

**IN THE HIGH COURT OF MADHYA PRADESH**

**AT JABALPUR**

**BEFORE**

**JUSTICE SUJOY PAUL**

**ON THE 3<sup>rd</sup> OF OCTOBER, 2023**

**WRIT PETITION No. 24915 of 2023**

**BETWEEN :-**

**MANOJ KUMAR KHARE S/O SHRI RAMDAS  
KHARE, AGED ABOUT 51 YEARS, OCCUPATION:  
SERVICE GRAM PANCHAYAT SECRETARY GRAM  
PANCHAYAT KALANI JANPAD PANCHAYAT  
CHHATARPUR DISTRICT CHHATARPUR R/O  
GRAM PANCHAYAT NIVRI JANPAD PANCHAYAT  
CHHATARPUR (MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI RAJENDRA SHRIVASTAVA – ADVOCATE)***

**AND**

- 1. THE STATE OF MADHYA PRADESH  
THROUGH ITS SECRETARY DEPARTMENT  
OF PANCHAYAT AND SOCIAL WELFARE  
MANTRALAYA VALLABH BHAWAN  
DISTRICT BHOPAL (MADHYA PRADESH)**
- 2. COMMISSIONER (REVENUE) SAGAR  
DIVISION SAGAR (MADHYA PRADESH)**
- 3. ADDITIONAL COLLECTOR  
(DEVELOPMENT), AVAM CHIEF  
EXECUTIVE OFFICER ZILA PANCHAYAT,  
CHHATARPUR (MADHYA PRADESH)**

.....RESPONDENTS

(*BY SHRI ARNAV TIWARI – PANEL LAWYER FOR THE STATE*)

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*This petition coming on for admission this day, JUSTICE SUJOY PAUL passed the following :*

**ORDER**

Heard.

2. The petitioner is aggrieved by the order dated 31.07.2023 (Annexure-P/8) whereby he was placed under suspension for the second time. Learned counsel for the petitioner submits that petitioner was initially placed under suspension on 18.04.2019 (Annexure-P/1). However, said order was revoked on 27.11.2020 (Annexure-P/2) because *chalan* could not be filed in the Court within stipulated time. This second suspension order was unsuccessfully challenged by filing appeal which came to be dismissed on 12.09.2023.

3. Criticizing the suspension order, three points are raised by learned counsel for petitioner namely; (i) as per Rule 4(2) of **Panchayat Service (Discipline and Appeal) Rules, 1999** (Rules), the petitioner could have been placed under deemed suspension by the appointing authority only when he is either detained in custody for a period exceeding 48 hours or he is convicted in the criminal case whereas in the instant case, only *chalan* has been filed for allegedly committing offence under various provisions of **Prevention**

**of Corruption Act, 1988, (ii)** the second suspension order shows that it is based on a Circular dated 26.02.1998 (Annexure-P/12) issued by General Administration Department (GAD) which is applicable to the employees of State Government or Semi Government establishments but has no application on a Panchayat Secretary and **(iii)** the petitioner has been suspended to accommodate somebody else which is a malicious exercise of power.

4. Prayer is opposed by the other side.

5. This is not unknown in service jurisprudence that an employee can be placed under suspension for the second time. (See: **U.P. Rajya Krishi Utpadan Mandi Parishad and Others v. Sanjiv Rajan, 1993 Supp (3) SCC 483** and **Chandra Pal Singh Pundhir v. M.P. Board of Secondary Education, Bhopal and Others, 2002(4) M.P.H.T. 213**)

6. Rule 4(1) of Panchayat Service (Discipline and Appeal) Rules, 1999 (Rules) reads as under :-

**4. Suspension.-** (1) The appointing authority or any authority to which it is subordinate, or disciplinary authority in that behalf may place a member of Panchayat Service under suspension :-

(a) Where a disciplinary proceeding against him is contemplated, or is pending or

(b) Where a case against him in respect of any criminal offence involving moral turpitude is under investigation inquiry or trial;

Provided that where the order of suspension is made by an authority subordinate to or lower in rank

than the appointing authority, such authority shall forth with report to the appointing authority the circumstances in which the order was made.

**(Emphasis supplied)**

7. Clause (b) of aforesaid Rules leaves no room for any doubt that if a case in respect of criminal offence involving moral turpitude is under investigation, inquiry or trial, an employee can be placed under suspension. Thus, this second order of suspension is passed in exercise of power under Clause (b) aforesaid. Even assuming that the Circular dated 26.02.1998 (Annexure-P/12) is not applicable, it will not invalidate the impugned order for the simple reason that this is trite that if a wrong provision is quoted but authority is otherwise equipped with the power to pass an order, wrong quoting of provision will not denude him from exercising the power. The order impugned cannot be jettisoned on this ground. **(See: P. Radhakrishna Naidu v. Govt. of A.P., (1977) 1 SCC 561 and K.K. Parmar v. H.C. of Gujarat, (2006) 5 SCC 789)**

8. Since petitioner is facing grave charges in a trial relating to corruption under the PC Act, no fault can be found in the impugned order dated 31.07.2023 (Annexure-P/8) and the appellate order affirming the order of suspension. So far, the last ground is concerned, I do not see any merit in the said contention that petitioner is placed under suspension to accommodate somebody else. No person has been impleaded *eo nomine* and therefore, question of examining the aspect of malafide does not arise. **(See: Medley Minerals India Ltd. v. State of Orissa, (2004) 12 SCC 390,**

**Rajendra Kumar Agrawal v. State of U.P., (2015) 1 SCC 642 and  
Rajneesh Khajuria v. Wockhardt Ltd., (2020) 3 SCC 86)**

**9.** The petition is devoid of merits. Hence, admission is declined.  
Petition is **dismissed**.

**(SUJOY PAUL)  
JUDGE**

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