IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 07th OF MAY, 2025

Writ Petition No.13206 of 2025

DR. RAKESH KUMAR VERMA

Vs.

STATE OF MADHYA PRADESH AND OTHERS

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Appearance

Shri Praveen Dubey – Advocate for the petitioner.

Shri Girish Kekre – Government Advocate for the respondents/State.

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ORDER

Since pleadings are complete and learned counsel for the parties are ready to argue the matter finally, therefore, on their joint request, it is finally heard.

2. In this petition filed under Article 226 of the Constitution of India, the assail is made to an order dated 04.04.2025 (Annexure-P/11) passed by respondent No.2, whereby the petitioner has been placed under suspension.

3. As per facts of the case, the petitioner being an in-charge Principal was performing his duties at Government Shaheed Bhagat Singh P.G. College, Pipariya. However, during the course of evaluation of answer-sheets, certain irregularities were noticed and made viral on social media and thereafter, an enquiry was conducted wherein statements of various persons were recorded and then, the Enquiry Committee submitted its report vide letter dated 03.04.2025 disclosing the fact that the answer-

sheets, which were to be evaluated by one Ms. Khusbhu Pagare, Guest Faculty, got evaluted by one Pannalal Pathariya, Lab Technician Class-IV employee. The enquiry report further revealed the fact that Ms. Khusbhu Pagare, in her statement, had admitted the fact that for evaluating the answer-sheets on her behalf, she had given a sum of Rs.7000/- to one Rakesh Kumar Maiher and even, Rakesh Kumar Maiher, in his statement, had also admitted the fact that in lieu of evaluation of answer-sheets, he had given Rs.5000/- to Pannalal Pathariya. Concluding the enquiry report, *prima facie*, the Enquiry Committee held the petitioner and one Dr. Ramgulam Patel, Professor, Political Science, guilty for the alleged irregularity. In pursuance of the report submitted by the Enquiry Committee, respondent No.2, exercising the power provided under Rule 9 of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 (in short the 'Rules, 1966'), has passed the impugned order of suspension dated 04.04.2025.

4. The challenge to the impugned order is founded mainly on the ground that the order has been passed in a very mechanical manner that too without applying the mind. Learned counsel for the petitioner has contended that without there being any fault on the part of the petitioner and his direct involvement in the alleged irregularity, his suspension is improper. In support of his contention, learned counsel for the petitioner has relied upon various orders viz. **(2013) 7 SCC 25 [State of Madhya Pradesh and others Vs. Sanjay Nagayach and others]; Writ Petition No.14716 of 2017 [Nahid Jahan(Smt.) Vs. State of M.P. & ors.]** and **2020 (4) MPLJ 382 [Neerja Shrivastava Vs. State of M.P. and others]**.

5. On the other hand, learned Government Advocate has opposed the submissions advanced by learned counsel for the petitioner and raised a preliminary objection with regard to maintainability of the petition saying

that since the impugned order is appellable, therefore, the petitioner should have availed the remedy of appeal as provided under Rule 23 of the Rules, 1966. In support of his submission, he has relied upon a case reported in **2011 (2) MPLJ 206 [State of M.P. and others Vs. Ashok Sharma(Dr.)]** and also an order dated 29.06.2018 passed in **Writ Petition No.13992 of 2018 [Dr. Anand Mahindra Vs. The State of Madhya Pradesh]**.

6. I have heard the arguments advanced by learned counsel for the parties and perused the record.

7. So far as the preliminary objection in respect of maintainability of present petition is concerned, I am of the opinion that there is no absolute bar for entertaining the instant petition. However, in the case of **Ashok Sharma(Dr.)** (supra), it has been observed by the Division Bench that in the matter of suspension, normally, the Court exercising the power provided under Article 226 of the Constitution of India should not stay the order because it amounts to final relief and rather doing so, it would be appropriate to direct the person concerned to challenge the order by availing the statutory remedy of appeal. In the case of **Anand Mahindra** (supra), the coordinate Bench relying upon the case of **Ashok Sharma(Dr.)** (supra) has also dismissed the petition on the ground that before approaching the Court, alternative remedy of appeal should have been availed. In my opinion, the view taken by the Division Bench in the case of **Ashok Sharma(Dr.)** (supra) cannot be said to be improper because in a normal circumstance, it is a settled principle of law that when the statutory remedy of appeal or other remedy is available, then the same should have been availed by the person concerned instead of filing a petition under Article 226 of the Constitution of India so as to seek judicial review of the order. But, at the same, in the case of **Sanjay Nagayach** (supra), the Supreme Court has observed as under:-

> ‘21. The power of suspension should not be exercised in an arbitrary manner and without any reasonable ground or as vindictive misuse of power. Suspension should be made only in a case where there is a strong prima facie case against the delinquent employee and the allegations involving moral turpitude, grave misconduct or indiscipline or refusal to carry out the orders of superior authority are there, or there is a strong prima facie case against him, if proved, would ordinarily result in reduction in rank, removal or dismissal from service. The authority should also take into account all the available material as to whether in a given case, it is advisable to allow the delinquent to continue to perform his duties in the office or his retention in office is likely to hamper or frustrate the inquiry.
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> 22. In view of the above, the law on the issue can be summarised to the effect that suspension order can be passed by the competent authority considering the gravity of the alleged misconduct i.e. serious act of omission or commission and the nature of evidence available. It cannot be actuated by mala fide, arbitrariness, or for ulterior purpose. Effect on public interest due to the employee's continuation in office is also a relevant and determining factor. The facts of each case have to be taken into consideration as no formula of universal application can be laid down in this regard. However, suspension order should be passed only where there is a strong prima facie case against the delinquent, and if the charges stand proved, would ordinarily warrant imposition of major punishment i.e. removal or dismissal from service, or reduction in rank, etc.’

Similarly, the Supreme Court in a case reported in **(2013) 16 SCC 147 [Union of India and another Vs. Ashok Kumar Aggarwal]** has observed that judicial review with regard to an order of suspension in ordinary manner is not open to the Court, but if the charges are absolutely *mala fide* or vindictive and are framed only to keep the delinquent employee out of job, then the judicial review can be exercised.

8. In the case of **Neerja Shrivastava** (supra), the Division Bench of this Court relying upon the case of **Ashok Kumar Aggarwal** (supra) has observed as under:-

> ‘8. In the matter of Union of India v. Ashok Kumar Aggarwal, 2013 MPLJ Online (S.C.) 25 : (2013) 16 SCC 147, Hon'ble Supreme Court considering the scope of judicial review in interference of the suspension order has held that it is not ordinarily open to Court to interfere with the suspension order as it is within exclusive domain of competent authority who can review its suspension order and revoke it. Making the scope of interference clear it has been held that where charges are baseless, mala fide

or vindictive and are framed only to keep delinquent employee out of the job, a case for judicial review is made out. The Supreme Court in this regard has held that:—

> "22. In view of the above, the law on the issue can be summarised to the effect that suspension order can be passed by the competent authority considering the gravity of the alleged misconduct i.e. serious act of omission or commission and the nature of evidence available. It cannot be actuated by mala fide, arbitrariness, or for ulterior purpose. Effect on public interest due to the employee's continuation in office is also a relevant and determining factor. The facts of each case have to be taken into consideration as no formula of universal application can be laid down in this regard. However, suspension order should be passed only where there is a strong prima facie case against the delinquent, and if the charges stand proved, would ordinarily warrant imposition of major punishment i.e. removal or dismissal from service, or reduction in rank, etc.
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> 23. In Jayrajbhai Jayantibhai Patel v. Anilbhai Nathubhai Patel, (2006) 8 SCC 200 this Court explained : (SCC p. 209, para 18)
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> > "18. Having regard to it all, it is manifest that the power of judicial review may not be exercised unless the administrative decision is illogical or suffers from procedural impropriety or it shocks the conscience of the Court in the sense that it is in defiance of logic or moral standards but no standardised formula, universally applicable to all cases, can be evolved. Each case has to be considered on its own facts, depending upon the authority that exercises the power, the source, the nature or scope of power and the indelible effects it generates in the operation of law or affects the individual or society. Though judicial restraint, albeit self-recognised, is the order of the day, yet an administrative decision or action which is based on wholly irrelevant considerations or material; or excludes from consideration the relevant material; or it is so absurd that no reasonable person could have arrived at it on the given material, may be struck down. In other words, when a Court is satisfied that there is an abuse or misuse of power, and its jurisdiction is invoked, it is incumbent on the Court to intervene. It is nevertheless, trite that the scope of judicial review is limited to the deficiency in the decisionmaking process and not the decision."
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> 24. Long period of suspension does not make the order of suspension invalid. However, in State of H.P. v. B.C. Thakur, 1994 SCC (L&S) 835 : (1994) 27 ATC 567, this Court held that where for any reason it is not possible to proceed with the domestic enquiry the delinquent may not be kept under suspension.

25. There cannot be any doubt that the 1965 Rules are a self-contained code and the order of suspension can be examined in the light of the statutory provisions to determine as to whether the suspension order was justified. Undoubtedly, the delinquent cannot be considered to be any better off after the charge-sheet has been filed against him in the Court on conclusion of the investigation than his position during the investigation of the case itself. (Vide Union of India v. Udai Narain [(1998) 5 SCC 535 : 1998 SCC (L&S) 1418].)

26. The scope of interference by the Court with the order of suspension has been examined by the Court in a large number of cases, particularly in State of M.P. v. Shardul Singh, (1970) 1 SCC 108, P.V. Srinivasa Sastry v. Comptroller and Auditor General, (1993) 1 SCC 419 : 1993 SCC (L&S) 206 : (1993) 23 ATC 645, ESI v. T. Abdul Razak, (1996) 4 SCC 708 : 1996 SCC (L&S) 1061, Kusheshwar Dubey v. Bharat Coking Coal Ltd., (1988) 4 SCC 319 : 1988 SCC (L&S) 950, Delhi Cloth and General Mills Ltd. v. Kushal Bhan, AIR 1960 SC 806, U.P. Rajya Krishi Utpadan Mandi Parishad v. Sanjiv Rajan, 1993 Supp (3) SCC 483 : 1994 SCC (L&S) 67 : (1993) 25 ATC 764, State of Rajasthan v. B.K. Meena, (1996) 6 SCC 417 : 1996 SCC (L&S) 1455, Prohibition and Excise Deptt. v. L. Srinivasan, (1996) 3 SCC 157 : 1996 SCC (L&S) 686 : (1996) 33 ATC 745 and Allahabad Bank v. Deepak Kumar Bhola, (1997) 4 SCC 1 : 1997 SCC (L&S) 897, wherein it has been observed that even if a criminal trial or enquiry takes a long time, it is ordinarily not open to the Court to interfere in case of suspension as it is in the exclusive domain of the competent authority who can always review its order of suspension being an inherent power conferred upon them by the provisions of Article 21 of the General Clauses Act, 1897 and while exercising such a power, the authority can consider the case of an employee for revoking the suspension order, if satisfied that the criminal case pending would be concluded after an unusual delay for no fault of the employee concerned. Where the charges are baseless, mala fide or vindictive and are framed only to keep the delinquent employee out of job, a case for judicial review is made out. But in a case where no conclusion can be arrived at without examining the entire record in question and in order that the disciplinary proceedings may continue unhindered the Court may not interfere. In case the Court comes to the conclusion that the authority is not proceeding expeditiously as it ought to have been and it results in prolongation of sufferings for the delinquent employee, the Court may issue directions. The Court may, in case the authority fails to furnish proper explanation for delay in conclusion of the enquiry, direct to complete the enquiry within a stipulated period. However, mere delay in conclusion of enquiry or trial cannot be a ground for quashing the suspension order, if the charges are grave in nature.

> But, whether the employee should or should not continue in his office during the period of enquiry is a matter to be assessed by the disciplinary authority concerned and ordinarily the Court should not interfere with the orders of suspension unless they are passed in mala fide and without there being even a prima facie evidence on record connecting the employee with the misconduct in question."'

9. Likewise, in the case of **Nahid Jahan(Smt.)** (supra), the coordinate Bench of this Court relying upon the case reported in **AIR 1954 SC 207 [K.S. Rashid & Son Vs. Income Tax Investigation Commissioner]** has also considered the aspect as to whether the judicial review in the matter of suspension can be exercised or not and observed as under:-

> 'ʻ18. It is apt to remember that in AIR 1954 SC 207 (K.S. Rashid & Son vs. Income Tax Investigation Commissioner), the court held that availability of alternative remedy can be a ground to exercise discretion to refuse to interfere in a petition under Article 226. This proposition was, however, qualified by the significant words, "unless there are good grounds therefor", which indicated that alternative remedy would not operate as an absolute bar and writ petition under Article 226 could still be entertained in exceptional circumstances. Specific and clear rule was laid down in (State of U.P. vs. Mohd. Nooh), 1958 SCR 598, as under:
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> > "But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies."
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> This proposition was considered by a Constitution Bench of this Court in A.V. Venkateswaran, Collector of Customs, Bombay vs. Ramchand Sobhraj Wadhwani & Another, AIR 1961 SC 1506 and was affirmed and followed in the following words:
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> > "The passages in the judgments of this court we have extracted would indicate (1) that the two exceptions which the learned solicitor General formulated to the normal rule as to the effect of the existence of an adequate alternative remedy were by no means exhaustive and (2) that even beyond them a discretion vested in the High Court to have entertained the petition and granted the petitioner relief notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the court, and that in a matter which is thus per

> eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the court."

Another Constitution Bench decision in Calcutta Discount Co. Ltd. vs. Income Tax Officer Companies Distt. I AIR 1961 SC 372 laid down:

> "Though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction subjects or a likely to subject a person to lengthy proceedings and unnecessary harassment, the High Court will issue appropriate orders or directions to prevent such consequences. Writ of certiorari and prohibition can issue against Income Tax Officer acting without jurisdiction under 8.34 I.T. Act."

[Emphasis Supplied]'

In view of the above preposition of law, this Court is of the opinion that the preliminary objection as raised by the respondents with regard to maintainability of the petition, under the facts and circumstances existing in the case, is not acceptable and as such, it is hereby rejected.

10. Now, it is to be seen as to whether the order passed by respondent No.2 suspending the petitioner is appropriate or not. From the reasons contained in the impugned order, it is clear that the petitioner has no direct connection with the alleged irregularity. Though, the petitioner was said to be a Nodal Officer, but without there being any prior intimation, if any irregularity has been committed, then it cannot be made a reason to hold him responsible for the said irregularity. At the most, the officer who committed the irregularity can be punished for the same and even subjected to disciplinary proceeding, but in any manner, the petitioner cannot be held responsible for the alleged irregularity and under such circumstances, if any order is passed keeping him under suspension, then it can be presumed that the authority, without applying its mind, has exercised the power of suspension. In my opinion, from the conduct of the authority, it is apparent that the authority somehow is trying to keep the

petitioner out from employment which indeed is not an object for placing an employee under suspension. That apart, in the enquiry report, it is found that the petitioner was not directly involved in the alleged irregularity and, therefore, the action of the authority placing the petitioner under suspension cannot be said to be justified and appropriate.

11. The Supreme Court in a case reported in **(1994) 4 SCC 126 [State of Orissia Vs. Bimal Kumar Mohanty]** has observed as to under what circumstances an employee should be placed under suspension and what would be the requirements to pass the order of suspension. In the said case, the observation made by the Supreme Court reads as under:-

> ‘13. It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or inquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending inquiry or contemplated inquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The

suspension must be a step in aid to the ultimate result of the investigation or inquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge.'

12. The coordinate Bench of this Court in the case of **Nahid Jahan (Smt.)** (supra) has observed as under:-

'9. This is trite law that the purpose of placing an employee under suspension is mainly to keep her away from the mischief range. The purpose is to complete the proceedings unhindered. Suspension is an interim measure in aid of disciplinary proceedings so that the delinquent may not gain custody or control of papers or take any advantage of her position. [See:(Union of India Vs. Ashok Kumar Agrawal), 2013 (16) SCC 147].

* * *

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."

* * *

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. '

13. From the aforesaid enunciation of law, it is clear that the order of suspension should not be passed in a routine manner. The very object for placing an employee under suspension is to complete the proceeding unhindered and to keep the said employee away from the mischief range. From the available record, it is clear that the petitioner was not directly

involved in the alleged irregularity and under such circumstances, if he is kept in service, then also no question of committing any mischief by him would arise. More so, while passing the order, the authority did not take note of the enquiry report which otherwise reveals that the petitioner was not directly involved in the alleged irregularity. Under such circumstances, it can be inferred that the impugned order placing the petitioner under suspension has been passed just to save the face of department among the public and to show that for the alleged irregularity, appropriate action has been taken. However, satisfaction of others is not the very object for placing an employee under suspension whereas it should be done for concluding the enquiry in a fair manner.

14. From the aforesaid backdrop of the case, I have no hesitation to hold that it is not a case in which the petitioner was required to be placed under suspension for the alleged irregularity. Thus, the impugned order of suspension dated 04.04.2025 (Annexure-P/11), exercising the power of judicial review, is set aside in respect of present petitioner only.

15. Resultantly, the petition stands **allowed**.

(SANJAY DWIVEDI)
JUDGE

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