IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE RAVI MALIMATH,

CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE VISHAL MISHRA

ON THE 23rd OF JUNE, 2022

WRIT PETITION NO. 9374 of 2006

Between:-

K.C.RAJWANI

.....PETITIONER

(BY SHRI BRIAN DA'SILVA – SENIOR ADVOCATE ASSISTED BY SHRI ABHISHEK DILRAJ - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH LAW & LEGISLATIVE AFFAIRS, VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)**

2. **HONBLE HIGH COURT OF M.P THROUGH REGISTRAR GENERAL HIGH COURT, JABALPUR (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI SUYASH THAKUR – GOVERNMENT ADVOCATE FOR THE RESPONDENT NO.1 AND SHRI ASHISH SHROTI – ADVOCATE FOR THE RESPONDENT NO.2)

This petition coming on for hearing this day, ***Hon'ble Shri Justice Ravi Malimath, Chief Justice*** *passed the following:*

ORDER

The case of the petitioner is that he joined the Madhya Pradesh Judicial Services as a Civil Judge Class-II on 25.10.1985. He was promoted to the Higher Judicial Services on 09.06.1997 and was

designated as permanent on 03.01.2002. He was appointed to the Junior Administrative Grade on 09.06.2002. On 13.02.2003, a memorandum of charges was served on the petitioner while he was posted as an Additional District and Sessions Judge, Begumganj, District Raisen. The respondent No.2 namely the High Court of Madhya Pradesh proposed to hold a departmental enquiry against him under Rule 14 (IV) of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966. The charges against the petitioner related to certain judicial orders passed by him between 21.06.2001 to 12.08.2002 when he was posted as an Additional District and Sessions Judge at Guna.

2. A reply was submitted by the petitioner and an enquiry was conducted. The Enquiring Officer submitted his detailed report to the Disciplinary Authority exonerating the petitioner from all the charges. It was held that the charges were not proved. The matter was placed before the Disciplinary Authority. On 18.11.2005, a show cause notice was issued to the petitioner by the High Court indicating that the High Court disagrees with the findings of the Enquiring Officer with respect to Charge Nos.1, 2, 4 and 5. It is also stated in the notice that the findings of the Enquiring Officer on Charge Nos.1, 2, 4 and 5 are liable to be reversed as he is found guilty of the said charges and consequently as to why he should not be punished for the said charges. A reply was furnished to the said show cause notice. Thereafter, the impugned order was issued to the petitioner compulsorily retiring him from service. Questioning the same, the instant writ petition has been filed.

3. Learned counsel for the petitioner contends that the act of the respondents is erroneous and liable to be interfered with. That even though, the Enquiring Officer held that the charges have not been proved, the Disciplinary Authority came to the conclusion that the findings

recorded on Charge Nos.1, 2, 4 and 5 have been wrongly considered by the Enquiring Officer and reversed the same. That the said reversal is based on mere inference that is drawn by the Disciplinary Authority. That in spite of making a request there was no grant of opportunity of a personal hearing to the writ petitioner. The entire allegations against the petitioner were with reference to certain judicial orders passed by him while he was serving as an Additional District Judge at Guna. They are all judicial matters and could not have been interfered with. Even otherwise, the sole consideration were the judicial orders. There is no complaint against the petitioner in his entire career as a Judge of the Madhya Pradesh Judicial Services. Therefore, it would appear that the respondents have victimized the petitioner and have wrongly removed him from service.

4. The same is disputed by the learned counsel for the respondents through their return. They dispute the contentions raised by the petitioner. They contend that the Disciplinary Authority was justified in reversing the findings of the Enquiring Officer. That the petitioner being a judicial officer is expected to maintain the highest degree of honesty and integrity. He has failed to do so. The acts of omission and commission by the petitioner have led a doubt as to the reputation of the petitioner. Therefore, such a Judicial Officer could not have been continued in the services of the Madhya Pradesh State Judicial Services. Therefore, they were justified in passing the impugned order.

5. Heard learned counsels.

6. The charges leveled against the petitioner are as follows:

ARTICLE-I

That you, in Bail Application No. 341/2002, granted interim bail to a person

accused of offence under section 49-A of Excise Act which related to possession of liquor unfit for human consumption and in this case the mandatory provisions of Section 59-A (2) of Excise Act were over-looked. The interim bail was granted on the ground of illness of the father of the accused, even though no medical certificate was made available to justify the ground mentioned in the application. This was done pursuant to your corrupt motive or for extraneous considerations.

ARTICLE-II

That you granted interim bail to a person accused of offence under Sec. 49-A of Excise Act in Bail Application No.205/2002, in which liquor worth Rs.7 Lakhs had been seized out of which 20 litres were found to be unfit for human consumption, without following the provisions of Sec.59-A (2) of Excise Act. It was to be noted that interim bail was granted on the very day the accused surrendered before J.M.F.C. on the ground of ill health of accused and this was done pursuant to your corrupt or oblique motive or for extraneous considerations.

ARTICLE-III

That you pursuant to your oblique or corrupt motive or for extraneous considerations in B.A. No.929/2001 granted bail to a person accused under Section 376 I.P.C., even though two earlier bail applications had been rejected and there was no change in the circumstances of the case and when District & Sessions Judge was also on leave.

ARTICLE-IV

That S.T. No.184/2000 was pending in your Court in which the accused was a jail inmate. This case related to serious offence such as under Section 302 and 376 I.P.C. You granted adjournments for close to one year between the

date of final arguments and pronouncement of judgment on extremely flimsy grounds and the accused was ultimately acquitted though there was overwhelming circumstantial evidence which was unreasonably discarded and this was done pursuant to your oblique or corrupt motive or for extraneous considerations showing utter lack of devotion to duty.

That the above acts of yours are unbecoming of a Judicial Officer which amount to grave misconduct under Rule 3 of M.P. Civil Services (Conduct) Rules, 1965, which is punishable under Rule 10 of M.P. Civil Services (Classification Control & Appeal) Rules, 1966.

ARTICLE-V

That you failed to show promptness in hearing final arguments after the closure of evidence in S.T. No.257/98 and Civil Suits No. 88/98, 89/98, 260/97, 186/97, 266/97 and 54-A/2000 and granted frequent adjournments showing lack of devotion to duty and discipline which was unbecoming of a Judge which amounts to grave misconduct under Rule 3 (a) of M.P. Civil Services (Conduct) Rules, 1965, which is punishable under Rule 10 of M.P. Civil Services (Classification Control & Appeal) Rules, 1966."

7. On an enquiry being conducted, the Enquiring Officer came to the conclusion that the charges have not been proved. After receipt of the findings recorded by the Enquiring Officer, the same was placed for consideration before Administrative Committee No.1. The Registrar (Vigilance) has prepared a note with regard to the findings recorded by the Enquiring Officer. So far as Charge No.1 is concerned, it was held that granting of bail in disregard to the mandatory provisions of Section-59A of the Madhya Pradesh Excise Act is sufficient to infer that order has been passed with corrupt motive or extraneous consideration. So far as

Charge No.2 is concerned, it was stated that it appears to be only for corrupt motive or for extraneous consideration. So far as Charge No.4 is concerned, it was held that the finding of the Enquiry Officer that no fault can be attributed to the writ petitioner for adjourning the case cannot be accepted. So far as Charge No.5 is concerned, it was held that the view of the Enquiring Officer is that it is only to be considered as leniency on the part of the delinquent officer with regard to grant of adjournments, but this leniency has exceeded the limit, which shows lack of devotion of the delinquent officer towards his duty. It is on this ground that the matter was placed for consideration before the Administrative Committee No.1, who accepted the report of the Vigilance (Registrar). The same was further accepted by the Full Court of the High Court.

8. On considering the opinion of the Disciplinary Authority, we are unable to find reason with the same. So far as the findings on Charge Nos.1 and 2 are concerned, the same has been drawn on the basis of an inference. After narrating the manner in which the bail was granted, the Disciplinary Authority came to the view that it can be inferred that bail has been granted in disregard to mandatory provision of Section 59 of the Madhya Pradesh Excise Act and, therefore, the same has been passed with corrupt motive or extraneous consideration.

9. We fail to appreciate the reasoning of the Disciplinary Authority. If even according to the Disciplinary Authority, the grant of bail is in violation of the mandatory provisions, the same may reflect upon the competency of the Judge in understanding the law. It cannot lead to a conclusion that he is either corrupt or the order has been passed for extraneous consideration. It is trite to mention that there are many judicial orders that may be considered to be right or may be considered to be wrong. It is not necessary that in every case where bail is granted, the

same has to always be looked into with suspicious eyes that it is granted with corrupt motive or for an extraneous consideration. We do not find any logic or reason, let alone an explanation for arriving at such a conclusion. There may be a possibility that the concerned Judge has either misread the evidence or has applied it wrongly. At the most it only reflects upon his judicial competency and not that he is either corrupt or the order has been passed for extraneous consideration.

10. So far as the charge Nos.4 and 5 are concerned, they pertain to grant of adjournments. The Enquiring Officer came to the conclusion that the writ petitioner may have been lenient in the grant of adjournments. We fail to understand as to how the Disciplinary Authority comes to a conclusion that even the leniency to be shown by the Judges to the Bar requires to be ascertained in a microscopic examination. In fact, the Disciplinary Authority notes "*On few dates the case was adjourned on the ground of sickness of the advocate of the accused, but adjourning the case for 11 months was not justified*." Whether the concerned Judge was justified in granting adjournments or not, cannot be ascertained by merely looking at the order sheets and the number of times, the case has been adjourned. There are so many factual situations that happen in the open Court which cannot always come about in the order sheets of the Judge. Many of the submissions, many of the requests and many such events that happen in the open Court are best left between the discussions of the Bar and the Bench. It is not necessary that each and every word that an advocate states in an open Court requires to be transcribed into the order sheets. The Judge holding a Court is not a stenographer to take down the dictation of each and every advocate. Only that portion of the submissions made by the concerned advocate that is relevant for the case or relevant for the orders of that date alone, requires to be mentioned in the order sheets. It is, therefore, the discretion of the concerned Judge as

to what should form the order for the day or not. We do not think that the Disciplinary Authority could have recorded such a reason of finding fault with the concerned Judge for being lenient to the Bar. One really does not know as to what happens when an adjournment is sought for. It is not proper to come to a conclusion that only because an adjournment has been granted, the integrity of a Judge has to be doubted. It is a matter of fact that whenever a matter is listed, that too, for arguments, the learned counsels always seek time to either prepare themselves or for other reasons. An adjournment may be granted. Therefore, we do not think that this could be held against the concerned Judge.

11. So far as the findings recorded by the Enquiring Officer on all the aforesaid charges are concerned, it could also be seen that the findings can be relatable to each and every Judge in the State. Bail orders are passed by the concerned Judges in various orders. A number of adjournments are given by the Judges in various cases, but only because bail has been granted, does not mean that it has been granted for corrupt reasons. Only because adjournment is granted, it cannot be said that it lacks devotion by the Officer. The lack of devotion that has been stated by the Disciplinary Authority, if it is to be accepted on a face value, would infer that no Judge should grant any adjournment to any lawyer in any case at any point of time. Unfortunately, the stakeholders would know that this cannot be done. It is not necessary that the learned advocates seek adjournment only because they do not intend to argue the matter. On many an occasion, there are very valid grounds for which an advocate would seek an adjournment. But only because the Judge grants it, cannot be said that he lacks devotion. Therefore, even on a plain reading of the inferences drawn by the Disciplinary Authority, we are unable to accept the reasons adopted therein. The reversal of the findings of the Enquiring Officer is purely based on surmises and conjunctures.

The note itself would indicate that it is only on an inference that a conclusion of corruption has been made out. It is needless for us to state that whenever a man is being punished and that too with such serious consequences, the same cannot be as a result of an inference. It has to be based on some material against the concerned Officer. In the instant case, there is absolutely no material to infer the same. The Enquiring Officer having conducted the enquiry and after recording the evidence has held that the charges have not been proved. The reasons for reversing the findings of the Enquiring Officer are unsustainable.

12. Notwithstanding the same, we asked the learned counsel appearing for the respondent No.2 with regard to the service records of the writ petitioner. We have also examined the Vigilance Report as well as the confidential record of the concerned officer. It was placed for our consideration.

13. We have considered the ACRs of the writ petitioner since inception. We do not find any noting in any of the ACRs for any of the years from 1986 to 2005 with regard to his integrity. We have also considered the confidential record of the writ petitioner. The same does not indicate even a suggestion with regard to his integrity in the performance of his duties. The same is not disputed by learned counsel for the respondents. The confidential record would indicate the assessment of the Portfolio Judges as well as Hon'ble the Chief Justice with regard to the services of the Judges. On most occasions, the remark about his integrity and reputation has been answered as being that he enjoys a very good reputation; that he is a good worker and that he is prompt in performance of his duties. In almost every year, it has been noted that his general reputation is good. We are unable to find any

noting by any authority with regard to his integrity. In fact some of the comments made in the ACRs are as follows:

> *"(i) He takes keen interest in learning the work;*
> *(ii) He enjoys the good reputation;*
> *(iii) He is judicial officer with capacity and sincerity;*
> *(iv) He enjoys very good reputation;*
> *(v) He is good and sincere worker;*
> *(vi) He is a soft spoken officer;*
> *(vii) He has worked hard to give good disposals;*
> *(viii) No complaint received regarding integrity; and*
> *(ix) His judgments are good."*

14. Therefore, the examination of the entire ACRs as well as his Vigilance File does not indicate that he was an Officer of any doubtful integrity. On the contrary, there were many remarks that he is a good Officer. It is only for the concerned period of time, namely, between 21.06.2001 to 12.08.2002 when he was Additional District Judge at Guna that certain judicial orders of his have come for scrutiny. Therefore, we do not find that there was any valid reason for the Disciplinary Authority to reverse the findings of the Enquiring Officer. There is also no material in his entire ACRs and Vigilance Report that can be held against him. For all these reasons, we are of the view that the Disciplinary Authority committed a gross error in reversing the findings of the Enquiry Officer. Therefore, even the consequential order of compulsory retirement from service in our considered view, becomes unsustainable.

15. For all the aforesaid reasons, the writ petition is allowed with the following directions:-

(i) The order passed by the Disciplinary Authority dated 18.11.2005 (Annexure P/4) and the impugned order dated 12.05.2006 (Annexure P/10) compulsorily retiring the petitioner from services are hereby set aside;

(ii) The petitioner shall be entitled to 25% of the arrears of pay from the date of dismissal namely compulsory retirement w.e.f. 12.05.2006 upto the age of superannuation;

(iii) The respondents to rework his salary, his entitlements and all his retiral benefits accordingly;

(iv) He is entitled for re-fixation of his pay, pension and all related issues as a consequence of this order;

(v) The same shall be paid to the petitioner within a period of four months from the date of receipt of a copy of this order.

(RAVI MALIMATH)
CHIEF JUSTICE

(VISHAL MISHRA)
JUDGE

SJ/-