IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 03rd OF SEPTEMBER, 2024

WRIT PETITON No.23249 of 2023

VIJAY KUMAR TIWARI

VS.

STATE OF MADHYA PRADESH AND OTHERS

&

WRIT PETITION No.23036 of 2023

SHRIRAM TIWARI

VS.

STATE OF MADHYA PRADESH AND OTHERS

Appearance

Shri Dilip Pandey – learned counsel for the petitioners.

Shri Girish Kekre – learned Government Advocate for respondents/State.

ORDER

Since the petitions involve common question of facts and law, therefore, they have been heard analogously and are being decided by this common order. However, for the sake of convenience, facts of W.P. No.23249 of 2023 are being taken note of.

2. The petitioner, by the instant petition filed under Article 226 of the Constitution of India, is challenging the validity of order dated 21.08.2023 (Annexure-P/7) passed by respondent No.2/Commissioner, Sagar Division, Sagar, whereby affirming the petitioner's order of dismissal from service dated 10.12.2020, the authority has dismissed his appeal.

3. The facts of the case in short are that the petitioner being an Adhyapak was the employee of School Education Department. During the course of his service tenure, a case got registered against him and as such, he was tried under Sections 323 and 34 of the Indian Penal Code and convicted for a period of six months with fine of Rs.300/-. Against the judgment of his conviction, though the petitioner preferred an appeal, but vide order dated 26.10.2016 (Annexure-P/1), the Appellate Court affirming the order of trial Court had dismissed his appeal. Thereafter, the petitioner preferred a revision (i.e. Cr.R. No.2757 of 2016) before the High Court in which his period of conviction got stayed vide order dated 07.11.2016 (Annexure-P/2).

(3.1) In the meantime, a notice was issued to the petitioner on 02.01.2020 (Annexure-P/3) seeking his reply as to why his services be not dismissed, which was replied by him on 10.02.2020 (Annexure-P/4). On 10.12.2020 (Annexure-P/5), respondent No.4 passed an order dismissing the petitioner from service. The said order of dismissal from service was challenged by the petitioner by filing an appeal before respondent No.2/Commissioner, Sagar Division, Sagar, who, by the impugned order dated 21.08.2023 (Annexure-P/7) affirming the petitioner's order of dismissal from service has dismissed the appeal. Hence, this petition.

4. Relying upon a case reported in **(2008) 3 SCC 743 [State of Madhya Pradesh and others Vs. Hazari Lal],** wherein it has been observed by the Supreme Court that conviction of a Government employee on a criminal charge does not mean that irrespective of the nature of case in which he is involved or the punishment which has been imposed on him, an order of dismissal must be passed; it is argued by Shri Pandey that the order of petitioners' dismissal from service relying upon their conviction on a minor offence registered against them under Sections 323

and 34 of the IPC cannot be said to be proper in any manner. Reliance has further been placed on an order dated 13.09.2023 passed in **Writ Petition No.1859 of 2023 [Dinesh Kumar Bilthare Vs. The State of Madhya Pradesh and others]**, in which, dealing with almost similar facts and circumstances as involved in the case at hand, the co-ordinate Bench of this Court has set aside the order of dismissal from service passed against the petitioner therein. Learned counsel for the petitioners has submitted that under the existing facts and circumstances of the case, the petitioners' order of dismissal from service dated 10.12.2020 is not sustainable in the eyes of law and is liable to be set aside.

5. On the other hand, learned Government Advocate has opposed the submissions advanced by Shri Pandey and submitted that being a Teacher, it is not expected from the petitioners to indulge themselves in any offence whatsoever. It is next argued that when the trial Court and Appellate Court have affirmed the petitioners' order of conviction, then the authority had no other option but to dismiss their services. Keeping a step ahead, he has submitted that the petitions are without any substance and liable to be dismissed.

6. Considering the arguments advanced by learned counsel for the parties, perusal of record and the cases on which reliance has been placed, I am of the opinion that every conviction of an employee cannot be converted into his/her dismissal from service because such punishment is too harsh. Dealing with this issue, the co-ordinate Bench of this Court in the case of **Dinesh Kumar Bilthare** (supra) has observed as under:-

> '**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 क्षमेत।
>
> 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.'

In view of the aforesaid enunciation of law, I have no hesitation to say that taking into account the nature of offence registered against the petitioners, their dismissal from service cannot be said to be proper.

7. Thus, the petitions are **allowed**. The petitioners' order of dismissal from service dated 10.12.2020 is hereby set aside. Needless to say, when the basic order giving rise to the dispute has already been set aside, then the order of Commissioner, Sagar Division, Sagar (respondent No.2) would have no legs to stand on and as such, the order dated 21.08.2023 is also set aside. In pursuance of interim orders dated 15.09.2023 and 12.09.2023, since the petitioners are performing their duties, therefore, the respondents are directed to allow them to work on their respective posts.

(SANJAY DWIVEDI)
JUDGE

dm

DEVASHISH MISHRA