IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

JUSTICE SUJOY PAUL

ON THE 11th OF OCTOBER, 2023

WRIT PETITION No.9657 OF 2023

BETWEEN :-

DR. RASHMI REKHA MISHRA W/O DR. TARANI KANTA MOHANTA, AGED ABOUT 56 YEARS, OCCUPATION – GOVERNMENT SERVANT R/O DATTATREYA NAGAR PLOT NO.-15, BURHANPUR, DISTRICT BURHANPUR (M.P.)

…...PETITIONER

(*BY MR. SANJAY K. AGRAWAL - ADVOCATE*)

AND

1. **STATE OF MADHYA PRADESH THROUGH ITS PRINCIPAL SECRETARY, DEPARTMENT OF AYUSH, GOVERNMENT OF MADHYA PRADESH, MANTRALAYA VALLABH BHAWAN, BHOPAL (M.P.)**

2. **THE COMMISSIONER, DIRECTORATE OF AYUSH, GOVERNMENT OF MADHYA PRADESH, SATPURA BHAWAN, BHOPAL (M.P.)**

…..RESPONDENTS

(SHRI *ANKIT AGRAWAL – GOVERNMENT ADVOCATE*)

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

ORDER

This petition takes exception to the order dated 18/04/2023 whereby the petitioner, Principal, Government Ayurvedic College, Burhanpur is placed under suspension.

2. In short, the admitted facts between the parties are that after placing the petitioner under suspension on 18/04/2023, the Department has issued a charge-sheet to the petitioner on 14/07/2023 (Annexure IA-1) filed with I.A.No.15567 of 2023. The case of petitioner is that suspension order does not contain any reason for placing the petitioner under suspension. It is passed in a routine manner without application of mind. Subsequently, while issuing the charge-sheet, certain subsequent events were taken into account which were not available at the time of issuance of suspension order and therefore, suspension order is liable to be interfered with.

3. Shri Sanjay K. Agrawal, learned counsel for the petitioner by reading all the charges one by one urged that none of the charges are so grave which requires suspension of the petitioner. For stale allegations, petitioner is placed under suspension. He placed reliance on the judgment of Apex Court in **(1994) 4 SCC 126 State of Orissa vs. Bimal Kumar Mohanty** and judgment of this Court in **Smt. Nahid Jahan vs. State of M.P. and others (W.P.No.14176 of 2017).** *Lastly,* it is submitted that return shows that petitioner is placed under suspension as per the direction of the concerned Minister. Thus,

petitioner has no efficacious alternative remedy and suspending a Class-I Officer on the dictate of Minister is unknown to service jurisprudence. Reliance is also placed on the judgment of **Dr. G.C. Chourasiya vs. State of M.P. and others (W.P.No.29521 of 2022).**

4. Sounding a *contra* note, Shri Ankit Agrawal, learned Government Advocate supported the suspension order and urged that the impugned order is appealable and hence, this petition may not be entertained. At this stage, there is no occasion for this Court to examine the correctness or gravity of the charges.

5. No other point is pressed by learned counsel for the parties.

6. Parties confined their arguments to the extent indicated hereinabove.

7. Heard learned counsel for the parties at length and perused the record.

8. The suspension order dated 18.04.2023 (Annexure P-2) was assailed by contending that it does not contain any reason and there is no mention that any departmental enquiry/criminal case is either pending or contemplated. A plain reading of the order dated 18.04.2023 shows that the petitioner is placed under suspension by alleging dereliction / negligence in performing the duties. In **(2000) 10 SCC 162 (Punjab National Bank v. D.M. Amarnath),** the Apex Court opined that it is not necessary to mention in the suspension order that disciplinary proceedings are pending or contemplated.

9. This is trite that the order of suspension is an administrative order and not an order passed in exercise of any quasi judicial power (**See**: **Pratap Singh Vs. State of Punjab, AIR 1964 SC 72)**. In view of the principles laid down in these judgments, suspension order cannot be interfered with merely because it is silent about departmental enquiry. However, as noticed above, some reason about negligence in performing duties has been assigned for placing the petitioner under suspension. Thus, this argument must fail.

10. The next question is regarding availability of alternative remedy. No doubt, as per **M.P. Civil Services (Classification, Control and Appeal) Rules, 1966** (CCA Rules) the order of suspension is appealable. In the instant case, the respondents in order dated 3rd May, 2023 (Annexure R-3) mentioned about the allegations/reasons on the strength of which action has been taken against the petitioner. One such reason is that the Hon'ble Minister, Aayush has directed to place the petitioner under suspension. In this backdrop, the question whether the petitioner should be relegated to avail the appellate remedy is ponderable. The suspension order is issued by Deputy Secretary, Ayush Department of Government of M.P. As per Rule 9 of the CCA Rules. The competence of said authority is not questioned. However, the one of the reasons assigned in order dated 3rd May, 2023 shows that specific directions to suspend the petitioner have been issued by the Minister concerned. Thus, there is no manner of doubt that the competent authority has not issued the suspension order by independent application of mind. Instead, he issued the order under the dictate of the concerned Minister. This is well settled that when a

statutory authority is empowered to take a decision, the said authority must take that decision independently within the statutory framework. If he takes the decision on the dictate of higher authority, the order under challenge becomes vulnerable.

11. In several cases, the Courts have emphasized that a statutory authority must exercise its own mind in deciding a matter before it and not act under direction from any quarter. Thus, in **R. Rodrigues Vs. W.G. Ronadive, AIR 1970, Goa 94,** the High court quashed a decision by a mamlatdar acting under S.7 of the Goa, Daman and Diu Agricultural Tenancy Act, 1964, on the ground that he had reached the decision mainly because the Chief Minister had decided in that way.

12. In **P.F. Co-op. Society Vs. Collector, Thanjavur, AIR 1975 Mad 81,** the Collector granted a lease of fishery rights to the petitioner in exercise of his statutory powers under the Indian Fisheries Act. The State Government directed the collector to cancel the lease after issuing a show-cause notice to the licensee. Accordingly, the Collector issued a show – cause notice to the petitioner and cancelled the lease. The Madreas High Court quashed the Collector's order saying that it was wrong on the part of the government to give direction to the Collector to cancel the lease. The power to cancel the lease belonged to the Collector. Even if he follows the principles of natural justice before cancelling the lease, that did not help the situation for the collector ought to have applied his own mind to the matter and it was not possible for him to do so when he was acting under a direction from the government.

13. In the case of State of **Madhya Pradesh Vs. Sanjay Nagayach, (2013) 7 SCC 25** it was held as under :-

> "Statutory functionaries like the Registrar/Joint Registrar of Cooperative Society functioning under the respective co-operative Act must be above suspicion and function independently without external pressure. Where an authority invested with the power purport to act on its own but in substance the power is exercised by external guidance or pressure, it would amount to non-exercise of power, statutorily vested."
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> **(Emphasis Supplied)**

14. In **Dr. G.C. Chouraisya (supra),** the petitioner therein was directed to be placed under suspension by the order of Hon'ble Chief Minister. In turn, the competent authority placed the petitioner therein under suspension. The Court opined that Health Commissioner is the competent authority to place the petitioner under suspension but it is clear that the sheet anchor of suspension order is the decision of the Hon'ble Chief Minister. The Court expressed its opinion in following words :

> "19. Even if on the anvil of different orders placed before this Court to demonstrate that Health Commissioner is competent authority to place petitioner under suspension is assumed to be correct even then from the suspension order it appears that sheet anchor of suspension order is decision of the Hon'ble Chief Minister whereby he already placed the petitioner under suspension.
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> 20. In fact, impugned order dated 09-12-2022 reiterates the factum of suspension which has already

> been taken place by the order of Hon'ble Chief Minister that brings the impugned order into vulnerable zone for the simple reason that at the instance of higher authority if even the competent authority passes the order then it is vitiated because Health Commissioner had no other option but to suspend the petitioner. In fact, the order is not being passed by the Health Commissioner /Additional Commissioner but it is simply a reflection of the decision already taken at higher level."
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> **(Emphasis Supplied)**

15. In catena of judgments, the Apex Court opined that if a statute prescribes a thing to be done in a particular manner, it has to be done in the same manner and other methods are forbidden [**See : AIR 1959 SC 93 (Baru Ram v. Prasanni), (2001) 4 SCC 9 (Dhanajaya Reddy v. State of Karnataka), 2002 (1) SCC 633 (CIT v. Anjum M.H. Ghaswala)]** and the judgment of this Court in **2011 (2) MPLJ 690 (Satyanjay Tripathi v. Banarsi Devi).**

16. Rule 9 of CCA Rules gives power of suspension to appointing / disciplinary authority or to the authorities who are superior to the appointing authority and also to any other authority who is empowered by the Government by issuing such order. Thus, Rule 9 mandates that only such statutory authorities can take a decision to place an employee under suspension and consequently, pass an order of suspension. In the instant case, the order is passed by the competent authority but the decision to place the petitioner under suspension was already taken by the Hon'ble Minister.

17. In this backdrop, in the considered opinion of this Court, the appellate remedy available to the petitioner under the CCA Rules cannot be treated as an efficacious and meaningful remedy. It is equally trite that if the impugned order of suspension is arbitrary which hits Article 14 of the Constitution, this itself can be a reason to interfere in it by the Court without relegating the employee to avail the remedy of appeal. This Court in **Smt. Nahid Jahan (Supra)** has dealt with this aspect in great detail. For these cumulative reasons, this Court is not inclined to dismiss the petition on the ground of availability of alternative remedy.

18. The pivotal question is whether the suspension order can be interfered with in exercise of power under Article 226 of the Constitution. This Court is not oblivious of the legal position that the decision to place an employee under suspension is within the province of the competent authority under Rule 9 of CCA Rules. However, the decision making process and its propriety, can become subject matter of judicial review.

19. The Apex Court in **AIR 1952 SC 16 (Commissioner of Police Vs. Gordhandas Bhanji)** held as under :-

> **"17.** It is clear to us from a perusal of these Rules that the only person vested with authority to grant or refuse a licence for the erection of a building to be used for purposes of public amusement is the Commissioner of Police. It is also clear that under Rule 250 he has been vested with the absolute discretion *at any time* to cancel or suspend any licence which has been granted under the Rules. But

> the power to do so is vested in him and not in the State Government and can only be exercised by him at *his* discretion. No other person or authority can do it."
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> **(Emphasis Supplied)**

20. The similar view is taken by the Apex Court in **(1989) 2 SCC 505 (State of U.P. and Ors. Vs. Maharaja Dharmander Prasad Singh and Ors.)**. The aforesaid view was further followed in **(2008) 7 SCC 117 (Pancham Chand and Ors. Vs. State of Himachal Pradesh and Ors.),** relevant portion of which reads as under:-

> "**18.** The Act is a self-contained code. All the authorities mentioned therein are statutory authorities. They are bound by the provisions of the Act. They must act within the four corners thereof. The State, although, has a general control but such control must be exercised strictly in terms of Article 162 of the Constitution of India. Having regard to the nature and the manner of the control specified therein, it may lay down a policy. Statutory authorities are bound to act in terms thereof, but per se the same does not authorise any Minister including the Chief Minister to act in derogation of the statutory provisions. The Constitution of India does not envisage functioning of the Government through the Chief Minister alone. It speaks of a Council of Ministers. The duties or functions of the Council of Ministers are ordinarily governed by the provisions contained in the Rules of Business framed under Article 166 of the Constitution of India. All governmental orders must comply with the requirements of a statute as also the constitutional provisions. Our Constitution envisages a rule of law and not rule of men. It recognises that, howsoever

high one may be, he is under law and the Constitution. All the constitutional functionaries must, therefore, function within the constitutional limits.

19. Apart from the fact that nothing has been placed on record to show that the Chief Minister in his capacity even as a member of the Cabinet was authorised to deal with the matter of transport in his official capacity, he had even otherwise absolutely no business to interfere with the functioning of the Regional Transport Authority. The Regional Transport Authority being a statutory body is bound to act strictly in terms of the provisions thereof. It cannot act in derogation of the powers conferred upon it. While acting as a statutory authority it must act having regard to the procedures laid down in the Act. It cannot bypass or ignore the same.

20. Factual matrix, as indicated hereinbefore, clearly goes to show that the fourth respondent filed the application before the Chief Minister straightaway. Office of the Chief Minister communicated the order of the Chief Minister, not once but twice. Respondent 2 acted thereupon. It advised the Regional Transport Authority to proceed, after obtaining a proper application from Respondent 4 in that behalf. This itself goes to show that prior thereto no proper application was filed before the Regional Transport Authority. Such an interference on the part of any authority upon whom the Act does not confer any jurisdiction, is wholly unwarranted in law. It violates the constitutional scheme. It interferes with the independent functioning of a quasi-judicial authority. A permit, if granted, confers a valuable right. An applicant must earn the same."

(Emphasis Supplied)

21. In the instant case, as discussed above, the Officer who has placed the petitioner under suspension has acted as per the dictate of the Hon'ble Minister and therefore, his decision to place the petitioner under suspension is not taken independently within the framework of Rule 9 of CCA Rules.

22. The Apex Court on more than one occasion opined that the tendency to act under 'suspension syndrome' must be eschewed [**See : State of Orissa Vs. Bimal Kumar Mohanty (1994) 4 SCC 126; M. Paul Anthony v. Bharat Gold Mines Ltd., (1999) 3 SCC 679** and **Union of India Vs. Ashok Kumar Agrawal (2013) 16 SCC 147**].

23. The ancillary question is whether in the instant case the petitioner is placed under suspension in a routine manner. It is noteworthy that the purpose of placing an officer under suspension is to keep her away from the mischief range. The purpose is to complete the proceedings unhindered. The suspension is an interim measure in aid of disciplinary proceedings so that the delinquent may not get custody or control of papers or take any advantage of her position. (**See: Ashok Kumar Agrawal (supra)** and order of this Court in **Smt. Nahid Jahan (supra)**].

24. During the pendency of this case, the department has issued charge-sheet dated 14.7.2023 (Annexure IA/1) to the petitioner. A bare perusal of charge-sheet shows that it contains allegations relating to year 2016-18. Along with the charge-sheet, the relevant documentary evidence on which it is founded upon are supplied to the petitioner

which shows that the documents are already in possession of the department and the petitioner will not be able to tamper with such documents. Similarly, charge no.2 talks about furnishing incorrect information to Vidhan Sabha question and answering one question belatedly. This charge is also based on documentary evidence. Similarly, charge no.3 is also founded upon documentary evidence which are already in possession of prosecution. The charge no.4 relates to the year 2011 when petitioner allegedly wrote ACR of Dr. Basanti twice. This Court has not referred about the charges in order to sprinkle any finding regarding its validity/correctness. Putting it differently, the department is at liberty to proceed with the enquiry on the basis of aforesaid charge-sheet. The reference to the charges are made only to show that none of the charges are of the nature which requires the step of ordering suspension of a principal. The aforesaid finding is in the realm of propriety in issuing the order of suspension and is not related with the aspect of competence or correctness.

25. In the case of **Smt. Nahid Jahan (supra**), this Court opined as under :

"12. In the case of ***Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and another*** , 1999 (3) SCC 679, it was held that an exercise of right to suspend an employee may be justified on a facts of a particular case. Instances, however, are not rare where officers have been found to be afflicted by "*suspension syndrome*" and the employees have been found to be placed under suspension just for nothing. It is their irritability rather than an employee's trivial lapse which has often resulted in suspension.

13. The Supreme Court emphasized the need of applying mind before placing an employee under suspension. Author M.S. Nila in the Book "Law of Suspension" (Eastern Book Co., Lucknow) expressed the view that "*suspension on technical irregularities and lapses is unreasonable*" (Page 20). Another Author Shri S.K.P. Shriniwas in "Law of Suspension and Reinstatement" (Orient Publishing Co.) opined that authority passing suspension order must not be afflicted with suspension syndrome. An order of suspension must not be passed whimsically, capriciously, unduly, fancifully and unreasonably. Contrary to these, such an order must be a reasoned one.

14. Wording of suspension order clearly shows that the allegations against the petitioner are relating to a clerical error of including the name of a dead person in the portal. For this alleged "misconduct", the respondents placed her under suspension. It is profitable to refer to the judgment of Supreme Court in this regard. In 1979 (2) SCC 286 ***(Union of India and others Vs. J. Ahmed)***, Desai J. held that "it is, however, difficult to believe that lack of efficiency or attainment of highest standards in

> discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability is very high."
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> 15. If the reasons mentioned in the suspension order are tested on the anvil of the judgment of J. Ahmed (supra), it will be clear that there is no allegation against the petitioner that because of her negligence, any irreparable loss or damage has been caused to the department. The negligence or its result, in the present case, was not irreparable or so heavy necessitating the issuance of order of suspension.
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> 16. In the peculiar facts and circumstances of this case, in the opinion of this Court, the respondents have placed the petitioner under suspension in a routine manner. Such exercise of power is arbitrary and cannot be countenanced. Needless to mention that an arbitrary order hits Article 14 of the Constitution. In such rare cases, it is not necessary to relegate the employee to avail alternative remedy of appeal."

26. In the light of principles so laid down in **Smt. Nahid Jahan (supra),** it is clear that an employee cannot be placed under suspension in routine manner as a suspension syndrome. The existence of power to suspend an employee and manner in which it is passed and also the propriety of passing such order are different facets. Merely because the authority is competent to issue suspension order, the suspension order

will not be beyond the scope of judicial review. If it suffers from serious non-application of mind or palpably arbitrary, it can be interfered with. In the instant case, the suspension order cannot sustain judicial scrutiny because it is not passed by the competent authority on independent application of mind. The suspension order is also passed in a routine manner, thus it deserves to be axed. However, it is made clear that this Court has not expressed any opinion regarding validity of the charge-sheet. Suspension order dated 18.04.2023 **is set aside**. The petition is **allowed**.

(SUJOY PAUL)
JUDGE

manju/ sarathe