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IN THE HIGH COURT OF KARNATAKA,  
DHARWAD BENCH

DATED THIS THE 28<sup>TH</sup> DAY OF JANUARY 2022

PRESENT

THE HON'BLE MR. JUSTICE S.G. PANDIT

AND

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

W.P. No. 104944/2021 (S-KAT)

BETWEEN:

SRI. RAMESH MALLI

- PETITIONER

(BY SRI. GANGADHAR J.M, ADVOCATE)

AND:

1. THE DEPUTY INSPECTOR GENERAL OF POLICE (WIRELESS), POLICE DEPARTMENT, M.G. ROAD CORNOR HOUSE, BENGALURU-560 001.
2. THE SUPERINTENDENT OF POLICE (WIRELESS), POLICE DEPARTMENT, M.G. ROAD CORNOR HOUSE, BENGALURU-560 001.

- RESPONDENTS

(BY SRI.G.K. HIREGOUDAR, GOVT. ADVOCATE AND  
SMT. GIRIJA S. HIREMATH, HCGP)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDER DATED 30.09.2021 PASSED BY THE KARNATAKA STATE ADMINISTRATIVE TRIBUNAL, BELAGAVI IN APPLICATION NO. 10826/2019 VIDE ANNEXURE-D & ETC.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 14.01.2022 COMING ON FOR 'PRONOUNCEMENT OF ORDER' THIS DAY, **S.G. PANDIT J.**, PASSED THE FOLLOWING:

**ORDER**

The petitioner is before this Court under Articles 226 and 227 of the Constitution of India assailing the order dated 30.09.2021 passed by the Karnataka State Administrative Tribunal at Belagavi (for short 'the Tribunal') in Application Number 10826/2019 whereby the application filed by the petitioner questioning the order of discharge is dismissed.

2. The petitioner was selected and appointed as Police Constable (Wireless) in the respondent No.2-Department by order dated 13.06.2017. By notification dated 22.02.2018 (Annexure-A5), Police Department invited applications from eligible candidates to fill up posts of Sub Inspector (Civil) (Male and Female) and it also provided an opportunity to the in-service candidates. The petitioner

being the in-service candidate made application for the post of Sub Inspector in pursuance to the above said notification on obtaining no objection from the Department. The petitioner was issued with admission ticket for the competitive examination, scheduled to be held on 13.01.2019. The CCB Police, Bengaluru had received information that some persons had conspired for leakage of question paper of written examination of PSI scheduled to be held on 13.01.2019 and contacting the candidates assuring question papers and answers by collecting ₹30 lakhs. In that regard Crime No. 291/2019 came to be registered on 12.01.2019. In connection with the above complaint the CCB Police had taken the petitioner into custody along with others for interrogation on 28.01.2019. On 29.01.2019 the petitioner was produced before the Court and he was remanded to judicial custody till 11.02.2019. Subsequently he was granted bail and was released on 02.02.2019. It is stated that thereafter petitioner was not taken to duty.

3. It is submitted that the respondent No.2 obtained a report from the Police Inspector (Wireless), District Control Room, Bengaluru, against the petitioner. Based on the said report, Annexure-A13 was passed under Rule 6 of Karnataka Civil Service (Probation) Rules, 1977 (for short '1977 Rules') discharging the petitioner from service. Challenging the said order of discharge the petitioner was before the Tribunal in Application No. 10826/2019 contending that the order of discharge is wholly illegal and it is a stigmatic order. The Tribunal by impugned order dated 30.09.2021 dismissed the application holding that the authorities have found the petitioner to be unsuitable to hold the post for the reasons stated in the impugned order of discharge. Aggrieved by both the order of discharge as well as the order passed by the Tribunal, the petitioner is before this Court.

4. Heard Sri Gangadhar. J.M, learned counsel for the petitioner, Sri G.K. Hiregoudar, learned Government Advocate for respondents and perused the writ petition papers.

5. Learned counsel for the petitioner would contend that the Tribunal failed to appreciate the contention of the petitioner that the order of discharge is a stigmatic order. It is contended that a reading of the impugned order of discharge itself indicates that the petitioner was discharged alleging that criminal case in Crime No. 291/2019 is registered and the discharge order is based on the report obtained by the appointing authority in that regard.

6. Learned counsel inviting attention of this Court to the impugned order submits that the impugned order is not an order of discharge simplicitor, but it alleges that the petitioner is irresponsible in his duty and the petitioner has exhibited misconduct by involving himself in criminal proceedings.

7. Learned counsel for the petitioner submits that when the authority alleges misconduct, it is mandatory for the appointing authority to conduct enquiry and thereafter to discharge the petitioner. Learned counsel referring to Rules 5, 6 and 7 of the '1977 Rules' submits that Rule 7 of

'1977 Rules' provides for conducting enquiry where misconduct is alleged against a probationer. Rule 7 of '1977 Rules' provides for conducting of enquiry when allegation of misconduct is alleged by following the procedure prescribed under the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 (for short 'CCA Rules'). It is his submission that the Tribunal failed to appreciate the allegations contained in the order of discharge and the Tribunal proceeded to dismiss the application on the ground that the petitioner, a probationer is discharged on account of general unsuitability for the post held by him.

2. Learned counsel would submit that the preliminary enquiry held by the Police Inspector (Wireless) is behind the back of the petitioner and no opportunity was provided to the petitioner in the preliminary enquiry. Based on such preliminary enquiry report, the petitioner is discharged from service. It is well settled position of law that a probationer could be discharged from service for

unsuitability and not on imputing allegations. Once again taking through the impugned order of discharge the learned counsel would submit that it is not an order of discharge simplicitor but it is an order of discharge imputing allegations against the petitioner which attaches stigma. Learned counsel would rely upon the decision of the apex Court reported in **AIR 1984 SC 636 (Anoop Jaiswal V. Government of India and another)** as well as the judgment of the division bench of this Court in W.P. No. 10969/2020 dated 15.06.2021, in support of his contention.

9. Per contra, learned Government Advocate would submit that the petitioner had involved in a serious criminal case which related to leakage of question paper of Police Sub Inspector competitive examination. The petitioner being a Police Constable, a personal belonging to the disciplinary force involving in a question paper leakage case, would be against the interest of the Police force and against the interest of the State.

10. Learned Govt. Advocate taking through the order of discharge submits that the preamble portion indicates reasons for unsuitability of the petitioner and it is not the basis for discharge. It is his submission that the Tribunal has rightly dismissed the application holding that the petitioner, a probationer is discharged on account of general unsuitability for the post held by him.

11. Learned Govt. Advocate would submit that the Tribunal considered each and every contention raised by the petitioner herein and answered the same while dismissing the application filed by the petitioner. Thus he prays for dismissal of the writ petition.

12. On hearing the learned counsel for the parties and on perusal of the writ petition papers the following points would arise for consideration.

- 1) *Whether the impugned order of discharge dated 03.08.2019 (Annexure-A13) is an order of discharge simplicitor or a stigmatic order?*
- 2) *Whether the Tribunal is justified in dismissing the application of the petitioner?*



13. The answer to the above points would be that the order of discharge is a stigmatic order and the Tribunal is not justified in dismissing the application for the following reasons.

14. The petitioner was appointed as Police Constable by order dated 13.06.2017 as at Annexure-A1. While the petitioner was working as Police Constable (Wireless) in the respondent No.2-Department, application was called for to fill up the post of Police Sub Inspectors (Civil) (Male and Female) under Annexure-A5 notification dated 15.02.2018. The applicant was one of the aspirants for the post of Police Sub Inspector and accordingly applied for the said post. Admittedly, a case was registered in Crime No. 291/2019 at CCB, Bengaluru. The petitioner was taken to custody for interrogation and subsequently was remanded to judicial custody till 11.02.2019. In the meanwhile, petitioner applied for bail and was released on bail on 02.02.2019. These are the undisputed facts.

15. Admittedly, the probationary period of the petitioner was not declared as having completed satisfactorily and the petitioner was on probation. The probationer is governed by '1977 Rules'. Rule 5 of '1977 Rules' provides for declaration of satisfactory completion of probation. Rule 6 of '1977 Rules' provides for discharge of a probationer during the period of probation which reads as follows:

*"6. Discharge of a probationer during the period of probation - (1) Notwithstanding anything in Rule 5, the Appointing Authority may, at any time during the period of probation, discharge from service a probationer on grounds arising out of the conditions, if any, imposed by the rules or in the order of appointment, or on account of his unsuitability for the service of post; but the order of discharge except when passed by the Government shall not be given effect to, till it has been submitted to and confirmed by the next higher authority.*

*(2) An order discharging a probationer under this rule shall indicate the grounds for the discharge but no formal proceedings under the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957, shall be necessary."*

A reading of the above rule makes it abundantly clear that at any time during the period of probation the appointing authority could discharge a probationer from service on account of his unsuitability for the service or post or on grounds arising out of conditions imposed by the Rules or in the order of appointment with the approval of the next higher authority, except when it is passed by the Government. If a probationer is to be terminated for any misconduct Rule 7 provides for termination for misconduct which reads as under:

*"7. Termination for misconduct – No order terminating the services of a probationer, whether during or at the end of the period of probation for any misconduct, shall be passed except in accordance with the Karnataka Civil Services (Classification, control and Appeal) Rules, 1957."*

From a careful reading of the above rule it is clear that when misconduct is alleged against a probationer no order of termination shall be passed except in accordance with CCA Rules by conducting enquiry.

16. It is for the Court and Tribunal to find out from the order of discharge, whether it is an order of discharge simplicitor or whether order of discharge is based on allegations or misconduct. The order of discharge reads as follows:

ಪ್ರಸ್ತಾವನೆ:

ಅಪರ ಪೋಲಿಸ್ ಆಯುಕ್ತರು, ಅಪರಾಧ, ಬೆಂಗಳೂರು ರವರು ಉಲ್ಲೇಖ(1) ರ ಪತ್ರದಲ್ಲಿ ಪಿಐ, ಸಿಸಿಬಿ, ವಿಶೇಷ ವಿಚಾರಣಾ ದಳ, ಎನ್.ಟಿ.ಪೇಟೆ, ಬೆಂಗಳೂರು ರವರ ಉಲ್ಲೇಖ(2)ರ ವರದಿಯನ್ವಯ ಪೋಲಿಸ್ ಪ್ರಧಾನ ಕಛೇರಿ ಕಂಟ್ರೋಲ್ ರೂಮಿನಲ್ಲಿ ಕರ್ತವ್ಯ ನಿರ್ವಹಿಸುತ್ತಿರುವ ರಮೇಶ ಮಲ್ಲಿ, ಪಿಸಿ (ವೈ) ರವರು ಉಲ್ಲೇಖ (3) ರ ಪ್ರಕರಣದಲ್ಲಿ ಭಾಗಿಯಾಗಿರುವುದು ಕಂಡುಬಂದ ಮೇರೆಗೆ ದಿನಾಂಕ 28.01.2019 ರಂದು ವಸ್ತುಗಿರಿ ಮಾಡಿ, ದಿನಾಂಕ 29.01.2019ರಂದು ಮಾನ್ಯ 1ನೇ ಎ.ಸಿ.ಎಂ.ಎಂ. ನ್ಯಾಯಾಲಯದ ಮುಂದೆ ಹಾಜರಪಡಿಸಲಾಗಿದ್ದು, ಮಾನ್ಯ ನ್ಯಾಯಾಲಯವು ದಿನಾಂಕ 11.02.2019ರವರೆಗೆ ನ್ಯಾಯಾಂಗ ಬಂಧನಕ್ಕೆ ಒಳಪಡಿಸಲಾಗಿರುವ ಕಾರಣ ಇಲಾಖಾ ಶಿಸ್ತುಕ್ರಮ ಜರುಗಿಸಿ ವರದಿ ಸಲ್ಲಿಸುವಂತೆ ಸೂಚಿಸಲಾಗಿರುತ್ತದೆ. ಉಲ್ಲೇಖ(4) ರ ಆ.ಪೊ.ಸಿ ರವರ ಮನವಿಯಲ್ಲಿ ಕರ್ತವ್ಯಕ್ಕೆ ವರದಿಮಾಡಿಕೊಳ್ಳಲು ಸಿದ್ಧನಿದ್ದೇನೆ. ವೇತನ ವಿಲ್ಲದೆ ಜೀವನ ನಿರ್ವಹಣೆ ಕಷ್ಟವಾಗಿದೆ ಕೌಟಂಬಿಕ ಸಮಸ್ಯೆಯನ್ನು ಅನುಕಂಪದಿಂದ ಪರಿಗಣಿಸಿ ಕರ್ತವ್ಯಕ್ಕೆ ವರದಿ ಮಾಡಿಕೊಳ್ಳಲು ಆದೇಶ ನೀಡಬೇಕೆಂದು ಕೋರಿರುತ್ತಾರೆ. ಉಲ್ಲೇಖ (5)ರಲ್ಲಿ ಆ.ಪೊ.ಸಿ ರವರ ಮೇಲಿನ ಆರೋಪಗಳ ಬಗ್ಗೆ ವಿಚಾರಣೆ ಮಾಡಿ ವರದಿ ನೀಡುವಂತೆ ಪೋಲಿಸ್ ನಿರೀಕ್ಷಕರು (ವೈ) ಜಿಲ್ಲಾ ನಿಯಂತ್ರಣ ಕೊಠಡಿ, ಬೆಂಗಳೂರು ರವರಿಗೆ ಸೂಚಿಸಿದ ಮೇರೆಗೆ ಆ.ಪೊ.ಸಿ. ರವರು ಪಿಸಿ(ವೈ) ಹುದ್ದೆಗೆ ದಿನಾಂಕ 01.07.2017ರಂದು ಕರ್ತವ್ಯಕ್ಕೆ ವರದಿ ಮಾಡಿಕೊಂಡಿದ್ದು ಇನ್ನೂ ಪ್ರೋಬೇಷನರಿ ಹಂತದಲ್ಲಿರುವ ಕ್ರಿಮಿನಲ್ ಪ್ರಕರಣದಲ್ಲಿ ಭಾಗಿಯಾಗಿರುವುದರಿಂದ ಕೆ.ಸಿ.ಎಸ್. ಪ್ರೋಬೇಷನರಿ ನಿಯಮಗಳು 1977 ಪ್ರಕಾರ ಶಿಸ್ತು ಕ್ರಮ ಜರುಗಿಸುವ ಕುರಿತು.

ದೋಷಾರೋಪಣಾ ವಿವರಣೆ:

ಶ್ರೀ ರಮೇಶ ಮಲ್ಲಿ ಪೊ.ಪಿಸಿ (ವೈ) ಡಿಜಿಬಿ ನಿಯಂತ್ರಣ ಕೊಠಡಿ, ಬೆಂಗಳೂರು ಆದ ನಿಮ್ಮ ವಿರುದ್ಧ ಪಿಐ, ಸಿಸಿಬಿ, ವಿಶೇಷ ವಿಚಾರಣಾ ದಳ, ಎನ್.ಟಿ.ಪೇಟೆ, ಬೆಂಗಳೂರು ನಗರರವರು ವಿಶೇಷ ವಿಚಾರಣಾ ವರದಿಯಲ್ಲಿ ಶ್ರೀ ಮಿರ್ಜಾ ಅಲಿ ರಾಜಾ, ಪೋಲಿಸ್ ಇನ್ಸ್‌ಪೆಕ್ಟರ್ ರವರು ನೀಡಿದ ದೂರಿನಲ್ಲಿ ದಿನಾಂಕ 13.01.2019 ರಂದು ಸಿವಿಲ್ ಪಿಎಸ್‌ಐ ಹುದ್ದೆಯ ನೇಮಕಾತಿ ಲಿಖಿತ ಪರೀಕ್ಷೆ ನಡೆಯುತ್ತಿದ್ದಾಗ ಖಚಿತವಾಗಿ ಬಂದಿರುವ ಮಾಹಿತಿಯ ಮೇರೆಗೆ ಎಸ್.ಕೆ.ಪೂಜಾರಿ, ರಾತೋಡ್, ದಿಲೀಪ್, ಹರ್ಷ ಸಂತೋಷ ಮತ್ತು ನಾಗರಾಜು ಎಂಬುವವರು

ಬೆಂಗಳೂರಿನ ಬಸವರಾಜ ಮತ್ತು ಹೊಳೆಯಪ್ಪ ಎಂಬುವರ ಸಹಾಯದಿಂದ ಸಂಘಟಿತರಾಗಿ ವ್ಯವಸ್ಥಿತವಾಗಿ ಕಾರ್ಯಾಚರಣೆಯನ್ನು ರೂಪಿಸಿ ದಿನಾಂಕ 13.01.2019 ರಂದು ನಡೆಯಲಿರುವ ಲಿಖಿತ ಪರೀಕ್ಷೆಯ ಪ್ರಶ್ನೆ ಪತ್ರಿಕೆಯನ್ನು ಕಳ್ಳತನದಿಂದ ಪಡೆದುಕೊಂಡು ಸಿವಿಲ್ ಪಿಎಸ್‌ಐ ಹುದ್ದೆಗೆ ಪ್ರಶ್ನೆಗಳನ್ನು ಉತ್ತರಿಸಿ, ಅವರ ಹೇಳಿಕೊಟ್ಟು ಪರೀಕ್ಷೆಯಲ್ಲಿ ಹೆಚ್ಚಿನ ಅಂಕ ಪಡೆದು ಉತ್ತೀರ್ಣರಾಗಿ ಪಿಎಸ್‌ಐ ಹುದ್ದೆ ಪಡೆದುಕೊಳ್ಳಲು ಸಹಾಯ ಮಾಡುವುದಾಗಿ ನಂಬಿಸಿ ಅವರಿಂದ 30 ಲಕ್ಷಕ್ಕೂ ಹೆಚ್ಚಿನ ಹಣ ಅಕ್ರಮವಾಗಿ ಪಡೆದು ಪಿಎಸ್‌ಐ ಹುದ್ದೆಯ ಸಾಮಾನ್ಯ ಆಕಾಂಕ್ಷಿಗಳಿಗೆ ಪೋಲಿಸ್ ಇಲಾಖೆಗೆ ಹಾಗೂ ಸರ್ಕಾರಕ್ಕೆ ಅಕ್ರಮ ನಷ್ಟ ಉಂಟು ಮಾಡುವ ಯೋಜನೆಯಿಂದ ಸದರಿ ಸಂಘಟಿತ ಗುಂಪು ರಾಜ್ಯದ ನಾನಾ ಕಡೆಯಿಂದ ಅಭ್ಯರ್ಥಿಗಳನ್ನು ಒಟ್ಟುಗೂಡಿಸುತ್ತಿದ್ದು, ರಾಜ್ಯದ ವಿವಿಧ ಸ್ಥಳಗಳಲ್ಲಿ ಗುಪ್ತವಾಗಿ ಅವರುಗಳಿಗೆ ಕಳ್ಳತನದಿಂದ ಪಡೆದಿದ್ದ ಪ್ರಶ್ನೆಪತ್ರಿಕೆಗಳನ್ನು, ನೆಟ್‌ಕಾಲ್‌ಗಳನ್ನು, ವ್ಯಾಟ್‌ಸಾಪ್ ಮೆಸೇಜ್‌ಗಳನ್ನು, ಮೋಬೈಲ್ ಮತ್ತು ಕಂಪ್ಯೂಟರ್ ಮುಖಾಂತರ ರವಾನಿಸುತ್ತಿದ್ದು ಇದಕ್ಕಾಗಿ ಅಂತರಜಾಲ ಮತ್ತು ಮಾಹಿತಿ ತಂತ್ರಜ್ಞಾನವನ್ನು ಬಳಸಿಕೊಳ್ಳುತ್ತಿದ್ದಾರೆಂದು ತಿಳಿದು ಬಂದಿದ್ದು ಈ ಕೃತ್ಯ ಎಸಗುತ್ತಿರುವ ಆರೋಪಿತರ ಮೇಲೆ ಕಾನೂನು ರೀತ್ಯಾ ಕ್ರಮ ಜರುಗಿಸಬೇಕೆಂದು ನೀಡಿದ ದೂರಿನ ಮೇರೆಗೆ ಪೋಲಿಸ್ ಸೈಬರ್ ಕ್ರೈಂ ಪೋಲಿಸ್ ಠಾಣೆ ಮೊ.ಸಂ. 291/2019 ಕಲಂ 66 (ಸಿ) 66 ಡಿ.ಐ.ಟಿ. ಆಕ್ಟ್ ಮತ್ತು ಕಲಂ-120 (ಬಿ), 114, 379, 465, 468, 471, 474, 420, 482, 511 ರೆ/ವಿ 34 ಐ.ಪಿ.ಸಿ. ರೀತ್ಯಾ ಪ್ರಕರಣವು ದಾಖಲಾಗಿರುತ್ತದೆ.

ಪಿ.ಬಿ. ಸಿ.ಬಿ. ವಿಶೇಷ ವಿಚಾರಣಾ ದಳ, ಎನ್.ಟಿ.ಪೇಟೆ, ಬೆಂಗಳೂರು ರವರು ಸಲ್ಲಿಸಿರುವ ವಿಶೇಷ ವರದಿಯನ್ವಯ ದಿನಾಂಕ 12.01.2019 ರಂದು ಪ್ರಕರಣದ ಕಡತವನ್ನು ಮುಂದಿನ ತನಿಖೆಯ ಸಲುವಾಗಿ ಉಪ ಪೋಲಿಸ್ ಆಯುಕ್ತರು ಅಪರಾಧರವರ ಕಛೇರಿ ಆದೇಶ ಸಂಖ್ಯೆ:ಅಪರಾಧ(2)/1.7/ಸಿಟಿಪಿ/2019 ದಿ: 12.01.2019ರನ್ವಯ ಪ್ರಕರಣವನ್ನು ಸೈಬರ್ ಕ್ರೈಂ ಪೋಲಿಸ್ ಠಾಣೆಯಿಂದ ವರ್ಗಾವಣೆ ಪಡೆದುಕೊಂಡು ಕೇಸ್ ತನಿಖೆಯನ್ನು ಮುಂದುವರೆಸಿರುತ್ತಾರೆ. ಪ್ರಕರಣ ತನಿಖಾಕಾಲದಲ್ಲಿ ಪೋಲಿಸ್ ಪ್ರಧಾನ ಕಛೇರಿ ಕಂಟ್ರೋಲ್ ರೂಮಿನಲ್ಲಿ ಕರ್ತವ್ಯ ನಿರ್ವಹಿಸುತ್ತಿರುವ ಶ್ರೀ ರಮೇಶ ಮಲ್ಲಿ ಪೊ.ಪಿ.ಸಿ(ವೈ) ಆದ ನೀವು ಸದರಿ ಪ್ರಕರಣದಲ್ಲಿ ಭಾಗಿಯಾಗಿರುವುದು ಕಂಡುಬಂದ ಮೇರೆಗೆ ದಿ:28.01.2019ರಂದು ದಸ್ತಗಿರಿ ಮಾಡಿ, ದಿ: 29.01.2019ರಂದು ಮಾನ್ಯ 1ನೇ ಎ.ಸಿ.ಎಂ.ಎಂ. ನ್ಯಾಯಾಲಯದ ಮುಂದೆ ಹಾಜರಪಡಿಸಲಾಗಿರುತ್ತದೆ ಮಾನ್ಯ ನ್ಯಾಯಾಲಯವು ದಿನಾಂಕ 11.02.2019ರವರೆಗೆ ನಿಮ್ಮನ್ನು ನ್ಯಾಯಾಂಗ ಬಂಧನಕ್ಕೆ ಒಳಪಡಿಸಲಾಗಿರುತ್ತದೆ. ಶ್ರೀ ರಮೇಶ ಮಲ್ಲಿ ಪೊ.ಪಿ.ಸಿ (ವೈ) ಆದ ನೀವು ದಿನಾಂಕ 24.06.2019 ರಲ್ಲಿನ ಮನವಿಯಲ್ಲಿ ಮೇಲಿನ ಆರೋಪಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ಇತರೆ ಅಧಿಕಾರಿಯನ್ನು ಅಮಾನತ್ತಿನಲ್ಲಿರಿಸಲಾಗಿದ್ದು ಆದರೆ ಇದೇ ಪ್ರಕರಣದ ಆರೋಪಿಯಾಗಿರುವ ನನ್ನನ್ನು ಅಮಾನತ್ತಿನಲ್ಲಿರಿಸಲಾಗಿರುವುದಿಲ್ಲ ಮತ್ತು ಕರ್ತವ್ಯದ ಮೇಲೂ ಸಹ ತೆಗೆದುಕೊಂಡಿರುವುದಿಲ್ಲ ಸರ್ಕಾರದ ಅಧಿಕೃತ ಜ್ಞಾಪನ ಪತ್ರ ಸಂ.ಸಿ.ಅ.ಸು.ಇ.4.ಸೇ.ಇ.ವಿ89 ದಿನಾಂಕ 31.01.1989ರ ನಿರ್ದೇಶನಗಳ ಪ್ರಕಾರ ಗೃಹ ಹಾಜರಿಯ ಅವಧಿ ಎಷ್ಟೆ ಇರಲಿ ಆತನು ಕರ್ತವ್ಯಕ್ಕೆ ವಾಪಸ್ಸು ಬಂದರೆ ಕರ್ತವ್ಯಕ್ಕೆ ತೆಗೆದುಕೊಳ್ಳಬೇಕೆಂಬ ನಿರ್ದೇಶನವಿರುತ್ತದೆ. ಕೆ.ಎಸ್.ಪಿ. (ಡಿ.ಪಿ) ನಿಯಮ 1965 ನಿಯಮ 5 ರ ನಿರ್ದೇಶನಗಳಂತೆ ಪೋಲಿಸ್ ಸಿಬ್ಬಂದಿ / ಅಧಿಕಾರಿ ಅಪರಾಧ ಪ್ರಕರಣದಲ್ಲಿ ದಸ್ತಗಿರಿ ಆದಲ್ಲಿ ದಸ್ತಗಿರಿ ಆದ ದಿನಾಂಕದಿಂದ

ಅಮಾನತ್ತಿನಲ್ಲಿಡಬೇಕಾಗಿರುತ್ತದೆ. ಆದರೆ ನನ್ನ ಪ್ರಕರಣದಲ್ಲಿ ಈ ನಿಯಮಗಳ ಪಾಲನೆ ಆಗಿರುವುದಿಲ್ಲ. ನಾನು ಕರ್ತವ್ಯಕ್ಕೆ ವರದಿ ಮಾಡಿಕೊಳ್ಳಲು ಸಿದ್ಧನಿದ್ದೇನೆ. ವೇತನವಿಲ್ಲದ ಜೀವನ ನಿರ್ವಹಣೆ ಕಷ್ಟವಾಗಿದೆ ಕೌಟಂಬಿಕ ಸಮಸ್ಯೆಯನ್ನು ಅನುಕಂಪದಿಂದ ಪರಿಗಣಿಸಿ ಕರ್ತವ್ಯಕ್ಕೆ ವರದಿ ಮಾಡಿಕೊಳ್ಳಲು ಆದೇಶ ನೀಡಬೇಕೆಂದು ಕೋರಿರುತ್ತಾರೆ.

ಪೋಲಿಸ್ ನಿರೀಕ್ಷಕರು (ವೈ) ಬೆಂಗಳೂರು ಜಿಲ್ಲೆ ರವರ ವಿಚಾರಣಾ ವರದಿ

ಆ.ಪೊ.ಸಿ. ಆದ ಶ್ರೀ ರಮೇಶ ಮಲ್ಲಿ ಪೊಪಿಸಿ (ವೈ) ರವರ ಮೇಲಿನ ಆರೋಪಗಳ ಬಗ್ಗೆ ವಿಚಾರಣಾ ವರದಿಯನ್ನು ದಿನಾಂಕ 22.07.2019ರಂದು ಸಲ್ಲಿಸಿರುತ್ತಾರೆ. ಸದರಿ ವರದಿಯಲ್ಲಿ ಮೇಲಿನ ಪ್ರಕರಣದ ಆರೋಪಿ ಆಗಿರುವ ನಾಗರಾಜ್ ಎಎಸ್‌ಐ (ವೈ) (ಹಾಲಿ ಅಮಾನತ್ತು) ಡಿಜಿಪಿ ನಿಯಂತ್ರಣ ಕೊಠಡಿ ಬೆಂಗಳೂರು ರವರ ಸ್ವ-ಇಚ್ಛಾ ಹೇಳಿಕೆ ಮತ್ತು ಅವರಿಂದ ವಶಪಡಿಸಿಕೊಂಡ ದಾಖಲಾತಿಗಳು ಮತ್ತು ನಗದು ಹಣದ ಆಧಾರದಲ್ಲಿ ದಿನಾಂಕ 28.01.2019ರಂದು ಆರೋಪಿ ರಮೇಶ ಮಲ್ಲಿರವರಿಗೂ ತನಿಖೆಗೆ ಹಾಜರಾಗುವಂತೆ ತನಿಖಾಧಿಕಾರಿಗಳು ದೂರವಾಣಿ ಮೂಲಕ ತಿಳಿಸಿದ್ದು, ಶ್ರೀ ರಮೇಶ ಮಲ್ಲಿರವರು ದಿ.28.01.2019 ರಂದು ಪೋಲಿಸ್ ನಿರೀಕ್ಷಕರು, ವೈರಲ್‌ಸ್, ಡಿ.ಜಿ.ಪಿ ನಿಯಂತ್ರಣ ಕೊಠಡಿ ಬೆಂಗಳೂರು ರವರಿಂದ ಲಿಖಿತ ಅನುಮತಿಯನ್ನು ಪಡೆದು ತನಿಖೆಗೆ ಹಾಜರಾಗಿರುತ್ತಾರೆ. ಅದೇ ದಿನ ಸಂಜೆ 5.30 ಗಂಟೆಗೆ ರಮೇಶ ಮಲ್ಲಿರವರನ್ನು ಸಿಸಿಬಿ ಅಧಿಕಾರಿಗಳು ವಿಚಾರಣೆಗೊಳಪಡಿಸಿ ದಸ್ತಗಿರಿ ಮಾಡಿ, ಸದರಿ ಪ್ರಕರಣಕ್ಕೆ ಸಂಬಂಧಿಸಿದ ಹಣ ಮೋಬೈಲ್ ಹಾಗೂ ದಾಖಲಾತಿಗಳನ್ನು ದಿನಾಂಕ 29.01.2019 ರಂದು ವಶಪಡಿಸಿಕೊಂಡು ಆರೋಪಿ ರಮೇಶ ಮಲ್ಲಿ ಪಿಸಿ (ವೈ) ರವರನ್ನು ಘನ ನ್ಯಾಯಾಲಯದ ಮುಂದೆ ಹಾಜರು ಪಡಿಸಿ ಘನ ನ್ಯಾಯಾಂಗ ಬಂಧನಕ್ಕೆ ಒಳಪಡಿಸಿರುತ್ತಾರೆ.

ಆ.ಪೊ.ಸಿ. ರವರಾದ ಶ್ರೀ ರಮೇಶ ಮಲ್ಲಿ, ಪೊಪಿಸಿ(ವೈ) ಡಿಜಿಪಿ ನಿಯಂತ್ರಣ ಕೊಠಡಿ ಬೆಂಗಳೂರಿನಲ್ಲಿ ಕರ್ತವ್ಯ ನಿರ್ವಹಿಸುತ್ತಿದ್ದು ಅವರು ಸಿವಿಲ್ ಪಿಸ್‌ಐ ಹುದ್ದೆಯ ಲಿಖಿತ ಪರಿಕ್ಷೆಯನ್ನು ತೆಗೆದುಕೊಂಡಿದ್ದು ಸದರಿ ಲಿಖಿತ ಪರಿಕ್ಷೆಯ ಪ್ರಶ್ನೆಪತ್ರಿಕೆಯನ್ನು ಇದೇ ಪ್ರಕರಣ ಆರೋಪಿ-8 ನಾಗರಾಜ್ ಎಎಸ್‌ಐ (ವೈ) (ಹಾಲಿ ಅಮಾನತ್ತು) ರವರ ಕಡೆಯಿಂದ ಅಕ್ರಮವಾಗಿ ಪಡೆದುಕೊಂಡು ಪರಿಕ್ಷೆ ಬರೆಯುವ ದುರುದ್ದೇಶದಿಂದ ಹಣವನ್ನು ಹಾಗೂ ಚೆಕ್‌ಗಳನ್ನು ನೀಡಿದ್ದು ಈ ಪ್ರಕರಣದಲ್ಲಿ ಭಾಗಿಯಾಗಿರುವುದು ಕಂಡುಬಂದಿರುತ್ತದೆ ಎಂದು ವರದಿಯಲ್ಲಿ ತಿಳಿಸಿರುತ್ತಾರೆ.

ಅಂತಿಮ ತೀರ್ಮಾನ

ಮೇಲಿನ ದೋಷಾರೋಪಣೆಯನ್ನು ಮತ್ತು ಆ.ಪೊ.ಸಿ. ರವರ ಮನವಿಯನ್ನು ಹಾಗೂ ವಿಚಾರಣಾ ವರದಿಯನ್ನು ಕೂಲಂಕುಷವಾಗಿ ಪರಿಶೀಲಿಸಲಾಗಿ ಆ.ಪೊ.ಸಿ. ಶ್ರೀ ರಮೇಶ ಮಲ್ಲಿ, ಪೊಪಿಸಿ(ವೈ) ಪಿಸಿ (ವೈ) ಆದ ನೀವು ಪಿಸಿ (ವೈ) ಹುದ್ದೆಗೆ ದಿನಾಂಕ 01.07.2017ರಂದು ಸೇವೆಗೆ ವರದಿ ಮಾಡಿಕೊಂಡಿದ್ದು ನೇಮಕಾತಿ ಆದೇಶದಲ್ಲಿ ನೇಮಕಾತಿಯ ಷರತ್ತು ಮತ್ತು ನಿಬಂಧನೆಗಳನ್ನು ಸ್ಪಷ್ಟವಾಗಿ ತಿಳಿಸಿದ್ದರು ಸಹ ಪೊಪಿಸಿ(ವೈ) ಅವಧಿಯಲ್ಲೇ ಕ್ರಿಮಿನಲ್ ಪ್ರಕರಣದಲ್ಲಿ ಭಾಗಿಯಾಗಿರುವುದು ವಿಚಾರಣೆಯ ದಾಖಲೆಗಳಿಂದ ತಿಳಿದುಬಂದಿರುತ್ತದೆ. ಕರ್ತವ್ಯದಲ್ಲಿ ಬೇಜವಾಬ್ದಾರಿತ ಮತ್ತು ದುರ್ನಡತೆಯನ್ನು ಪ್ರದರ್ಶಿಸಿ, ಕ್ರಿಮಿನಲ್ ಪ್ರಕರಣದಲ್ಲಿ ಭಾಗಿಯಾಗಿ ನ್ಯಾಯಾಂಗ ಬಂಧನಕ್ಕೆ ಒಳಗಾಗಿ ಶಿಸ್ತಿನ ಇಲಾಖೆಯ ಗೌರವಕ್ಕೆ ಧಕ್ಕೆ ತಂದಿರುತ್ತೀರಿ. ಆದುದರಿಂದ ನಿಮ್ಮ ವಿರುದ್ಧ ಕೆ.ಸಿ.ಎಸ್. ನಿಯಮಗಳು 1977 ಪೊಪಿಸಿ(ವೈ) ನಿಯಮ (6) ಪ್ರಕಾರ

ಕ್ರಮ ಕೈಗೊಳ್ಳುವುದು ಸೂಕ್ತವೆಂದು ಭಾವಿಸಿ ನನಗಿರುವ ಪ್ರದತ್ತವಾದ ಅಧಿಕಾರವನ್ನು ಚಲಾಯಿಸಿ ಈ ಕೆಳಕಂಡಂತೆ ಆದೇಶವನ್ನು ಹೊರಡಿಸಿರುತ್ತೇನೆ.

ಸಂಖ್ಯೆ: ಸಿಬ್ಬಂದಿ (1)/01/ಡಿಇ/ನಿ/2019-20 ಓಬಿ ಸಂಖ್ಯೆ:56/2019 ದಿನಾಂಕ 03-08-2019

ಅ.ಪೊ.ಆ ಶ್ರೀ ರಮೇಶ್ ಮಲ್ಲಿ, ಪ್ರೋಬೇಷನರಿ ಪೋಲಿಸ್ ಕಾನ್ಸ್ಟೇಬಲ್, ವೈರಲ್ಸ್, ಡಿಜಿಪಿ ನಿಯಂತ್ರಣ ಕೊಠಡಿ ಬೆಂಗಳೂರುರವರು ಪ್ರೋಬೇಷನರಿ ಅವಧಿಯಲ್ಲೇ ಕ್ರಿಮಿನಲ್ ಪ್ರಕರಣದಲ್ಲಿ ಭಾಗಿಯಾಗಿ ಪೋಲಿಸ್ ಇಲಾಖೆಯ ಗೌರವಕ್ಕೆ ಧಕ್ಕೆಯುಂಟು ಮಾಡಿ ಪೋಲಿಸ್ ಕಾನ್ಸ್ಟೇಬಲ್ ವೈರಲ್ಸ್ ಹುದ್ದೆಯಲ್ಲಿ ಮುಂದುವರೆಯಲು ಅನರ್ಹವಾಗಿರುವುದರಿಂದ ಅ.ಪೊ.ಆ.ರವರನ್ನು ದಸ್ತಗಿರಿಯಾದ ದಿನಾಂಕ 28.01.2019ರಿಂದಲೇ ಜಾರಿಗೆ ಬರುವಂತೆ ಕೆ.ಸಿ.ಎಸ್. (ಪ್ರೋಬೇಷನರಿ) ನಿಯಮ 1977ರ ನಿಯಮ-6ರ ಅಡಿಯಲ್ಲಿ "ಸೇವೆಯಿಂದ ವಿಮುಕ್ತಗೊಳಿಸಲಾಗಿದೆ"

ಈ ಆದೇಶವನ್ನು ನನ್ನ ಸಹಿ ಮತ್ತು ಮುದ್ರೆಯೊಂದಿಗೆ ದಿನಾಂಕ 08.08.2019ರಂದು ಹೊರಡಿಸಿರುತ್ತೇನೆ.

"ಡಿಐಜಿಪಿ (ವೈ) ರವರಿಂದ  
ಅನುಮೋದಿಸಲ್ಪಟ್ಟಿದೆ:

(ಧರ್ಮೇಂದ್ರ ಕುಮಾರ ಮೀನಾ, ಐಪಿಎಸ್)  
ಶಿಸ್ತು ಪ್ರಾಧಿಕಾರಿಗಳು ಹಾಗೂ  
ಪೋಲಿಸ್ ಅಧೀಕ್ಷಕರು ವೈರಲ್ಸ್  
ಬೆಂಗಳೂರು)

17. The law with regard to discharge of probationer and as to whether it is punitive or simplicitor and how to find out as to whether the order of discharge is simplicitor or punitive is well settled. Whether an order of termination is simplicitor or punitive is ultimately to be decided having due regard to the facts and circumstances of each case. A careful perusal of the above order of discharge, it could be dissected into three parts ie: (i) preamble (ii) final

conclusion and order. Preamble portion of the order would always indicates the reason or basis for the order. In other words preamble portion of the order would be the foundation for the decision and order. Preamble portion of the order of discharge discloses the arrest of the petitioner, remanding him to judicial custody and his release on bail. It also indicates registration of Crime No. 291/2019 under Section 66 (c) and 66 (d) of Information Technology Act and on several sections of IPC. It also alleges that the petitioner working in the office of D.G.P. (Control Room), Bengaluru, has taken the written examination for the post of P.S.I. and has illegally taken the question paper pertaining to the said written examination from accused No.8-Nagaraj, A.S.I., with a malafide intention and has paid the money and cheque and involved in the commission of the crime. Further it alleges that the petitioner having joined the post of Police Constable on 01.07.2017 accepting the terms and conditions of appointment involved in the commission of offence during probationary period, acted irresponsibly,



exhibited misconduct while on duty and having participated in the criminal offence and having undergone judicial custody, damaged the reputation of the department known for discipline. The order portion clearly indicates that the petitioner exhibited "ಕರ್ತವ್ಯದಲ್ಲಿ ಬೇಜವಾಬ್ದಾರಿ ಮತ್ತು ದುರ್ನಡತೆಯನ್ನು ಪ್ರದರ್ಶಿಸಿ" (exhibited irresponsibility in duty and misconduct). When the misconduct is the foundation for discharge it requires enquiry as contemplated under Rule-7 of 1977 Rules. The Apex Court has held that if the misconduct is the foundation for discharge, such order becomes bad in law.

18. From a reading of the above order it can be said that it is not an order of discharge simplicitor and it is a stigmatic order. The recital in the order of discharge refers to involvement of petitioner in commission of crime and his detention in judicial custody, which itself would be stigmatic. Moreover a reading of the order of discharge also indicates that the respondent No.2 had obtained

report from the Police Inspector with regard to the alleged incident. The said report was also the basis for discharge.

19. The Tribunal failed to appreciate the basis or foundation on which the order of discharge was passed. The Tribunal proceeded to dismiss the application of the petitioner on the ground that the petitioner is discharged from service on account of general unsuitability for the post held by him which is not so. The Tribunal relying on the decision of the apex Court in ***State Bank of India & others Vs. Palak Modi (2013 AIR SCW 76)*** was of the view that the probationer has no right to hold the post and his service can be terminated at any time during or at the end of period of probation on general unsuitability for the post held by him.

20. It is true that the petitioner has no right to hold the post and he can be terminated at any time during or at the end of the probationary period for general unsuitability, but a probationer cannot be discharged imputing allegations amounting to misconduct. If any misconduct is

alleged, then enquiry under Rule 7 of '1977 Rules' is necessary. The Tribunal observed at paragraph no. 16 that the petitioner is alleged to have been involved in a criminal case relating to certain malpractice in the selection process, which is a serious allegation. When such being the allegation it cannot be said that the order of discharge is discharge simplicitor. Definitely the order of discharge is an order of discharge imputing serious allegations against the petitioner which are not proved in any enquiry as required under Rule 7 of '1977 Rules'. Rule 6 of '1977 Rules' would be inapplicable to the facts of the present case. The petitioner is not discharged on account of general unsuitability as concluded by the Tribunal.

21. This Court need not go behind the order to find out as to whether the order is merely a camouflage for an order of dismissal for the misconduct. On the face of the order of discharge, it is manifest that the order of discharge is a camouflage for order of dismissal for misconduct.

22. The apex Court in ***Dipti Prakash Banerjee V. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta and others*** reported in **(1999) 3 SCC 60** has laid down principles to determine as to whether the order of termination or discharge is punitive or simplicitor or allegations against probationer were foundation. Relevant portion reads as follows:

"19. As to in what circumstances an order of termination of a probationer can be said to be punitive or not depends upon whether certain allegations which are the cause of the termination are the motive or foundation. In this area, as pointed out by Shah, J. (as he then was) in *Madan Gopal v. State of Punjab*, there is no difference between cases where services of a temporary employee are terminated and where a probationer is discharged. This very question was gone into recently in *Radhey Shyam Gupta v. U.P. State Agro Industries Corpn. Ltd.* and reference was made to the development of the law from time to time starting from *Parshotam Lal Dhingra v. Union of India* to the concept of "purpose of enquiry" introduced by Shah, J. (as he then was) in *State of Orissa v. Ram Narayan Das* and to the seven-Judge Bench decision in *Samsher Singh v. State of Punjab* and to post-Samsher Singh case-law. This Court had occasion to make a detailed examination of what is

the "motive" and what is the "foundation" on which the innocuous order is based.

20.....

21. If findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid.

25. In the matter of "stigma", this Court has held that the effect which an order of termination may have on a person's future prospects of employment is a matter of relevant consideration. In the seven-Judge Bench decision in *Samsher Singh v. State of Punjab* Ray, C.J. observed that if a simple order of termination was passed, that would enable the officer to "make good in other walks of life without a stigma". It was also stated in *Bishan Lal Gupta v. State of Haryana* that if the order contained a stigma, the termination would be bad for "the

*individual concerned must suffer a substantial loss of reputation which may affect his future prospects”.*

23. The Hon'ble Supreme Court in a case reported in **(2013) 16 SCC 59 (Registrar General, High Court of Gujarat and Another Vs. Jayshree Chamanlal Buddhhatti)** was examining as to whether the order of termination was simplicitor or stigmatic. At paragraph nos.20 and 31 it is held as follows:

*"20. The question, therefore, comes for consideration, as stated earlier, as to whether this is a case of termination simpliciter of the services of a probationer on account of her unsuitability for the post that she was holding, or whether it is a termination of her services after holding an enquiry behind her back, and without giving her an opportunity to defend.*

*31. Having gone through the salient judgments on the issue in hand, one thing which emerges very clearly is that, if it is a case of deciding the suitability of a probationer, and for that limited purpose any inquiry is conducted, the same cannot be faulted as such. However, if during the course of such an inquiry any allegations are made against the person concerned, which result into a stigma, he ought to be afforded the minimum protection which is contemplated under Article*

*311 (2) of the Constitution of India even though he may be a probationer. The protection is very limited viz. to inform the person concerned about the charges against him, and to give him a reasonable opportunity of being heard."*

24. In the instant case also a report from Police Sub Inspector (Wireless) was obtained behind the back of the petitioner and the said report was also a basis for discharge of the petitioner apart from imputing misconduct against the petitioner.

25. This Court had an occasion to examine the order of discharge on consideration of several decisions of the Apex Court including **Anoop Jaiswal** supra in W.P. No. 10969/2020 decided on 15.06.2021, was of the view that as the order is stigmatic in nature, an enquiry should have been held by the competent authority. In **Anoop Jaiswal** (supra) the Hon'ble apex Court has observed that the form of the order is not decisive as to whether the order is by way of punishment and that even an innocuously worded order terminating the service may in the facts and

circumstances of the case establish that an enquiry into allegations of serious and grave character of misconduct involving stigma has been made in infraction of the provisions of Article 311(2). The relevant paragraph nos.12 and 13 in **Anoop Jaiswai** (supra) reads as under:

*"12. It is, therefore, now well settled that where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the Court before which the order is challenged to go behind the form and ascertain the true character of the order. If the Court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the Court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employee.*

*13. In the instant case, the period of probation had not yet been over. The impugned order of discharge was passed in the middle of the probationary period. An explanation was called for from the appellant regarding the alleged act of indiscipline, namely, arriving late at the Gymnasium and acting as one of the ring leaders on the occasion and his explanation was obtained. Similar explanations were called for from other probationers and enquiries were made behind the back of the appellant. Only the case of the appellant was dealt with severely in the end. The cases of other probationers who were also*



*considered to be ring leaders were not seriously taken note of. Even though the order of discharge may be non-committal, it cannot stand alone. Though the noting in the file of the Government may be irrelevant, the cause for the order cannot be ignored. The recommendation of the Director which is the basis or foundation for the order should be read along with the order for the purpose of determining its true character. If on reading the two together the Court reaches the conclusion that the alleged act of misconduct was the cause of the order and that but for that incident it would not have been passed then it is inevitable that the order of discharge should fall to the ground as the appellant has not been afforded a reasonable opportunity to defend himself as provided in Art.311(2) of the Constitution."*

26. For the reasons recorded above, order passed by the Tribunal dated 30.09.2021 in Application no. 10826/2019 is set aside, Application No. 10826/2019 is allowed. Consequently, the impugned order of discharge bearing No. Sibbandi(1)/DE/Ni/2019-20 and Ob. No. 56/2019 dated 03.08.2019 is quashed. However, liberty is reserved in favour of the respondents to proceed against the petitioner in accordance with Rule 7 of '1977 Rules'.

With the above observations, writ petition is allowed  
in part.

**Sd/-  
JUDGE**

bvv

**Sd/-  
JUDGE**