.S. Rashid and Son Vs. The Income Tax Investigation Commission Etc., AIR 1954 SC 207** and **A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and another, AIR 1961 SC 1506** and Constitution Bench decision in the case of **Calcutta Discount Co. Ltd. Vs. Income Tax Officer, Companies District I Calcutta and another, AIR 1961 SC 372** as well as the judgment pronounced in the case of **Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others, (1998) 8 SCC 1** held that despite availability of statutory Alternative Remedy, writ petition can be entertained if order under challenge hit Article 14 of the Constitution or unless there are good grounds or principles laid down in the Whirlpool Corporation (supra) stare the impugned order. Therefore, in the conspectus of facts and emergence of conclusion Alternative Remedy is not an effective remedy in the present set of

facts. Therefore, petitioner cannot be relegated to file statutory appeal.

27. So far as submission of respondents that elected representative can recommend for transfer of an employee has no adversarial quotient. Elected representative can certainly recommend for transfer as discussed in the judgment **Mohd. Masood Ahmad (supra)** but it is not a case of transfer but is of suspension and another thing is that when a procedure is prescribed in a particular manner in statute and in service jurisprudence, then it is to be done in that manner only and as explained in the said order every case is to be seen individually and said recommendation must contain public interest. Division Bench of this Court in fact in the case of **Shyam Kumar Singh (supra)** held that no transfer order can be sustained if it is made purely on the ground of recommendation made by minister and therefore, impugned order in that writ appeal was found to be unsustainable in law. Therefore, case of **Mohd. Masood Ahmad (supra)** is distinguishable on facts and law both.
28. Even otherwise the Supreme Court in the case of **Ajay Kumar Choudhary Vs. Union of India, (2015) 7 SCC 291** held that suspension is a colonial hang over and used as a weapon to target a Government employee. Therefore, on this count also whole exercise of respondents to place the petitioner in such manner under suspension appears to be illegal.
29. *Resultantly*, impugned orders dated 09-12-2022 (Annexure P/1) and 12-12-2022 (Annexure P/2) are hereby set aside. However the parties

may take endeavours to conclude the departmental enquiry at the earliest if not concluded already and respondents are at liberty to take appropriate decision on the basis of subsequent developments.

30. Petition stands allowed and disposed of in above terms.

(Anand Pathak)
Judge