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

**BEFORE  
HON'BLE SHRI JUSTICE VIVEK AGARWAL**

**ON THE 13<sup>th</sup> OF FEBRUARY, 2024**

**WRIT PETITION No. 12844 of 2023**

**BETWEEN:-**

**LAXMAN PRASAD RAJAK S/O SHRI CHABBILAL RAJAK,  
AGED ABOUT 56 YEARS, OCCUPATION: TEMINATED  
ASSISTANT SUB INSPECTOR KRISHI UPAJ MANDI  
SAMITI DINDORI (MADHYA PRADESH)**

**.....PETITIONER**

**(BY DR.ANUVAD SHRIVASTAVA - ADVOCATE)**

**AND**

- 1. THE STATE OF MADHYA PRADESH THROUGH  
THE MANAGING DIRECTOR M.P. MANDIR  
BORAD / 26 HILLS KISAN BHAWAN BHOPAL  
(MADHYA PRADESH)**
- 2. JOINT DIRECTOR JABALPUR REGIONAL OFFICE  
OF MANDI BOARD NEAR T.V. TOWER KATANGA  
JABALPUR (MADHYA PRADESH)**

**.....RESPONDENTS**

**(BY SHRI RAM BHAJAN LODHI - ADVOCATE)**

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

**ORDER**

Learned counsel for the petitioner submits that the petitioner has been denied the benefit of Kramonnati/Time Scale of Pay, which became due in favour of the petitioner in the year 2018. Vide judgment dated 29.8.2022 passed in Sessions Trial No.23/2016 (State versus Laxman Prasad Rajak), the petitioner was convicted for the offence under Section 409 of the Indian Penal Code, 1860 with an imprisonment for five years and fine etc by the Court of learned

1st Additional Sessions Judge, Dindori. The aforesaid conviction will not relate back to the date of eligibility, which is since 2018 and, therefore, there being no retrospective application of the order of conviction and the petitioner should have been given the benefit of Time Scale of Pay.

Learned counsel for the respondents, in his turn, submits that the conviction of the petitioner will relate back to the date of registration of the offence, which is of the year 2015. The petitioner was arrested on 10.12.2015 and was given benefit of bail on 21.1.2016. He was in custody for a period of 42 days and by operation of the rules framed for suspension by virtue of he being in custody for more than 48 hours, he was deemed to have been placed under suspension.

I have heard learned counsel for the parties and gone through the material available on record.

It is evident that the petitioner's conviction will relate back to the date of registration of the FIR in a cognizable offence. Since that event is prior to the date on which the petitioner became eligible for grant of Time Scale of Pay and while granting the Time Scale of Pay, which is as good as granting promotion, the past conduct of the petitioner is to be taken into consideration. The impugned order denying the benefit of Time Scale of Pay cannot be faulted with.

The aforesaid view finds support from the fact that as a general principle, pendency of a disciplinary proceeding or a criminal prosecution against an employee is a reasonable and relevant ground for withholding promotion until the proceedings are over. In the present case, the proceedings were underway since 2015 when criminal case was registered against the petitioner.

The Apex Court in **Union of India versus K.B.Janakiraman (1991) 4 SCC 109** has observed a fact that at the conclusion of the disciplinary proceedings or the criminal prosecution, a penalty or sentence is imposed and at the same time, promotion is denied or deferred does not offend the rule against double jeopardy contained in Article 20(2) of the Constitution of India. In this context, the Apex Court has observed as under:-

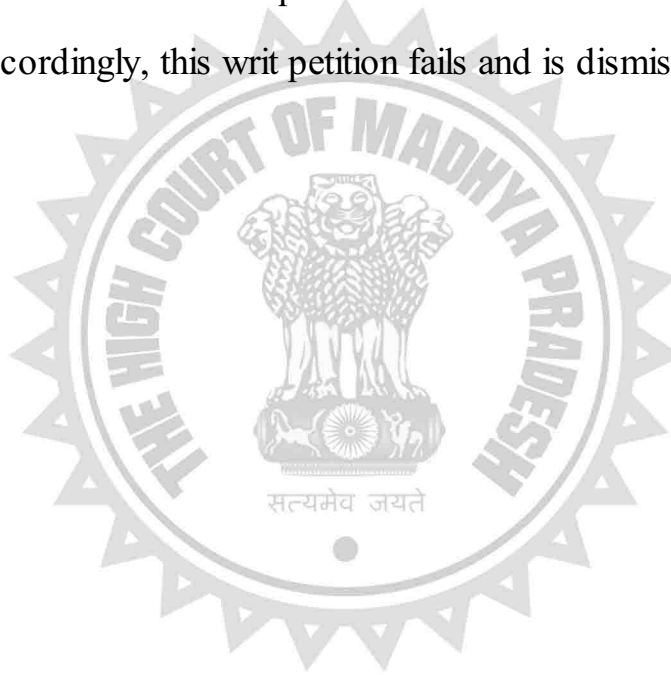
"29. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in praesenti. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified. If, further, the promoting authority can take

into consideration the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date because of the pendency of the proceedings, although it is for conduct prior to the date the authority considers the promotion."

Thus, in view of the said legal position, denial of career advancement, which is akin to promotion, cannot be faulted with in view of pendency of the criminal case and the consequent conviction.

Accordingly, this writ petition fails and is dismissed.

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**(VIVEK AGARWAL)  
JUDGE**