

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR  
BEFORE  
HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA  
ON THE 18<sup>th</sup> OF OCTOBER, 2023  
WRIT PETITION No. 25954 of 2023**

**BETWEEN:-**

**MAHENDRA KHARE S/O SHRI BHAGWATI PRASAD  
KHARE, AGED ABOUT 59 YEARS, OCCUPATION:  
ASSISTANT GRADE 3 (TERMINATED) R/O WARD NO  
3 REHALI DISTRICT SAGAR (MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI RAJENDRA KUMAR PANDEY - ADVOCATE )***

**AND**

- 1. THE STATE OF MADHYA PRADESH THROUGH  
THE PRINCIPAL SECRETARY DEPARTMENT  
OF REVENUE MANTRALAY VALLABH  
BHAWAN BHOPAL (MADHYA PRADESH)**
- 2. COMMISSIONER SAGAR DIVISION SAGAR  
(MADHYA PRADESH)**
- 3. COLLECTOR SAGAR DISTRICT SAGAR  
(MADHYA PRADESH)**

**.....RESPONDENTS**

***(BY SHRIMOHAN SAUSARKAR – GOVERNMENT ADVOCATE )***

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

**ORDER**

This Petition under Article 226 of Constitution of India has been  
filed seeking following reliefs:

- “7.1 Issue a writ of Certiorari quashing the  
impugned order dated 04.10.2022  
(Annexure P/3) passed by respondent  
no.3 and impugned order dated

- 29.08.2023 (Annexure P/4) passed by respondent no.2, in the interest of justice.
- 7.2 Issue a writ of mandamus and respondents may be directed to reinstate the petitioner in service on the post of Assistant Grade-III in Tahsil Office Rehali, District Sagar with all the consequential benefits, in the interest of justice.
- 7.3 Issue any other writ, order or direction as this Hon'ble Court deems fit. ”

2. It is the case of petitioner that he was a Government employee. He was tried for an offence under Sections 7 and 13(1)(d) read with Section 13(2) of Prevention of Corruption Act. Ultimately by judgment dated 08.09.2022 passed by Special Judge, Prevention of Corruption Act, Sagar in case No. SC Lok/23/2016, petitioner has been convicted for offence under Sections 7 and 13(1)(d) read with Section 13(2) of Prevention of Corruption Act and has been sentenced to undergo rigorous imprisonment of four years and fine of Rs.10,000/- on each count and sentences have been directed to run concurrently. Thereafter, petitioner preferred criminal appeal No.8174/2022 and by order dated 15.11.2022, sentence of petitioner has been suspended and petitioner has been released on bail. After conviction of petitioner, Collector cum District Magistrate, Sagar by order dated 04.10.2022 has dismissed the petitioner from service on the ground that he has been convicted for an offence involving moral turpitude. The appeal filed by petitioner has also been dismissed by Commissioner, Sagar Division, Sagar by order dated 29.08.2023 passed in Appeal No.119/Appeal/2023-24.

3. Challenging the order of dismissal from service, it is submitted by counsel for petitioner that before imposing major penalty of dismissal,

no departmental enquiry was conducted by respondents and therefore, dismissal of petitioner from service is bad in law.

4. *Per contra*, petition is vehemently opposed by counsel for State. It is submitted that once petitioner has been convicted, then in the light of Article 311 of Constitution of India, petitioner can be dismissed from service without holding departmental enquiry. It is further submitted that case in hand is duly covered by order passed by this Court in the case of **B.S. Saiyam Vs. State of Madhya Pradesh and Others** decided on **9<sup>th</sup> of October, 2023** in **W.P. No.25137/2023**.

5. Considered the submissions made by counsel for parties.

6. The undisputed fact is that petitioner has been convicted for offence under Sections 7 and 13(1)(d) read with Section 13(2) of Prevention of Corruption Act. His conviction has not been stayed and merely his sentence has been suspended, therefore, in absence of stay on conviction, petitioner has to face the consequences of his conviction.

7. This Court in the case of **B.S. Saiyam (supra)** has passed the following order:

“This petition under Article 226 of Constitution of India has been filed against order dated 30.09.2022 passed by Engineer-in-chief, Water Resources Department, Bhopal in File No.3328700/21/2011, order dated 04.08.2023 passed by Engineer-in-chief, Water Resources Department, Bhopal in File No. No.3328700/21/2011, order dated 26.05.1998 passed by General Administration Department in File No.C-6-2/98/3/1 and order dated 08.02.1999 passed by General Administration Department in File No. C-6-2/98/3/1 and has prayed for following reliefs:-

“(i) *That the G.A.D. Circular, dated 26.05.1998 (Annexure P/7) and Circular, dated 08.02.1999 (Annexure P/8) may kindly be*

*quashed by way of writ in the nature of certiorari by this Hon'ble Court.*

*(ii) That the impugned dismissal order, dated 30.09.2022 (Annexure P/2) and also the order passed rejecting the statutory appeal on 04.08.2023 (Annexure P/6) may kindly be quashed by way of a writ in the nature of certiorari by this Hon'ble Court.*

*(iii) That the Respondents may kindly be directed to issue a posting order of the Petitioner so as to enable the Petitioner to join the duties by the Petitioner under the Respondent No.2.*

*(iv) That consequently a writ in the nature of mandamus may kindly be issued directing Respondents to make payment of due salary from 16.09.2022 to till current date.*

*(v) Any other relief deemed fit and proper in the facts and circumstances of the case may also be granted to the Petitioner.*

*(vi) The cost of this Writ Petition may kindly be awarded in favour of the Petitioner.”*

2. By circulars dated 26.05.1998 and 08.02.1999 issued by GAD, it has been mentioned that if a government employee is held guilty for an offence involving moral turpitude, then he should be dismissed from service and before that holding of departmental enquiry as well as opportunity of hearing is not required to be issued to the delinquent officer as per Rule 19 read with Rule 14 of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966.

3. It is submitted by counsel for petitioner that petitioner was tried for an offence under Sections 420/34, 467/34, 468/34 and 471/34 of IPC for the

allegations that by preparing forged medical bills an attempt was made to withdraw the amount and the forged documents were used knowing well that they were forged documents. It is the case of petitioner that against his conviction he has preferred a Cr.A.No.8604/2022 and his jail sentence has been suspended by order dated 18.10.2022. It is submitted that merely on the basis of conviction of petitioner a punishment of dismissal from service has been imposed under Rule 10 of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966. No charge-sheet on misconduct under Rule 3-A of the Madhya Pradesh Civil Services (Conduct) Rules, 1965 or any other relevant rule has been issued to the petitioner.

4. The respondent No.2 has also failed to follow the procedure laid down under Rule 14-A r/w Rule 19 of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 but the respondent No.2 has taken resort to Circular dated 08.02.1999 and dismissed the petitioner's services straightway without following due procedure as required under the law.

5. The petitioner had earlier filed W.P.No.30068/2022 before this Court and this Court was pleased to allow the petitioner to withdraw the petition with liberty to file appropriate petition for appropriate relief, if occasion so arises. Thereafter, petitioner preferred a departmental appeal, which has been dismissed by order dated 04.08.2023. It is submitted that appeal has been decided by the same authority who has passed the order of termination i.e. respondent No.2 and therefore, the same is liable to be quashed.

6. It is further submitted that the Allahabad High Court in the case of **Vishwanath Vishwakarma v. State of U.P.** decided on **18.09.2023** in **Writ-A No.4422/2015** has held that the conviction cannot be sufficient enough to dismiss the delinquent officer from service but the conduct of the delinquent officer must be considered, which is mandatory requirement in light of interpretation of Article 311 (2) (a) of

Constitution of India by the Apex Court as well as by the Allahabad High Court.

7. The Supreme Court in the case of **Union of India v. Sunil Kumar Sarkar**, reported in (2001) 3 SCC 414 has held that very foundation of proposing punishment under Rule 19 is that there should be conviction on a criminal charge, therefore question of having predetermined mind does not arise in such cases. All that disciplinary authority is expected to do under Rule 19 of Central Rule is to be satisfied that the officer concerned has been convicted on a criminal charge and has been given a show cause notice and any reply to show cause has been properly considered before making any order under this rule.

8. It is also the case of petitioner that he should have been given an opportunity of hearing to show that he was wrongly convicted by the trial Court. However, it is further submitted that petitioner was convicted without obtaining any sanction under Section 197 of Cr.P.C.

9. Considered the submissions made by counsel for parties.

10. The Supreme Court in the case of **Union of India v. V.K. Bhaskar**, reported in (1997) 11 SCC 383 has held that dismissal from service on the ground of conduct which led to conviction on a criminal charge could be passed for which pendency of an appeal against conviction is no bar.

11. In the **Vishwnath Vishwakarma** (supra) the facts were that petitioner therein was convicted for offence under Section 302 of IPC. The allegations made against Vishwanath Vishwkarma had nothing to do with the official duty of the petitioner therein and that's why it is held that before dismissing the petitioner therein the respondent should have given an opportunity of hearing to the petitioner therein to prove his innocence *qua* his service conditions.

12. The petitioner has been convicted on the allegations that he had prepared forged documents to facilitate other co-accused persons to withdraw the amount. Those, forged documents were put for

consideration of payment. However, it appears that before the payment could be made the scam was unearthed and the payment was stopped but one thing is clear that by preparing the forged documents, petitioner had made an effort not only to give undue advantage to other co-accused persons but had created the forged medical bills. This was done by petitioner in discharge of his official duties. Committing a forgery cannot be said to be a part of official duty.

**13.** The Supreme Court in the case of **Parkash Singh Badal v. State of Punjab**, reported in **(2007) 1 SCC 1** has held as under:-

“**50.** The offence of cheating under Section 420 or for that matter offences relating to Sections 467, 468, 471 and 120-B can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. In such cases, official status only provides an opportunity for commission of the offence.”

**14.** Thus, the contention of the counsel for petitioner that prosecution of petitioner without obtaining sanction under Section 197 of Cr.P.C. is misconceived for the purposes of this writ petition. However, it is made clear that this observation shall not come in the way of decision in criminal appeal, which is pending against conviction of petitioner.

**15.** Article 311 (2) of Constitution of India reads as under:-

**“311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.—(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be**

*dismissed or removed by an authority subordinate to that by which he was appointed.*

*(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:*

*Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:*

*Provided further that this clause shall not apply—*

- (a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or*
- (b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or*
- (c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the*



*State it is not expedient to hold such inquiry.”*

**16.** The Circulars dated 08.02.1999 and 26.05.1998 challenged by petitioner are based on the provisions of Article 311(2) of Constitution of India. Corruption is a menace to the civil society and the conviction of petitioner has not been stayed, therefore the petitioner has to suffer disqualifications attached to his conviction.

**17.** Counsel for the petitioner could not point out any reason to hold that the Circular dated 08.02.1999 and Circular dated 26.05.1998 are bad in law. Furthermore, the conduct of the petitioner is writ large that in discharge of his official duties, he had prepared forged medical bills.

**18.** Under these circumstances, this Court is of the considered opinion that looking to the nature of allegations for which the petitioner has been convicted as well as misuse of his authority by preparing the forged medical bills in favour of the co-accused persons, it is clear that petitioner has been convicted for the offence involving moral turpitude.

**19.** Under these circumstances, no case is made out warranting interference.

**20.** The petition fails and is hereby **dismissed.**”

**8.** Since, this case is duly covered by order passed by this Court in the case of **B.S. Saiyam (supra)**, accordingly, petition is also **dismissed** in the terms and conditions of order passed in the case of **B.S. Saiyam (supra)**.

**(G.S. AHLUWALIA)**  
**JUDGE**

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