# IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

**BEFORE**

**HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA**

**ON THE 28th OF NOVEMBER, 2023**

**WRIT PETITION No. 28420 of 2023**

**BETWEEN:-**

**MANOJ CHOURE, S/O SHRI BARIKRAO CHOURE, AGED ABOUT 51 YEARS, OCCUPATION: PRATHMIK SHIKSHAK, R/O NEPANAHAR, TEHSIL NEPANAGAR, DISTRICT BURHANPUR (MADHYA PRADESH)**

**.....PETITIONER**

*(BY SHRI ASHOK KUMAR GUPTA- ADVOCATE)*

**AND**

1. **THE STATE OF MADHYA PRADESH THROUGH THE PRINCIPAL SECRETARY, TRIBAL WORK DEPARTMENT, VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**

2. **COMMISSIONER, TRIBAL WORK DEPARTMENT, BHOPAL (MADHYA PRADESH)**

3. **JOINT DIRECTOR, TRIBAL WORK AND SCHEDULED CASTE DEVELOPMENT, INDORE DIVISION, INDORE (MADHYA PRADESH)**

4. **COLLECTOR BURHANPUR, DISTRICT BURHANPUR (MADHYA PRADESH)**

5. **ASSISTANT COMMISSIONER, TRIBAL AND SCHEDULED CASTE DEVELOPMENT, DISTRICT BURHANPUR (MADHYA PRADESH)**

**.....RESPONDENTS**

*(BY SHRI SWAPNIL GANGULY- DEPUTY ADVOCATE GENERAL)*

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*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 against the order dated 08.06.2023 by which petitioner has been dismissed from service on the ground that he has been convicted for offence under Sections 420, 409/120B, 109 of IPC and under Section 6 of *Madhya Pradesh Nikshepakon Ke Hiton Ka Sanrakshan. Adhiniyam, 2000* and has been sentenced to undergo R.I. for 5 years and fine of Rs.5000/-, in default 5 months R.I.

**2.** It is submitted by counsel for petitioner that after his conviction i.e. by judgment dated 28th of April, 2023 passed in S.T. No. 200074/2014, he was sent to jail but by order dated 22.09.2023 passed in Criminal Appeal No. 6444/2023, his sentence has been suspended. Therefore, he filed an application on 05.10.2023 for his reinstatement on the ground that his sentence has been suspended but no heed has been paid. Accordingly, it is submitted that the order dated 08.06.2023 (Annexure-P/3) be quashed or in the alternative, respondent No. 4 be directed to decide his representation dated 05.10.2023.

**3.** *Per contra*, the petition is vehemently opposed by counsel for State. It is submitted by counsel for State that the allegation against petitioner was that by alluring the innocent depositors, he persuaded, them to deposit their hard earned money in a company which was illegally floated without obtaining banking licence from the Reserve Bank of India and ultimately, the said amount was misappropriated. Since, the offence allegedly committed by petitioner involves a moral turpitude, therefore, he was rightly dismissed from service. Further it is

submitted that the case in hand is duly covered by an order passed by this Court in the case of **B.S. Saiyam Vs. The State of Madhya Pradesh and Others**, decided on 9th of October, 2023 in **W.P. No. 25137/2023**.

**4.** Heard counsel for parties.

5. Article 311 (2) of Constitutional of India reads as under:-

> ***"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State***
>
> *(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."*

**6.** The State Government has issued a circular dated 08.02.1999 and 26.05.1998 which reads as under:-

**सामान्य प्रशासन विभाग**
**मंत्रालय**

क्रमांक–सी 6–2/98/3/1 भोपाल, दिनांक 8 फरवरी, 1999

प्रति,

शासन के समस्त विभाग,
अध्यक्ष, राजस्व मण्डल, मध्यप्रदेश, ग्वालियर,
समस्त विभागाध्यक्ष,
समस्त संभागयुक्त,
समस्त जिलाध्यक्ष,
मध्यप्रदेश।

विषयः– **भ्रष्टाचार के प्रकरणों में न्यायालय द्वारा दोषसिद्धि होने पर संबंधित शासकीय सेवक के विरूद्ध त्वरित कार्यवाही।**

संदर्भः– इस विभाग का परिपत्र क्रमांक सी–6–3/77/3/1, दिनांक 15–9–77, क्रमांक सी–6–2/80/3/1, दिनांक 6–10–80 एवं सी–6–2/98/3/1, दिनांक 26–5–98.

इस विभाग के संदर्भित परिपत्रों द्वारा मध्यप्रदेश सिविल सेवा (वर्गीकरण, नियंत्रण एवं अपील) नियम, 1966 के अंतर्गत ये निदेश जारी किये गये थे कि यदि किसी शासकीय सेवक को न्यायालय द्वारा ऐसे अपराध में दोषी पाये जाने के कारण दण्डित किया गया है, जिससे उस शासकीय सेवक के नैतिक पतन होने का आभास होता हो और उसे शासकीय सेवा में रखना लोकहित में उचित नहीं हो तो, अनुशासनिक प्राधिकारी उपर्युक्त नियम के नियम 19(1) के अंतर्गत उस शासकीय सेवक पर उचित शास्ति अधिरोपित करने के लिये तुरन्त कार्यवाही करे। अर्थात् आपराधिक आरोपों में न्यायालय द्वारा दोषसिद्ध पाये जाने पर शासकीय सेवक के विरूद्ध ''संक्षिप्त जांच'' करने के उपरांत मामले के गुणदोष पर विचार कर उचित शास्ति अधिरोपित करें। इस प्रकार की कार्यवाही करने के लिये इस बात का कोई प्रतिबंध नहीं है कि उस शासकीय सेवक ने अपनी दोषसिद्ध के विरूद्ध अपील दायर कर दी है इसलिये शास्ति अधिरोपित नहीं की जा सकती।

2. उक्त स्पष्ट निर्देशों के बावजूद भी राज्य सरकार के समक्ष कुछ ऐसे प्रकरण सामने आये हैं जिसमें शासकीय सेवक को न्यायालय द्वारा आपराधिक प्रकरण में दोषसिद्ध पाये जाने पर भी प्रशासकीय विभाग/नियुक्ति/अनुशासनिक प्राधिकारियों ने संबंधित शासकीय सेवक के विरूद्ध त्वरित अनुशासनात्मक कार्यवाही नहीं की। भविष्य में इस प्रकार के प्रकरणों में त्वरित कार्यवाही को सुनिश्चित करने के लिये विधि विभाग के परामर्श से समस्त प्रशासकीय विभाग/नियुक्ति प्राधिकारी/अनुशासनिक प्राधिकारियों के मार्गदर्शन के लिये निम्नानुसार निदेश जारी किये जाते है :–

**(क) सेवारत् शासकीय सेवकों के मामलों में :–**

1. उक्त श्रेणी के अंतर्गत आने वाले शासकीय सेवक यदि किसी आपराधिक प्रकरण में न्यायालय द्वारा दोष सिद्ध पाये जाते हैं जिसमें उनका नैतिक पतन अंतर्वलित हो तो यह अपेक्षा है कि उसे

मध्यप्रदेश सिविल सेवा (वर्गीकरण, नियंत्रण एवं अपील) नियम, 1966 के नियम 10 (नौ) में प्रावधानिक ''सेवा से पदच्युत (dismissal) करने'' की शास्ति अधिरोपित की जाना चाहिये।

2. उक्त प्रकार के प्रकरणों में उच्चतम न्यायालय के न्यायिक दृष्टांत के अनुसार मध्यप्रदेश सिविल सेवा (वर्गीकरण, नियंत्रण तथा अपील) नियम, 1966 के नियम 19 सहपठित नियम 14 एवं भारतीय संविधान के अनुच्छेद 311 (2)(अ) के अंतर्गत अपचारी शासकीय सेवक के विरूद्ध विस्तृत विभागीय जांच आवश्यक नहीं है, साथ ही, संबंधित शासकीय सेवक को कार्यवाही के पूर्व कोई सूचना देना भी आवश्यक नहीं है। अर्थात् दण्डादेश सीधे पारित एवं जारी किया जा सकता है।

3. यदि संबंधित अपचारी शासकीय सेवक की नियुक्ति लोक सेवा आयोग के माध्यम से हुई हो तो सर्वप्रथम विभागीय प्रस्ताव पर लोक सेवा आयोग का मत प्राप्त कर लिया जावे। विभागीय प्रस्ताव पर आयोग की सहमति की स्थिति में अंतिम दण्डादेश प्रशासकीय विभाग द्वारा पारित किये जा सकते है। यदि विभागीय प्रस्ताव पर आयोग सहमत नहीं होता तो प्रशासकीय विभाग द्वारा प्रकरण समन्वय में मुख्यमंत्री जी को प्रस्तुत किया जाना चाहिये जिसमें आयोग से असहमति के आधार स्पष्ट दर्शाये जाने चाहिये। संबंधित शासकीय सेवक को दण्डादेश के साथ आयोग के मत की प्रति दी जाना चाहिये तथा आयोग से असहमति की स्थिति में उसके आधार भी दण्डादेश में दर्शाये जाना चाहिये।

4. प्रथम श्रेणी अधिकारियों के मामले में मध्यप्रदेश शासन के कामकाजी नियमों के भाग 4 नियम 10 के अधीन जारी किये गये निर्देश (छ) के अनुसार अंतिम दण्डादेश पारित करने के पूर्व समन्वय में मुख्यमंत्री जी के आदेश प्राप्त किये जावें।

5. यदि संबंधित शासकीय सेवक ने अपनी दोषसिद्धि अपीलीय न्यायालय में ''अपील'' की है और अपीलीय न्यायालय ने दोष सिद्धि को ''स्थगन'' न देकर मात्र ''सजा'' को स्थगित किया है तो भी उक्तानुसार शास्ति अधिरोपित की जा सकती है।

6. संबंधित सेवक को ''दण्डादेश'' पारित करने के साथ ही, राज्य प्रशासनिक अधिकरण में ''केवियेट'' भी दाखिल कर दिया जावे ताकि आरोपी शासकीय सेवक अधिकरण से ''एक पक्षीय'' स्थगन प्राप्त करने में सफल न हो। ''अधिकरण'' द्वारा ''स्थगन'' दिये जाने पर उच्च न्यायालय में ''याचिका'' दायर की जावे।

उक्त श्रेणी के अंतर्गत आने वाले प्रकरणों में प्रस्तुत की जाने वाली टीप

तथा अंतिम दण्डादेश का प्रारूप क्रमश संलग्न परिशिष्ट क (I) तथा ख (II) संलग्न है।

**(ख) ऐसे सेवानिवृत शासकीय सेवक जिनके विरूद्ध विभागीय जांच प्रारंभ नहीं की गई हो एवं जिन्हें आपराधिक प्रकरण में दंडित किया गया हो :–**

ऐसे सेवानिवृत्त शासकीय सेवक जिनके विरूद्ध विभागीय जांच प्रारंभ नहीं की गई हो एवं जिन्हें आपराधिक प्रकरण में दण्डित किया गया हो उनकी पेंशन म.प्र. सिविल सेवा (पेंशन) नियम, 1976 के नियम 9 के उपनियम (एक) के अंतर्गत स्थाई रूप से रोकने के लिए शासन सक्षम है, ऐसे प्रकरणों में भी संबंधित शासकीय सेवक को पूर्व सूचना देना आवश्यक नहीं है, पेंशन रोकने संबंधी अंतिम आदेश मंत्रि–परिषद् द्वारा पारित किये जावेंगे। ऐसे शासकीय सेवकों, जिनकी नियुक्ति लोक सेवा आयोग के माध्यम से हुई है, के विषय में सर्वप्रथम आयोग का मत प्राप्त किया जावेगा, तत्पश्चात् आयोग के मत सहित प्रकरण मंत्रि–परिषद् के समक्ष प्रस्तुत किया जावेगा।

उक्त श्रेणी के अंतर्गत आने वाले प्रकरणों में प्रस्तुत की जाने वाली टीप तथा पेंशन रोकने संबंधी दण्डादेश का प्रारूप क्रमशः संलग्न परिशिष्ट ख–1, ख–2 पर है।

**(ग) ऐसे शासकीय सेवक जिनके विरूद्ध विभागीय जांच अथवा आपराधिक प्रकरण लंबित हैं और सेवानिवृत्त हो गये हैं अथवा हो रहे हैं :–**

ऐसे शासकीय सेवक जो सेवानिवृत्त हो गये हैं और उनकी पेंशन भी अंतिम रूप से स्वीकृत की जा चुकी है और उनके विरूद्ध आपराधिक प्रकरण/विभागीय जांच लंबित है या बाद में संस्थापित होती है तो म.प्र. सिविल सेवा (पेंशन) नियम, 1976 के नियम 9 (4) के प्रथम परन्तुक के अंतर्गत महामहिम राज्यपाल अर्थात् मंत्रिपरिषद् आदेश द्वारा विभागीय जांच/न्यायिक कार्यवाही प्रारंभ करने की तिथि से ऐसे शासकीय सेवक को स्वीकृत पेंशन में अस्थाई रूप से 50 प्रतिशत की कटौती की जा सकती है।

उक्त नियम 9 (4) के द्वितीय परन्तुक के ''ए'' के अनुसार यदि विभागीय कार्यवाही संस्थित होने के दिनांक से एक वर्ष में पूर्ण नहीं होती है तो उपर्युक्त एक वर्ष की अवधि व्यतीत हो जाने के पश्चात् रोकी गई पेंशन का 50 प्रतिशत पुनःस्थापित हो जायेगा।

इसी प्रकार नियम 9 (4) के द्वितीय परन्तुक के ''बी'' के अनुसार यदि विभागीय कार्यवाही संस्थित होने की दिनांक से दो वर्ष की अवधि में पूर्ण नहीं होती है तो उपर्युक्त दो वर्ष की अवधि व्यतीत होने के पश्चात् रोकी गई पेंशन की पूर्ण राशि पुनःस्थापित हो जायेगीं। इसी द्वितीय परन्तुक के ''सी'' के अनुसार विभागीय जांच का अंतिम आदेश पेंशन रोकने का पारित होने पर आदेश विभागीय जांच प्रारंभ होने की तिथि से प्रभावशील माना जावेगा।

लोक सेवा आयोग के माध्यम से नियुक्त शासकीय सेवक के मामले में सर्वप्रथम ''आयोग'' का मत प्राप्त किया जायेगा तत्पश्चात् प्रकरण मंत्रिपरिषद् को

प्रस्तुत किया जावेगा।

उक्त श्रेणी के अंतर्गत आने वाले प्रकरणों में प्रस्तुत की जाने वाली टीप, संबंधित शासकीय सेवक को दिये जाने वाले कारण बताओ नोटिस और अंतिम आदेश का प्रारूप क्रमशः संलग्न परिशिष्ट ग–1, ग–2 और ग–3 पर है।

3. कृपया आपराधिक प्रकरणों में दोष सिद्ध पाये गये शासकीय सेवकों के विरूद्ध उक्तानुसार कार्यवाही प्राथमिकता के आधार पर की जावे साथ ही इन निर्देशों का कठोरता के साथ पालन किया जावे।

एम.के.वर्मा
उप सचिव
मध्यप्रदेश शासन,
सामान्य प्रशासन विभाग,

**मध्यप्रदेश शासन**
**सामान्य प्रशासन विभाग**
**मंत्रालय, वल्लभ भवन, भोपाल**

क्र. सी–6–2–98–3–1 भोपाल, दिनांक 26 मई, 1998

प्रति,

शासन के समस्त विभाग,
इत्यादि।

**विषयः–** **भ्रष्टाचार प्रकरणों में न्यायालय द्वारा दोष–सिद्ध होने पर त्वरित कार्यवाही।**

**संदर्भः–** इस विभाग का परिपत्र क्र. सी. 6–3/77/3/1, दिनांक 15–9–77 तथा क्रमांक सी. 6–2/80/3/1, दिनांक 6–10–80.

संदर्भित परिपत्रों द्वारा इस विभाग द्वारा मध्यप्रदेश सिविल सेवा (वर्गीकरण, नियंत्रण एवं अपील नियम, 1966 के नियम 19 (1) के अंतर्गत यह निर्देश जारी किये गये कि यदि किसी शासकीय सेवक को न्यायालय द्वारा ऐसे अपराध में दोषी पाये जाने के कारण दंडित किया गया है, जिससे उस शासकीय सेवक के नैतिक पतन होने का आभास होता हो तथा उसे शासकीय सेवा में रखना लोकहित में उचित नहीं हो तो अनुशासनिक प्राधिकारी उपर्युक्त नियम के नियम 19 (1) के अंतर्गत उस शासकीय सेवक पर उचित शास्ति अधिरोपित करने के लिये तुरन्त कार्यवाही करे। अर्थात् आपराधिक आरोपों में न्यायालय द्वारा दोष–सिद्ध पाये जाने पर शासकीय सेवक के विरूद्ध ''संक्षिप्त जांच'' करने के उपरांत मामले के गुण–दोष पर विचार कर उचित शास्ति अधिरोपित करें। इस प्रकार की कार्यवाही करने के लिये इस बात का कोई प्रतिबंध नहीं है कि उस शासकीय सेवक ने अपनी दोष – सिद्धि के विरूद्ध अपील दायर कर दी है इसलिये शास्ति अधिरोपित नहीं की जा सकती। अपील प्रस्तुत होने पर भी वस्तुतः उक्त शास्ति अधिरोपित की जा सकती है। यदि अपील में निर्दोष पाये

जाने पर निचले न्यायालय के निर्णय को निरस्त कर दिया जाता है तो पूर्व पारित शास्ति संबंधी आदेश भी निरस्त किया जा सकता है।

2. राज्य शासन के ध्यान में एक ऐसा प्रकरण आया है जिसमें न्यायालय द्वारा भ्रष्टाचार के प्रकरण में दोष–सिद्ध ठहराने के बाद 2 वर्षों तक दोषी शासकीय सेवक के विरूद्ध कार्यवाही नहीं की गई। इस प्रकार दोषी शासकीय सेवक को परोक्ष रूप से शासकीय सेवा में बने रहने का वांछनीय लाभ प्राप्त हुआ। यह स्थिति अत्यन्त खेदजनक है। विभाग में प्राप्त ऐसे सभी प्रकरणों पर त्वरित कार्यवाही की जाना चाहिये। यदि कोई शासकीय सेवक इन प्रकरणों पर त्वरित कार्यवाही नहीं करने का दोषी पाया जाता है, तो उसके विरूद्ध कड़ी अनुशासनात्मक कार्यवाही की जायेगी।

3. कृपया उपर्युक्त निर्देशों का कड़ाई से पालन सुनिश्चित करें।

एम.एम. श्रीवास्तव
उपसचिव.

**7.** From the plain reading of circular dated 26.05.1998, it is clear that there is a reference of circular dated 15.09.1977 and 06.10.1980 which provided that in case if a person has been convicted for an offence involving moral turpitude and if it is not conducive for his continuation in Government Service, then action should be taken under Rule 19 of Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966.

**8.** Similarly, circular dated 08.02.1999 specifically provides that if a person has been convicted for an offence involving moral turpitude, then he should be dismissed.

**9.** Rule 19 of Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 specifically provides that the provisions of Rule 14 to 18 would not apply where the penalty is imposed on a Government Servant on the ground of conduct which has lead his conviction on a criminal charge. Thus, the dismissal of the petitioner upon his conviction for offence under Sections 420, 409/120B, 109 of IPC is permissible without holding any departmental

enquiry.

**10.** Now the only question which requires consideration is as to whether the allegations made against the petitioner involves a moral turpitude or not?

**11.** The petitioner has filed a copy of judgment passed by Ist Additional Session Judge, Burhanpur in S.T. No. 200074/2014, according to which the allegations made against the petitioner were that the petitioner had allured the honest and innocent investors to invest in Super Power Investment Services India Limited and later on, the said company misappropriated an amount of 2.5 crores and the amount of the innocent investors was never returned back. Undisputedly, the company was a shell company which was doing business without banking licence and other necessary approvals.

**12.** From the judgment it is clear that petitioner had remained in Jail from 06.09.2014 to 28.01.2015 as an under trial prisoner. Thereafter, he was sent to jail after the judgment was pronounced i.e. 28.04.2023 and was granted bail by order dated 22.09.2023 passed in Criminal Appeal No. 6444/2023. The conviction of the appellant has not been suspended.

**13.** The term moral turpitude is a vague term having different meaning in different context. The term has a general meaning i.e. contrary to justice, honesty, modesty or good morals in contrary to what a man oust to the society in general.

**14.** The Supreme Court in the case of **Pawan Kumar Vs. State of Haryana and Another**, reported in **1996 (4) SCC 17** has held as under:-

> "12. Moral turpitude" is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity………."

**15.** The Supreme Court in the case of **Sushil Kumar Singhal Vs. Regional Manager, Punjab National Bank**, reported in **2010 (8) SCC 573** has held as under:-

> "**25.** In view of the above, it is evident that moral turpitude means anything contrary to honesty, modesty or good morals. It means vileness and depravity. In fact, the conviction of a person in a crime involving moral turpitude impeaches his credibility as he has been found to have indulged in shameful, wicked and base activities."

**16.** The Supreme Court in the case of **State Bank of India and others vs. P. Soupramaniane** reported in **(2019) 18 SCC 135** has held as under:

> "**14.** The other important factors that are to be kept in mind to conclude that an offence involves moral turpitude are : the person who commits the offence; the person against whom it is committed; the manner and circumstances in which it is alleged to have been committed; and the values of the society.
>
> **15.** According to the National Incident-Based Reporting System (NIBRS), a crime data collection system used in the United States of America, each offence belongs to one of the three categories which are : crimes against persons, crimes against property, and crimes against society. Crimes against persons include murder, rape, and assault where the victims are always individuals. The object of crimes against property, for example, robbery and burglary is to obtain money, property, or some other benefits. Crimes against society, for example, gambling, prostitution, and drug violations, represent society's prohibition against engaging in certain types of activities. Conviction of any alien of a crime involving moral turpitude is a

> ground for deportation under the Immigration Law in the United States of America. To qualify as a crime involving moral turpitude for such purpose, it requires both reprehensible conduct and scienter, whether with specific intent, deliberateness, wilfulness or recklessness.
>
> **16.** There can be no manner of doubt about certain offences which can straightaway be termed as involving moral turpitude e.g. offences under the Prevention of Corruption of Act, the NDPS Act, etc. The question that arises for our consideration in this case is whether an offence involving bodily injury can be categorised as a crime involving moral turpitude. In this case, we are concerned with an assault. It is very difficult to state that every assault is not an offence involving moral turpitude. A simple assault is different from an aggravated assault. All cases of assault or simple hurt cannot be categorised as crimes involving moral turpitude. On the other hand, the use of a dangerous weapon which can cause the death of the victim may result in an offence involving moral turpitude. In the instant case, there was no motive for the respondent to cause the death of the victims. The criminal courts below found that the injuries caused to the victims were simple in nature. On an overall consideration of the facts of this case, we are of the opinion that the crime committed by the respondent does not involve moral turpitude. As the respondent is not guilty of an offence involving moral turpitude, he is not liable to be discharged from service."

**17.** If, the allegations made against petitioner are considered, then it is clear that he has been convicted for an offence involving moral turpitude and accordingly his dismissal from service cannot be held to be illegal or unwanted.

**18.** Since, the conviction of the petitioner has not been stayed, therefore, it is clear that merely because his sentence has been

suspended would not mean that his conviction has also been stayed. He still a convicted person and has to face the disqualification of his conviction.

**19.** The Supreme Court in the case of **Government of Andhra Pradesh and another vs. B. Jagjeevan Rao** reported in **(2014) 13 SCC 239** has held as under:

> "6. It is not in dispute that the respondent was convicted by the Principal Special Judge for SPE & ACB cases for the offences punishable under the Act. The High Court, as the order would reflect, had only directed suspension of sentence. There was no order of stay of conviction. It is well settled in law that there is a distinction between suspension of sentence and stay of conviction. This has been succinctly stated in *Rama Narang* v. *Ramesh Narang* [*Rama Narang* v. *Ramesh Narang*, (1995) 2 SCC 513] : (*S. Nagoor Meera case* [*Director of Collegiate Education (Admn.)* v. *S. Nagoor Meera*, (1995) 3 SCC 377 : 1995 SCC (L&S) 686 : (1995) 29 ATC 574] , SCC pp. 380-81, para 7)
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> "*7. … '15. …* Section 389(1) empowers the appellate court to order that the execution of the sentence or order appealed against be suspended pending the appeal. What can be suspended under this provision is the execution of the sentence or the execution of the order. Does "order" in Section 389(1) mean order of conviction or an order similar to the one under Section 357 or Section 360 of the Code? Obviously, the order referred to in Section 389(1) must be an order capable of execution. An order of conviction by itself is not capable of execution under the Code. It is the order of sentence or an order awarding compensation or imposing fine or release on probation which are capable of execution and which, if not suspended, would be required to be executed by the authorities. …

*16*. In certain situations the order of conviction can be executable, in the sense, it may incur a disqualification as in the instant case. In such a case the power under Section 389(1) of the Code could be invoked. In such situations the attention of the appellate court must be specifically invited to the consequence that is likely to fall to enable it to apply its mind to the issue since under Section 389(1) it is under an obligation to support its order "for reasons to be recorded by it in writing". If the attention of the court is not invited to this specific consequence which is likely to fall upon conviction how can it be expected to assign reasons relevant thereto? … If such a precise request was made to the Court pointing out the consequences likely to fall on the continuance of the conviction order, the court would have applied its mind to the specific question and if it thought that case was made out for grant of interim stay of the conviction order, with or without conditions attached thereto, it may have granted an order to that effect.' (*Rama Narang case* [*Rama Narang* v. *Ramesh Narang*, (1995) 2 SCC 513] , SCC pp. 524-25, paras 15-16)"

**7.** A similar view has been expressed in *K.C. Sareen* v. *CBI* [(2001) 6 SCC 584 : 2001 SCC (Cri) 1186] ."

**20.** The Supreme Court in the case of **Shyam Narain Pandey vs. State of Uttar Pradesh** reported in **(2014) 8 SCC 909** has held as under:-

**"4.** A "convict" means declared to be guilty of criminal offence by the verdict of court of law. That declaration is made after the court finds him guilty of the charges which have been proved against him. Thus, in effect, if one prays for stay of conviction, he is

asking for stay of operation of the effects of the declaration of being guilty.

**5.** It has been consistently held by this Court that unless there are exceptional circumstances, the appellate court shall not stay the conviction, though the sentence may be suspended. There is no hard-and-fast rule or guidelines as to what are those exceptional circumstances. However, there are certain indications in the Code of Criminal Procedure, 1973 itself as to which are those situations and a few indications are available in the judgments of this Court as to what are those circumstances.

**6.** It may be noticed that even for the suspension of the sentence, the court has to record the reasons in writing under Section 389(1) CrPC. Couple of provisos were added under Section 389(1) CrPC pursuant to the recommendations made by the Law Commission of India and observations of this Court in various judgments, as per Act 25 of 2005. It was regarding the release on bail of a convict where the sentence is of death or life imprisonment or of a period not less than ten years. If the appellate court is inclined to consider release of a convict of such offences, the Public Prosecutor has to be given an opportunity for showing cause in writing against such release. This is also an indication as to the seriousness of such offences and circumspection which the court should have while passing the order on stay of conviction. Similar is the case with offences involving moral turpitude. If the convict is involved in crimes which are so outrageous and yet beyond suspension of sentence, if the conviction also is stayed, it would have serious impact on the public perception on the integrity of the institution. Such orders definitely will shake the public confidence in judiciary. That is why, it has been cautioned time and again that the court should be very wary in staying the conviction especially in the types of cases referred to above and it shall be done only in very

rare and exceptional cases of irreparable injury coupled with irreversible consequences resulting in injustice.

**7.** In *Ravikant S. Patil* v. *Sarvabhouma S. Bagali* [(2007) 1 SCC 673 : (2007) 1 SCC (Cri) 417] , a three-Judge Bench of this Court has held that: (SCC p. 681, para 16)

"*16.5*. … the power to stay the conviction … should be exercised only in exceptional circumstances where failure to stay the conviction, would lead to injustice and irreversible consequences."

**8.** In *Navjot Singh Sidhu* v. *State of Punjab* [(2007) 2 SCC 574 : (2007) 1 SCC (Cri) 627] , following *Ravikant S. Patil case* [(2007) 1 SCC 673 : (2007) 1 SCC (Cri) 417] , at para 6, this Court held as follows: (*Navjot Singh Sidhu case* [(2007) 2 SCC 574 : (2007) 1 SCC (Cri) 627] , SCC pp. 581-82)

"*6*. The legal position is, therefore, clear that an appellate court can suspend or grant stay of order of conviction. But the person seeking stay of conviction should specifically draw the attention of the appellate court to the consequences that may arise if the conviction is not stayed. Unless the attention of the court is drawn to the specific consequences that would follow on account of the conviction, the person convicted cannot obtain an order of stay of conviction. Further, grant of stay of conviction can be resorted to in rare cases depending upon the special facts of the case."

**9.** In *State of Maharashtra* v. *Balakrishna Dattatrya Kumbhar* [(2012) 12 SCC 384 : (2013) 2 SCC (Cri) 784 : (2013) 2 SCC (L&S) 201] , referring also to the two decisions cited above, it has been held at para 15 that: (SCC p. 389)

"*15*. … the appellate court in an exceptional case, may put the conviction in abeyance along with the

sentence, but such power must be exercised with great circumspection and caution, for the purpose of which, the applicant must satisfy the court as regards the evil that is likely to befall him, if the said conviction is not suspended. The court has to consider all the facts as are pleaded by the applicant, in a judicious manner and examine whether the facts and circumstances involved in the case are such, that they warrant such a course of action by it. The court additionally, must record in writing, its reasons for granting such relief. Relief of staying the order of conviction cannot be granted only on the ground that an employee may lose his job, if the same is not done."

**10.** In *State of Maharashtra* v. *Gajanan* [(2003) 12 SCC 432 : 2004 SCC (Cri) Supp 459] and *Union of India* v. *Atar Singh* [(2003) 12 SCC 434 : 2004 SCC (Cri) Supp 461] , cases under the Prevention of Corruption Act, 1988, this Court had to deal with specific situation of loss of job and it has been held that it is not one of exceptional cases for staying the conviction.

**11.** In the light of the principles stated above, the contention that the appellant will be deprived of his source of livelihood if the conviction is not stayed cannot be appreciated. For the appellant, it is a matter of deprivation of livelihood but he is convicted for deprivation of life of another person. Until he is otherwise declared innocent in appeal, the stain stands. The High Court has discussed in detail the background of the appellant, the nature of the crime, manner in which it was committed, etc. and has rightly held that it is not a very rare and exceptional case for staying the conviction."

**21.** The Allahabad High Court in the case of **Ram Kishan Vs. State of U.P. and Others**, decided on 07.01.2020 in **Writ Appeal No. 14570/2009** has held as under:-

9. In **Union of India vs. Tulsiram Patel, (1985) 3 SCC 398,** Hon'ble Supreme Court has considered the provisions of Article 311(2) of the Constitution of India and held as under:-

> *"The second proviso will apply only where the conduct of a government servant is such as he deserves the punishment of dismissal, removal or reduction in rank. If the conduct is such as to deserve a punishment different from those mentioned above, the second proviso cannot come into play at all, because Article 311(2) is itself confined only to these three penalties. Therefore, before denying a government servant his constitutional right to an inquiry,* ***the first consideration would be whether the conduct of the concerned government servant is such as justifies the penalty of dismissal, removal or reduction in rank****. Once that conclusion is reached and the condition specified in the relevant clause of the second proviso is satisfied, that proviso becomes applicable and the government servant is not entitled to an inquiry."*

10. In **Shyam Narain Shukla vs. State of U.P., (1988) 6 LCD 530,** a Division Bench of this court has considered similar question and held as under:-

> *"In view of the above decision of the Supreme Court, it has to be held that* ***whenever a Government servant is convicted of an offence, he cannot be dismissed from service merely on the ground of conviction but the appropriate authority has to consider the conduct of such employee leading to his conviction and then to decide what punishment is to be inflicted upon him.*** *In the matter of consideration of conduct as also the quantum of punishment the employee has*

> *not to be joined and the decision has to be taken by the appropriate authority independently of the employee who, as laid down by the Supreme Court, is not to be given an opportunity of hearing at that stage."*

11. Another Division Bench of this Court in **Sadanand Mishra v. State of U.P. 1993 LCD 70** held that on conviction of an employee of a criminal charge, the order of punishment cannot be passed unless the conduct which has led to his conviction, is also considered. It was further held that the scrutiny or exercise of conduct of an employee leading to his conviction is to be done ex parte and an opportunity of hearing is not to be provided for this purpose to the employee concerned.

12. In **Shankar Das v. Union of India, 1985 (2) SCR 358**, Hon'ble Supreme Court while referring to power under Clause (a) of second proviso of Article 311(2)of the Constitution of India, has observed as under: -

> *"Be that power like every other power has to be exercised fairly, justly and reasonably."*

13. Proviso (a) to Article 311 of the Constitution of India, is an exception to clause (2) of Article 311, which is applicable 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. In case of **Divisional Personnel Officer, Southern Railway Vs. T.R. Chellappan, 1976 (3) SCC 190 (para-21)**, Hon'ble Supreme Court considered Article 311(2), Proviso (a) and held that this provision confers power upon the disciplinary authority to decide whether in the facts of a particular case, what penalty, if at all, should be imposed on the delinquent employee, **after taking into account the entire conduct of the delinquent employee, the gravity of**

> **the misconduct committed by him, the impact which his misconduct is likely to have on the administration and other extenuating circumstances or redeeming features, if any,** present in the case and so on and so forth. The conviction of the delinquent employee would be taken as sufficient proof of misconduct and then the authority will have to embark upon a **summary inquiry as to the nature and extent of the penalty to be imposed on the delinquent employee** and in the course of the inquiry, if the authority is of the opinion that the offence is too trivial or of a technical nature it may refuse to impose any penalty in spite of the conviction. The disciplinary authority has the undoubted power after hearing the delinquent employee and considering the circumstances of the case to inflict any major penalty on the delinquent employee without any further departmental inquiry, if the authority is of the opinion that the employee has been guilty of a serious offence involving moral turpitude and, therefore, it is not desirable or conducive in the interests of administration to retain such a person in service. In **Sushil Kumar Singhal vs. Regional Manager, Punjab National Bank, 2010 (8) SCC 573 (Paras-24 and 25),** Hon'ble Supreme Court explained the meaning of the words 'moral turpitude' to mean anything contrary to honesty, modesty or good morals.

**22.** Considering the totality of the facts and circumstances of the case, this Court is of the considered opinion that no case is made out warranting interference.

**23.** Petition fails and is hereby **dismissed**.

**24.** However, liberty is granted to the petitioner to move an application for his reinstatement in case if he is honorably acquitted.

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

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