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WA-2404-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJEEV SACHDEVA,
CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE VINAY SARAF

ON THE 28th OF OCTOBER, 2025

WRIT APPEAL No. 2404 of 2025

THE STATE OF MADHYA PRADESH AND OTHERS

Versus

SHIV PRASAD TIWARI

.....
Appearance:

Shri Anubhav Jain - Government Advocate for the appellant/State.

*Shri Sanjay K. Agrawal - Senior Advocate with Ms. Shoren Agrawal - Advocate
for the respondent.*

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ORDER

Per. Hon'ble Shri Vinay Saraf, J

1. The instant intra court appeal is preferred by the appellants being aggrieved by the order dated 10.03.2025 passed by learned Single Judge in Writ Petition No.23801/2023, whereby the writ petition preferred by the respondent was allowed directing the appellants to reinstate the respondent in service with all back wages treating the intervening period when he remained out of job as the period on service.

2 . Heard on IA No.15701/2025 which is an application for condonation of delay of 67 days occurred in filing the appeal.

3. Counsel appearing on behalf of the respondent submits that without prejudice to the defence he has no objection to the delay being condoned.



4. Considering the reasons assigned in the application which is duly supported by the affidavit of the OIC and no objection extended by the respondent, we deem it proper to allow the application and condone the delay. Consequently, application is allowed, delay is condoned.

5. Heard Shri Anubhav Jain, Government Advocate for the appellants and Shri Sanjay K. Agrawal, senior advocate with Ms. Shoren Agrawal counsel for the respondent on the question of admission.

6. Short facts of the case are that the respondent was initially appointed on the post of Constable (Trademan) on 22.05.2008. In the month of May, 2021 he was quarantined in community hall at Jabalpur due to ongoing Covid -19 Pandemic. At that time it was informed to controlling officer that he was unconscious and not feeling well. It is alleged that the respondent had consumed liquor and was in the state of intoxication, pursuant to which the respondent was sent for medical examination to Government Hospital Ranghi, Jabalpur. The Department has issued a charge sheet on 19.07.2021 to the respondent levelling two charges against him that he was under intoxication and earlier also he was punished for consumption of liquor, but no improvement was shown by him.

7. After conducting enquiry, the enquiry officer prepared the enquiry report, wherein both the charges were found proved and the disciplinary authority after issuance of show cause notice by order dated 31.01.2022 inflicted the punishment of dismissal from service upon the respondent. Respondent preferred an appeal challenging the dismissal order but the appellate authority by order dated 28.03.2022 dismissed the appeal.



Thereafter, respondent preferred mercy appeal, which was also dismissed by order dated 25.04.2023 hence the writ petition was filed by the respondent before the learned single judge which was allowed by the impugned order.

8. Shri Anubhav Jain, learned Government Advocate appearing on behalf of the appellants submits that the allegations and charges were duly proved in the enquiry despite that the learned writ court allowed the writ petition and set aside the order passed by disciplinary authority as well as appellate authority. He further submits that the consumption of liquor was proved in medical report (MLC) and this fact was also proved by the Department by cogent oral evidence. He submits that the order passed by the learned Single Judge is unjust, illegal and perverse. He prays for setting aside the order passed by the learned Single Judge.

9. Learned counsel appearing for the respondent supported the order passed by the learned single judge and submits that the department failed to prove the charges in departmental enquiry.

10. Arguments advanced by the rival parties are considered and the documents available on record are perused. It appears that the respondent was sent to Damoh on the election duty in the month of May, 2021 when he returned from such duty, thereafter, he and other members of battalion were quarantined in the community hall at Jabalpur due to ongoing Covid-19 Pandemic. It was informed to the controlling officer that the respondent has consumed liquor and is in state of intoxication. Therefore, he was sent for medical examination to Government Hospital, where his medical examination was done by the doctor. In MLC, it is mentioned that he is



allegedly habitual of consuming alcohol but no test was conducted to establish that he was under intoxication. During the departmental enquiry, the department examined some of the colleagues of the respondent and one of them Constable Suraj Singh deposed that Head Constable Mahesh Subba informed him on phone that the respondent was in the state of intoxication. However, Mahesh Subba in his statement has not supported the prosecution story to the extent that he informed to constable Suraj Singh that the respondent was in intoxication. In MLC it is mentioned that "alleged H/o of alcohol consumption" but upon whose information the history was recorded has not been explained by the department and no medical report was obtained to prove that the respondent was in the state of intoxication.

11. Learned single judge has held that the department has failed to prove the alleged misconduct as well the charges levelled against the respondent. The charge of consumption of liquor could not be proved by the department. Learned single judge further held that the duty of charge of consumption of liquor is not sustainable in the in the eyes of law and consequently, the order passed by the disciplinary authority on 31.01.2022 was set aside. From the report it is revealed that though the respondent was physically examined by the doctor but no pathology report or no chemical examination was obtained to prove the charge of consumption of liquor by the respondent. There is no reliable oral evidence adduced by the department to prove the charge.

12. In our considered opinion, the learned single judge has rightly held that the charge of intoxication could not proved. We are in agreement with



the findings recorded by learned single judge and only on the basis of the allegation or habit of consumption of liquor a government servant cannot be dismissed from the service. The charge is required to be proved by the cogent evidence. Constable Suraj Singh stated that it was informed by Constable Mahesh Subba that the respondent is in the state of intoxication. However, Mahesh Subba has not supported the statement of Suraj Singh, which is only hearsay evidence and under these circumstances, it cannot be accepted that the Department has proved the charge by oral evidence. Doctor has recorded the alleged history of consumption of alcohol but no opinion was given by the doctor that actually the respondent was in the state of intoxication and in the absence of any specific opinion of the doctor and in the absence of any pathology or chemical examination report, it cannot be accepted that the department had proved the charges against the respondents.

13. Consequently, we do not find any merit in the instant appeal. The order passed by the learned single judge appears to be just and proper and does not require any interference. Admission is declined. Appeal is *dismissed*. No order as to costs.

(SANJEEV SACHDEVA)
CHIEF JUSTICE

(VINAY SARAF)
JUDGE

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