

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

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 06th OF JULY, 2023

WRIT PETITION No.7365 of 2023

BETWEEN:-

DR. DEVESH SARASWAT S/O DR. VINOD KUMAR SARASWAT, AGED ABOUT 52 YEARS, W/A PROFESSOR AND HEAD, DEPARTMENT OF DERMATOLOGY, SHYAM SHAH MEDICAL COLLEGE (AUTONOMOUS), REWA (MADHYA PRADESH)

.....PETITIONER

(BY SHRI PRAVEEN DUBEY - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH THROUGH ITS PRINCIPAL SECRETARY, MEDICAL EDUCATION DEPARTMENT, MANTRALAYA, VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)**
- 2. THE COMMISSIONER, MEDICAL EDUCATION DEPARTMENT, BHOPAL (MADHYA PRADESH)**
- 3. THE SHYAM SHAH MEDICAL COLLEGE (AUTONOMOUS), REWA THROUGH ITS CHIEF EXECUTIVE OFFICER (DEAN), DISTRICT REWA (MADHYA PRADESH)**
- 4. DR. MANOJ INDURKAR, PROFESSOR, MEDICINES, SHYAM SHAH MEDICAL COLLEGE (AUTONOMOUS), REWA, DISTRICT REWA (MADHYA PRADESH)**

.....RESPONDENTS

(STATE BY SMT. JANHVI PANDIT – ADDITIONAL ADVOCATE GENERAL & RESPONDENT NO.4 BY SHRI K.C. GHILDIYAL – SENIOR ADVOCATE WITH SHRI ADITYA VEER SINGH - ADVOCATE)

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

ORDER

This petition under Article 226 of the Constitution of India has been filed against the order dated 20/03/2023, by which petitioner who was holding the charge of Dean, Shyam Shah Medical College, Rewa, was relieved from his charge and the same has been handed over to the respondent No.4.

2. Challenging the order passed by the respondent No.1, it is submitted by the counsel for the petitioner that earlier the respondent No.4 was holding the charge of Dean, Shyam Shah Medical College, Rewa. He had issued a charge-sheet to Shri B.K. Shukla, a retired Accountant, in violation of the provisions of Madhya Pradesh Civil Services (Pension) Rules, 1976, therefore a minor penalty of stoppage of two increments was imposed and since the respondent No.4 was under the minor penalty, therefore the charge of Dean, Shyam Shah Medical College, Rewa was withdrawn and it was handed over to the petitioner. On 04/03/2022, the charge was taken over by the petitioner. "It is submitted that the bad omens of the petitioner started in the past 3-5 months, when the local politicians and public representatives started putting illegal demands and requests for release of government funds & facilities to ineligible person even without following the basic requirements. When the petitioner refused to accede to their requests, therefore the infuriated & enraged gentlemen due to their personal political ego, started raising false accusation against the petitioner and repeated raising Vidhan Sabha questions against the petitioner". (The allegations made in paragraph 5.12 of the Writ Petition have been

reproduced verbatim.) It is the case of the petitioner that all the questions raised in Vidhan Sabha were suitably replied. Thereafter, some of the politicians again raised Vidhan Sabha questions which have been cumulatively marked as Annexure-P/13. The said questions were also suitably replied by the petitioner by his reply dated 01/03/2023 (Annexure-P/14). It was specifically stated that since Sudama Prasad Pandey had got himself treated from National Cancer Institute, Nagpur, which is not in the list of recognized hospitals, therefore he is not entitled for reimbursement of Rs.3,00,000/- which he had spent on his treatment. Furthermore, there were allegations that the Doctors of the Shyam Shah Medical College, Rewa are actively involved in referring the patients to the private hospitals in which they are working and accordingly, a Committee was constituted.

3. The petitioner has filed a copy of letter dated 13/02/2023 prepared by the Committee which is to the effect that since the attendants of the patients did not appear for giving their statements, therefore the entire report is based on the documents provided by the concerning Department and the statement of Dr. Neha Khatik. However, it was specifically mentioned that because of ex-parte statement and documents, the Committee has failed to reach to any conclusion.

4. By referring to the proceedings of Vidhan Sabha dated 20/03/2023, it is submitted by the counsel for the petitioner that at 12:27, questions raised by the politicians were discussed and the Minister concerned gave a complete clean chit to the petitioner. It appears that at 12:31, Shri Hari Shankar Khatik was chairing the seat of Speaker and no allegation was made by the concerning Minister against

the petitioner. However, at 12:35, the seat of Speaker was taken over by Shri Girish Gautam and thereafter the things started moving against the petitioner and by referring to page No.88 of the Writ Petition, it is submitted that the Speaker requested the Minister to remove the Dean and immediately thereafter the Minister replied that he would consider the same. It is submitted that immediately on the very same day, i.e. 20/03/2023, the current charge of the post of Dean, Shyam Shah Medical College, Rewa was withdrawn by the impugned order dated 20/03/2023 (Annexure-P/1). It is submitted that thus it is a malice in law and the State should not surrender itself to the dictates of the politicians and the manner in which the proceedings in Vidhan Sabha took place, clearly indicates that the concerning Minister had surrendered completely before the Speaker. To buttress his contentions, the counsel for the petitioner has relied upon the judgments passed by the Supreme Court in the case of **Kalabharati Advertising Vs. Hemant Vimalnath Narichania and Others** reported in (2010) 9 SCC 437, **State of Madhya Pradesh and Others Vs. Sanjay Nagayach and Others** reported in (2013) 7 SCC 25, and the order passed by the Division Bench of this Court in the case of **Shyam Kumar Singh Vs. State of M.P. & others** decided on 27/04/2022 in **Writ Appeal No.400/2022** and the orders passed by the co-ordinate Bench of this Court in the case of **Dr. Narendra Nath Mishra Vs. State of M.P. & others** decided on 31/03/2023 in **Writ Petition No.2107/2023** and in the case of **B.S. Maravi Vs. State of M.P. & others** decided on 13/10/2022 in **Writ Petition No.12220/2022**.

5. *Per contra*, it is submitted by the counsel for the State that so far as the allegation against the respondent No.4 that a minor penalty has

been imposed against him therefore he is not eligible to hold the charge of the post of Dean, Shyam Shah Medical College, Rewa is concerned, it is submitted that the only allegation against the respondent No.4 was that he had issued a departmental charge-sheet to one retired Accountant. It is true that a minor punishment is in force against the respondent No.4 but the Authorities thought it proper to give the current charge of the post of Dean, Shyam Shah Medical College, Rewa because the minor penalty was not imposed for any allegation involving moral turpitude. It is further submitted that it is incorrect to say that the State had surrendered before the politicians. It is submitted that it is also incorrect to say that that after the chair of Speaker was taken over by Shri Girish Gautam, the things changed ups and down. By referring to the proceedings of the Vidhan Sabha, which have been filed by the petitioner as Annexure-P/15, it is submitted by the counsel for the State that when Shri Hari Shankar Khatik was chairing the seat of Speaker, a specific statement was made by the concerning Minister that **separate action shall be taken against the Dean which is pending consideration at the level of the State Government.** It is submitted that the Committee had found that some of the Doctors of Shyam Shah Medical College, Rewa are actively involved in referring the patients to the private Doctors against their wishes and if such things are happening in the Medical College, then it is a very serious issue and being the Dean of the institution, it was the duty of the petitioner to check such activities but he had miserably failed in doing so. Thus, it is submitted that the contention of the counsel for the petitioner that with the change of person on the seat of Speaker, the Minister concerned had taken a complete somersault, is incorrect. It is further submitted that even if the proceedings of the Vidhan Sabha are

considered, then it is clear that the Speaker had only advised the concerning Minister that the name of the Government is getting defamed. It is submitted that if the Medical Colleges instead of treating patients gets involved in referring the patients to the private hospitals then it is a serious matter and the State being a welfare State is under obligation to take care of the patients and if the Speaker had expressed his concern then it cannot be said to be with any hidden agenda or malafide intention. It is further submitted that the petitioner was merely holding the charge of the post of Dean, Shyam Shah Medical College, Rewa and in the light of the judgment passed by the Supreme Court in the case of **State of Haryana Vs. S.M. Sharma and Others** reported in **AIR 1993 SC 2273**, the person holding the current charge of the post has no substantive right to continue on the same. It is further submitted that the petitioner has not impleaded the persons against whom he is making serious allegations of malafides, therefore the petitioner cannot blow hot & cold and accordingly, relied upon the judgment passed by the Supreme Court in the case of **State of Punjab and Others Vs. Chaman Lal Goyal** reported in **(1995) 2 SCC 570**. It is further submitted that the concern shown by Speaker cannot be said to be unwarranted and referred to Para 8 of **Mohd. Masood Ahmad Vs. State of U.P. and Others** reported in **(2007) 8 SCC 150**.

6. It is submitted by the counsel for the respondent No.4 that in fact the respondent No.4 is a victim of ill treatment. By order dated 03/10/2019, a Committee was constituted by Commissioner, Rewa Division Rewa to look into the complaints regarding grant of regular pay scale to the contractual employees in an illegal manner. The Committee submitted its report on 09/07/2020 with a finding that the

appointments made by the Medical College were against the non-existing contractual as well as sanctioned posts and no concurrence was taken from the State. Accordingly, the Commissioner, Rewa Division Rewa by order dated 30/12/2020 directed the Dean, Shyam Shah Medical College, Rewa to take departmental action against the delinquent officers. Accordingly, a Committee was constituted by the respondent No.4 to identify the delinquent officers. It is submitted that in the light of the directions given by the Commissioner, Rewa Division Rewa, a charge-sheet was given to the retired Accountant. Furthermore, it is submitted that against the order of minor punishment, he has already preferred an appeal which is still pending before the competent Authority and has not been decided so far. It is further submitted that by letter dated 30/06/2022, the petitioner had also informed the Authorities that as per the provisions of Madhya Pradesh Civil Services (Pension) Rules, 1976, the proceedings against Shri B.K. Shukla, retired Accountant was in accordance with law because four years had not elapsed from the date of his retirement. It is further submitted that the impugned order was passed on 20/03/2023 and the respondent No.4 has assumed the charge on 21/03/2023.

7. Heard the learned counsel for the parties.

Whether any person has a right to hold current charge?

8. The Supreme Court in the case of **S.M. Sharma (supra)** has held as under:-

“9. It is only a posting order in respect of two officers. With the posting of Ram Niwas as Executive Engineer Sharma was automatically relieved of the current duty charge of the post of Executive Engineer. Sharma was neither

appointed/promoted/posted as Executive Engineer nor was he ever reverted from the said post. He was only holding current duty charge of the post of Executive Engineer. The Chief Administrator never promoted Sharma to the post of Executive Engineer and as such the question of his reversion from the said post did not arise. Under the circumstances the controversy whether the powers of the Board to appoint/promote a person to the post of an Executive Engineer were delegated to the Chairman or to the Chief Administrator, is wholly irrelevant.

10. Sharma was given the current duty charge of the post of Executive Engineer under the orders of the Chief Administrator and the said charge was also withdrawn by the same authority. We have already reproduced above Rule 4(2) of the General Rules and Rule 13 of the Service Rules. We are of the view that the Chief Administrator, in the facts and circumstances of this case, was within his powers to issue the two orders dated June 13, 1991 and January 6, 1992.

11. We are constrained to say that the High Court extended its extra-ordinary jurisdiction under Article 226 of the Constitution of India to a frivolity. No one has a right to ask for or stick to a current duty charge. The impugned order did not cause any financial loss or prejudice of any kind to Sharma. He had no cause of action whatsoever to invoke the writ jurisdiction of the High Court. It was a patent misuse of the process of the court.”

9. Thus, it is clear that no person has any right to hold the current charge as no substantive right is affected in case if the current charge is withdrawn. However, multiple allegations were made by the petitioner as well as by the respondents against each other, therefore this Court

thinks it appropriate to deal with the same.

Whether there is malice in law?

10. The Supreme Court in the case of **Kalabharati Advertising (supra)** has defined “legal malice” which reads as under:-

“**25.** The State is under obligation to act fairly without ill will or malice— in fact or in law. “Legal malice” or “malice in law” means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others. Where malice is attributed to the State, it can never be a case of personal ill will or spite on the part of the State. It is an act which is taken with an oblique or indirect object. It means exercise of statutory power for “purposes foreign to those for which it is in law intended”. It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts. (Vide *ADM, Jabalpur v. Shivakant Shukla (1976) 2 SCC, S.R. Venkataraman v. Union of India (1979) 2 SCC 491, State of A.P. v. Goverdhanlal Pitti (2003) 4 SCC 739, BPL Ltd. v. S.P. Gururaja (2003) 8 SCC 567 and W.B. SEB v. Dilip Kumar Ray (2007) 14 SCC 568.*)

26. Passing an order for an unauthorised purpose constitutes malice in law. (Vide *Punjab SEB Ltd. v. Zora Singh (2005) 6 SCC 776 and Union of India v. V. Ramakrishnan (2005) 8 SCC 394.*)”

11. As the submissions made by the counsel for the petitioner have already been reproduced in previous paragraphs, therefore in order to

avoid repetition, it is sufficient to mention that multiple allegations have been made by the petitioner against the local MLA, against the person who was adorning the seat of Speaker, Vidhan Sabha as well as the Minister of the concerning Department. However, none of them have been impleaded as a party.

12. It is submitted by the counsel for the petitioner that since the petitioner is alleging malice in law and the Government had surrendered before the seat of Speaker and the transfer / withdrawal order was passed only on account of suggestion/ direction given by the Speaker, therefore it is not necessary to implead anyone against whom the allegations of malice have been made.

13. Considered the submissions made by the counsel for the petitioner.

14. If the proceedings of 20/03/2023 of Vidhan Sabha, which have been filed by the petitioner as Annexure-P/15, are considered, then it is clear that when the seat of Speaker was being chaired by Shri Hari Shankar Khatik, the following statement was made by the Minister of the concerning Department:-

“श्रीमती अनीता तिवारी के प्रकरण में उच्च स्तरीय जाँच हेतु विभागीय आदेश दिनांक 07/2/2023 द्वारा अपर सचिव, मध्यप्रदेश शासन, चिकित्सा शिक्षा की अध्यक्षता में 03 सदस्यीय जाँच समिति गठित की गई है। समिति द्वारा प्रकरण में दिनांक 13/2/2023 एवं दिनांक 14/01/2023 को समिति द्वारा उपस्थित होकर विधिवत जाँच प्रक्रियाएं की गई हैं। समिति का प्रतिवेदन प्राप्त हुआ है प्राप्त प्रतिवेदन के अनुक्रम में संभागायुक्त रीवा संभाग को आवश्यक कार्यवाही किये जाने हेतु पत्र लिखा गया है। संभागायुक्त रीवा संभाग द्वारा दिनांक 09/03/2023 को डॉ. बीनू सिंह, प्राध्यापक प्रसूति एवं स्त्री रोग विभाग को कारण बताओं सूचना पत्र जारी की

गई है। तथा डॉ. सोनल अग्रवाल, सहायक प्राध्यापक, प्रसूति एवं स्त्री रोग विभाग को अधिष्ठाता चिकित्सा महाविद्यालय, रीवा द्वारा कारण बताओ सूचना पत्र दिनांक 09/03/2023 को जारी किया गया है। पृथक से अधिष्ठाता के विरुद्ध कार्यवाही का प्रकरण शासन स्तर पर विचाराधीन है। संबंधित चिकित्सकों का स्पष्टीकरण प्राप्त होने के पश्चात नियमानुसार कार्यवाही की जाएगी। चिकित्सा महाविद्यालय रीवा से संबद्ध चिकित्सालय में स्थापित सभी ए क्रियाशील है तथा सी. इनके मरम्मत कार्य हेतु आउटसोर्स एजेंसी द्वारा संपादित किया जाता है। चिकित्सा महाविद्यालय से संबद्ध चिकित्सालयों में निर्बाध रूप से ऑक्सीजन आपूर्ति की सुविधा उपलब्ध है। चिकित्सालयों के समस्त वार्डों को केंद्रीयकृत ऑक्सीजन सप्लाई मेनीफोल्ड व्यवस्था से जुड़ा है इसके संचालन/ तथा संधारण का कार्य आउटसोर्स एजेंसी के माध्यम से किया जाता है। चिकित्सा महाविद्यालय से संबद्ध चिकित्सालय के द्वारा वार्डों में भर्ती आंतरिक मरीजों को गुणवत्तापूर्ण भोजन व्यवस्था सुनिश्चित की जाती है। चिकित्सालय के किचन को गुणवत्तापूर्ण मानकों को पूर्ण करने के कारण प्रमाणीकृत भी किया गया है एवं खाने की गुणवत्ता के संबंध में चिकित्सा महाविद्यालय रीवा में कोई भी शिकायत नहीं है।”

15. Thereafter, it appears that at 12:35 Shri Girish Gautam took over the seat of Speaker and by referring to page No.88, it was submitted by the counsel for the petitioner that the Speaker had suggested the concerning Minister, which is as under:-

“मेरा आग्रह है कि उनके विरुद्ध तमाम शिकायतें हैं. इसके पूर्व भी अनीता मिश्रा के प्रकरण में, मैंने आपको धन्यवाद इसलिए दिया कि आपने त्वरित कार्यवाही की. इसमें मेरा आग्रह है, मैं, आसंदी से कह रहा हूं आप इसे आग्रह समझ लें या निर्देश समझ लें. आप उस डीन को वहां से हटा लो, आप सरकार की क्यों बदनामी करवा रहे हैं? मेरा केवल इतना कहना है. (मेजों की थपथपाहट)

श्री विश्वास सारंग— माननीय अध्यक्ष महोदय,

आपने यहां आसंदी से जो निर्देश या आग्रह, जो भी आप कहें किया है, हम उस पर विचार करेंगे.

अध्यक्ष महोदय— ठीक है.”

16. If the Vidhan Sabha proceedings are considered, it cannot be presumed that there was any somersault by the concerning Minister after the seat of Speaker was taken over by Shri Girish Gautam. In fact, earlier the concerning Minister had already made a statement that an action is proposed at State level against the Dean. Therefore, the contention of the counsel for the petitioner that the State Government had completely surrendered before Shri Girish Gautam, is completely false and misconceived.

17. Under these circumstances, this Court is of the considered opinion that there was no malice in law.

18. However, whether it was a malafide action on the part of the politicians/ MLA/ Minister/ Speaker or not, cannot be considered by this Court for the reason that none of them have been impleaded as party.

19. The Supreme Court in the case of **Chaman Lal Goyal (supra)** has held as under:-

“8. Be that as it may, in the absence of any clear allegation against any particular official and in the absence of impleading such person *eo nomine* so as to enable him to answer the charge against him, the charge of mala fides cannot be sustained.”

20. The Supreme Court in the case of **Indian Railway Construction Co. Ltd. Vs. Ajay Kumar** reported in (2003) 4 SCC 579 has held as under:-

“23. Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by the authority of its powers. While the indirect motive or purpose, or bad faith or personal ill will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that is what the employee has to establish in this case, though this may sometimes be done. The difficulty is not lessened when one has to establish that a person apparently acting on the legitimate exercise of power has, in fact, been acting mala fide in the sense of pursuing an illegitimate aim. It is not the law that mala fides in the sense of improper motive should be established only by direct evidence. But it must be discernible from the order impugned or must be shown from the established surrounding factors which preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts. (See *S. Partap Singh v. State of Punjab* [AIR 1964 SC 72 : (1964) 4 SCR 733].) It cannot be overlooked that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. As noted by this Court in *E.P. Royappa v. State of T.N.* AIR 1974 SC 555 courts would be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration.”

21. The Supreme Court in the case of **State of Bihar and Another Vs. P.P. Sharma**, reported in (1992) Supp (1) SCC 222 has held as under:-

“55. It is a settled law that the person against whom mala fides or bias was imputed should be impleaded eo nomine as a party respondent to the proceedings and given an opportunity to meet those allegations. In his/her absence no enquiry into those allegations would be made. Otherwise it itself is violative of the principles of natural justice as it amounts to condemning a person without an opportunity. Admittedly, both R.K. Singh and G.N. Sharma were not impleaded. On this ground alone the High Court should have stopped enquiry into the allegation of mala fides or bias alleged against them”

22. The Supreme Court in the case of **Federation of Railway Officers Association Vs. Union of India** reported in AIR 2003 SC 1344 has held as under :

20. Allegations regarding mala fides cannot be vaguely made and it must be specified and clear. In this context, the concerned Minister who is stated to be involved in the formation of new Zone at Hazipur is not made a party who can meet the allegations.”

23. The Supreme Court in the case of **J.N. Banavalikar Vs. Municipal Corporation of Delhi**, reported in AIR 1996 SC 326 has held as under:-

“21. Further, in the absence of impleadment of the junior doctor who is alleged to have been favoured by the course of action leading to removal of the appellant and the person who had allegedly passed mala fide order in order to favour such junior doctor, any contention of mala

fide action in fact i.e. malice in fact should not be countenanced by the Court.”

24. The Supreme Court in the case of **All India State Bank Officers’ Federation and Others Vs. Union of India and others**, reported in (1997) 9 SCC 151 in para 22, has held that where a person, who has passed the order and against whom the plea of mala fide has been taken has not been impleaded, the petitioner cannot be allowed to raise the allegations of mala fide. The relevant observation of the Apex Court are as under: -

“22. There is yet another reason why this contention of the petitioners must fail. It is now settled law that the person against whom mala fides are alleged must be made a party to the proceeding. The allegation that the policy was amended with a view to benefit Respondents 4 and 5 would amount to the petitioners contending that the Board of Directors of the Bank sought to favour respondents 4 and 5 and, therefore, agreed to the proposal put before it. Neither the Chairman nor the Directors, who were present in the said meeting, have been impleaded as respondents. This being so the petitioners cannot be allowed to raise the allegations of mala fides, which allegations, in fact, are without merit.”

25. Furthermore, even after going through the Vidhan Sabha proceedings, it cannot be said that there was any malafide on the part of any of the politician.

Whether Politicians can express concern over an issue?

26. It is the bounded duty of the local MLAs to raise a question in Vidhan Sabha with regard to any activity going on within the area from where they got elected. It is always expected from a politician to raise

the voice of the people and Vidhan Sabha is appropriate place to do so.

27. The Supreme Court in the case of **Mohd. Masood Ahmad (supra)**, has held as under:-

“8. Learned counsel for the appellant submitted that the impugned transfer order of the appellant from Muzaffarnagar to Mawana, District Meerut was made at the instance of an MLA. On the other hand, it has been stated in the counter-affidavit filed on behalf of Respondents 1 and 2 that the appellant has been transferred due to complaints against him. In our opinion, even if the allegation of the appellant is correct that he was transferred on the recommendation of an MLA, that by itself would not vitiate the transfer order. After all, it is the duty of the representatives of the people in the legislature to express the grievances of the people and if there is any complaint against an official the State Government is certainly within its jurisdiction to transfer such an employee. There can be no hard-and-fast rule that every transfer at the instance of an MP or MLA would be vitiated. It all depends on the facts and circumstances of an individual case. In the present case, we see no infirmity in the impugned transfer order.”

28. Thus the concern shown by Speaker about the reputation of State cannot be said to be unwarranted.

29. Once the Minister had already opined that separate action against the Dean is pending consideration at the State level, this Court is of the considered opinion that the petitioner cannot take advantage of the discussion which took place in the Vidhan Sabha, therefore the submission made by the counsel for the petitioner claiming malice in law or malafide action on the part of the State Authorities, is

misconceived and cannot be accepted at all.

What is the basis for withdrawal of current charge?

30. It is the case of the respondents/ State that the current charge of post of Dean, Shyam Shah Medical College, Rewa has been withdrawn on account of report dated 01/03/2023 submitted by the Committee. In reply, it is submitted by the counsel for the petitioner that the report dated 01/03/2023 is a stale and old report and cannot be relied upon.

31. This Court has failed to understand as to how the report dated 01/03/2023 which was given just 19 days prior to the impugned order can be said to be stale and old. Whenever any report is given, some time will be required by the Authorities to go through the same and then to decide further course of action. The relevant part of the report of the Committee relied upon by the respondents reads as under:-

“4. समिति के द्वारा एस.जी.एम.एच. अस्पताल के एम. आर.डी. विभाग से प्राप्त जानकारी अनुसार वर्ष 2022-23 में अस्पताल में भर्ती होने वाले कुल मरीजों में से 16,300 मरीजों की केस शीट एम.आर.डी. में उपलब्ध नहीं है साथ ही अस्पताल में भर्ती होने वाले 1,712 मरीज बिना उपचार के अस्पताल से चले गये। वहीं दूसरी ओर महाविद्यालय के कई चिकित्सा शिक्षकों के नाम के बोर्ड नर्सिंग होम/ अस्पताल एवं शहर के अन्य स्थानों पर देखने को मिले जो कि नियम विरुद्ध है। समिति को यह भी स्पष्ट प्रतीत हुआ कि वर्तमान अधिष्ठाता डॉ. देवेश सारस्वत एवं अस्पताल अधीक्षक डॉ. अवतार सिंह यादव द्वारा चिकित्सा महाविद्यालय एवं अस्पताल के प्रबंधन की ओर ध्यान नहीं दिया जा रहा है एवं अस्पताल के चिकित्सा शिक्षक एवं कर्मचारियों पर उनका कोई प्रभावी नियंत्रण नहीं है।

5. निष्कर्ष:-

उपरोक्त आधारों को दृष्टिगत रखते हुए जांच समिति का निष्कर्ष निम्नानुसार है:-

1. डॉ. बीनू सिंह, विभागाध्यक्ष एवं प्राध्यापक, प्रसूति एवं

स्त्रीरोग विभाग, श्यामशाह चिकित्सा महाविद्यालय, रीवा तथा डॉ. सोनल अग्रवाल, सहप्राध्यापक, प्रसूति एवं स्त्रीरोग विभाग, श्यामशाह चिकित्सा महाविद्यालय, रीवा के विरुद्ध दीर्घशास्ती हेतु अनुशासनात्मक कार्यवाही की अनुशंसा करती है।

2. श्यामशाह चिकित्सा महाविद्यालय, रीवा एवं संजय गांधी मेमोरियल अस्पताल के प्रबंधन को सुदृढ़ करने के उद्देश्य से अधिष्ठाता एवं अस्पताल अधीक्षक के पदों पर किसी योग्य चिकित्सा शिक्षक की पदस्थापना की अनुशंसा करती है।”

32. There are allegations that some of the Doctors working in Shyam Shah Medical College, Rewa are actively involved in referring the patients to the private hospitals. If this is being done by the Doctors posted in Government Medical College, then the counsel for the State is right in making a submission that it is a serious allegation which goes to the credibility of the Medical Colleges being run by the State. Even in the report filed by the respondents/State, it is clear that the petitioner had failed to effectively manage the affairs of Shyam Shah Medical College, Rewa and a recommendation was made by the enquiry Committee to post some competent officer on the post of Dean and Superintendent of Shyam Shah Medical College, Rewa and Sanjay Gandhi Memorial Hospital, Rewa. Thus, it is clear that the order dated 20/03/2023 (Annexure-P/1) was issued in the light of the report submitted by the enquiry Committee (Annexure-R/2).

Whether petitioner can seek quashment of order on the ground that no action has been taken against erring Doctors?

33. It is next contended by the counsel for the petitioner that the petitioner has been made Scapegoat whereas no action has been taken by the Authorities against the Doctors who are actively involved in

referring the patients to the private hospitals.

34. Considered the submission made by the counsel for the petitioner.

35. This Court has already reproduced relevant part of the Vidhan Sabha proceedings in which the concerning Minister had made a specific statement that the Commissioner, Rewa Division Rewa has issued show cause notices to the Doctors as well as some notices have also been issued by Dean, Shyam Shah Medical College, Rewa to the concerning Doctors who are allegedly involved in referring the patients to the private hospitals. Thus, it is clear that the action is being taken against the Doctors who are *prima facie* found involved in referring the patients to the private hospitals and it cannot be said that the State Government has given a clean chit to the said Doctors.

36. Be that whatever it may be.

37. Even otherwise, if no action has been taken against the alleged erring Doctors, it cannot be a ground for the petitioner to challenge the withdrawal of the current charge of the post of Dean, Shyam Shah Medical College, Rewa.

38. Furthermore, it is clear from the reply given by the concerning Minister in the Vidhan Sabha that the proceedings are pending for taking action whereas withdrawal of current charge cannot be said to be any punishment or any disregard to the status of the petitioner. By withdrawal of the current charge, the substantive post of the petitioner has not been taken away. As held by the Supreme Court in the case of **S.M. Sharma (supra)**, no person has a right to continue on the post of which he was holding the current charge because none of his substantive right was ever adversely affected.

Whether handing over of charge to respondent No.4 is correct?

39. So far as the submissions made by the counsel for the respondent with regard to the gravity / correctness of the order of minor penalty is concerned, since it is not the subject matter of this petition, therefore this Court is not inclined to make any comment on the same.

40. So far as the grant of current charge of the post of Dean, Shyam Shah Medical College, Rewa to the respondent No.4 is concerned, it is the stand of the respondents/ State itself that the minor penalty was not imposed on the respondent No.4 on an allegation involving any moral turpitude. Even otherwise, if the allegation on the basis of which minor penalty of stoppage of increment without cumulative effect has been imposed is considered, then the stand of the State that there was no allegation involving moral turpitude against the respondent No.4 appears to be correct.

41. Considering the totality of the facts and circumstances of the case, this Court is of the considered opinion that no case is made out by the petitioner warranting interference in the matter.

42. Since baseless allegations were made by the petitioner against the Vidhan Sabha proceedings as well as the Speaker and various other persons, the petition is **dismissed** with a cost of **Rs.20,000/- (Rupees Twenty Thousand Only)** to be deposited by the petitioner in the Registry of this Court within a period of **one month** from today, failing which the Registrar General shall not only initiate proceedings for recovery of cost but shall also register a case for contempt of Court.

(G.S. AHLUWALIA)
JUDGE