IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI SANJEEV SACHDEVA,

ACTING CHIEF JUSTICE

&

HON'BLE SHRI VINAY SARAF

WRIT PETITION No. 8623 of 2016

NIRBHAY SINGH SULIYA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Dhruv Verma- Advocate for Petitioner.

Shri Bramhadatt Singh- Deputy Advocate General for respondent/State.

Shri B.N. Mishra- Advocate for the respondent no.2.

Reserved on : 16.07.2024

Pronounced on : 25.07.2024

ORDER

Per: Vinay Saraf, J

Petitioner who was working on the post of Additional District Judge has preferred the present writ petition assailing the order of punishment dated 02.09.2014, whereby the Petitioner was removed from

the service by High Court of M.P., Jabalpur after conducting the departmental enquiry. The Petitioner has also assailed the legality and validity of the order passed by the State of M.P. in appeal on 17.03.2016 whereby the appeal preferred by the petitioner was rejected.

2. FACTS OF THE CASE

Brief facts suffice for disposal of the present petition are as under:

2.1 Petitioner/delinquent was appointed as Civil Judge, Class II on 31.10.1987 and was posted at Khandwa.

2.2 Thereafter, the Petitioner was promoted as Chief Judicial Magistrate and later on promoted after due selection as member of M.P. Higher Judicial Service at Entry Level in the month of May, 2011 and was posted as Additional District & Sessions Judge, Khargon.

2.3 On 12.08.2011, one Jaipal Mehta made a complaint against the Petitioner alleging that Petitioner has indulged in corruption activities with the support of Stenographer, Anil Joshi particularly in the matters of deciding bail applications arising out of the offences registered under Section 34(2) of the M.P. Excise Act.

2.4 Considering the nature of allegations, a show cause notice was served to the Petitioner on 13.05.2013 under sub rule (4) of Rule 14 of the *M.P. Civil Services (Classification, Control & Appeal) Rules, 1966* (hereinafter referred to as ' *Rules 1966*') intimating the Petitioner that the High Court has decided to initiate disciplinary proceedings against him. Along with the show cause notice, article of charges, statements of imputations of misconduct in support of article of charges, list of documents and list of witnesses were enclosed.

2.5 Petitioner refuted the allegations and submitted his reply to the show cause notice on 29.05.2013, wherein he denied the allegations of

corruption and submitted clarification. However, being dissatisfied with the reply submitted by the Petitioner on 20.06.2013, Shri Abhinand Kumar Jain, District & Sessions Judge, Khandwa was appointed as inquiring authority by exercising the powers conferred under Clause (9) of sub rule (5) of Rule 14 of Rules, 1966 and Chief Judicial Magistrate, Mandleshwar was appointed as Presenting Officer by the disciplinary authority to present the case in the disciplinary enquiry proceedings.

2.6 During enquiry the statement of the witness no.1, Gendalal Chouhan was recorded by the department and the opportunity was granted to the delinquent to cross examine him. Delinquent has also examined one witness in defence namely; Shri K.P. Tripathi and opportunity was granted to the Presenting Officer to cross examine the defence witness. After granting opportunity of hearing and securing written submission from the delinquent, the inquiring authority prepared enquiry report on 31.12.2013 and forwarded the same to the Principal Registrar (Inspection and Vigilance), High Court of M.P., Jabalpur wherein the enquiry officer found proved the charge no.1 and exonerated from charge no.2.

2.7. On 14.03.2014, Administrative Committee (HJS) High Court considered the findings recorded by the inquiring authority and resolved to issue show cause notice to the delinquent employee as to why he should not be punished for the charges proved against him.

2.8 On 21.03.2014, a show cause notice was issued to the delinquent along with the copy of enquiry report and he was called upon to show cause as to why enquiry report be not accepted and he should not be punished as the charges had been proved against him. The Petitioner submitted his reply to the show cause notice.

2.9 Reply submitted by the delinquent was considered by the Administrative Committee (HJS) High Court in its meeting dated 24.06.2014 and the Committee recommended for infliction of penalty of removal from the service upon the Petitioner and directed to place the matter before Full Court for consideration.

2.10 Matter was placed before Full Court on 19.07.2014 and after considering the entire material and reply submitted by the delinquent, Full Court resolved to impose penalty of removal from service upon delinquent under Rule 10 (viii) of the Rules, 1966.

2.11 Law and Legislative Department of State of M.P. issued an order on 02.09.2014 for removal of the petitioner from service.

2.12 The petitioner preferred an appeal under Rule 23 of the Rules 1966 before His Excellency, the Governor of Madhya Pradesh assailing the order of removal, which was rejected by order dated 17.03.2016.

2.13 Assailing the order of removal dated 02.09.2014 and order of rejection of appeal dated 17.03.2016, the petitioner has preferred the present petition.

3. CONTENTIONS OF PETITIONER

Shri Dhruv Verma, learned counsel appearing on behalf of the petitioner assailed the legality and validity of the order of removal as well rejection of appeal on various grounds infra:

3.1 Complaint was lodged by one *Jaipal Mehta,* who was not examined during departmental euquiry and no witness was examined to substantiate the allegations of corruption leveled by the complainant therefore, the allegations were not proved at all and enquiry officer has prepared the report only on the basis of assumption and presumption.

3.2 The allegations against the petitioner is that with corrupt or oblique motive and for some extraneous consideration while functioning as Additional Sessions Judge, the petitioner allowed four bail applications ignoring the provisions of Section 59-A of the M.P. Excise Act to give benefits to the applicants despite the fact that seized quantity of the liquor was more than 50 bulk litre and dismissed 14 bail applications of similar nature holding that bail cannot be granted as the seized quantity is more than 50 bulk litres. In this way, the petitioner has extended the benefits to some of the applicants and adopted double standard while considering the bail applications submitted by the accused persons involved in offences under Section 34(2) and 49 (A) of the M.P. Excise Act. It is argued on behalf of the petitioner that the said allegations could not be proved as at the most the bail orders may be treated as erroneous exercise of judicial powers and cannot be treated as misconduct at all.

3.3 The allegations against the Petitioner is that at the time of granting the bail to some of the applicants, he ignored the provisions of Section 59-A of the M.P. Excise Act, 1915 whereas it may be gathered from the bare perusal of the order that the prosecution was granted due opportunity to oppose the bail applications and provisions were not ignored.

3.4 To bolster the stand of the Petitioner, counsel for the petitioner relied upon the judgment delivered in the matter of ***Kallo Vs. State of M.P. 2006 (3) MPWN-Short Note 24*** and ***Muktilal Vs. State of M.P. 2000 (1) MPJR 272*** wherein it is observed that opposition of bail should not be merely for the sake of opposition. Cases wherein the seized quantity of liquor is more than 50 bulk litres, if the accused is not likely to temper with the evidence or flee away from trial, he may be granted

bail if he is of young age. It is argued that considering the aforesaid pronouncements of the High Court, the bail applications were allowed.

3.5 The major penalty of removal from service was imposed only on the basis of inferences drawn against the petitioner without there being any material on record to justify such inferences as no evidence was available on record to prove the allegation of corruption.

3.6 Counsel for the petitioner relied on the judgment of Apex Court delivered in the matter of ***Krishna Prasad Verma Vs. State of Bihar (2019) 10 SCC 640*** wherein the Apex Court has held that if any erroneous order is passed by any judicial officer, the same may be placed in service record for the purpose of determining career progression of judicial officer concerned but cannot be held and considered as misconduct unless they are passed for extraneous reasons and illegal gratifications. The relevant paragraphs of the judgment reads thus:

> ***"11.*** *The main ground to hold the appellant guilty of the first charge is that the appellant did not take notice of the orders of the High Court whereby the High Court had rejected the bail application of one of the accused vide order dated 26-11-2001 [Shivnath Rai v. State of Bihar, Criminal Misc. No. 30563 of 2001, order dated 26-11-2001 (Pat)] . It would be pertinent to mention that the High Court itself observed that after framing of charges, if the non-official witnesses are not examined, the prayer for bail could be removed, but after moving the lower court first. The officer may have been guilty of negligence in the sense that he did not carefully go through the case file and did not take notice of the order of the High Court which was on his file. This negligence cannot be treated to be misconduct. It would be pertinent to mention that the enquiry officer has not found that there was any*

extraneous reason for granting bail. The enquiry officer virtually sat as a court of appeal picking holes in the order granting bail."

3.7 Petitioner further relied on the order passed by the learned Single Bench of this Court in the matter of ***Sakoor Khan Vs. State of M.P. 2000 (2) MPLJ 79*** wherein learned judge has held that provisions engrafted under Section 49-B are positively neither sound nor in consonance with the spirit of our Constitution and therefore, they cannot put any embargo on the power of grant of bail under the Act.

3.8 The Petitioner further submits that inquiring authority could not travel beyond the evidence available on the record and reached to the conclusion of the enquiry that the Petitioner has not adhered the provisions of Section 59-A of the M.P. Excise Act, without any evidence or material and with a prejudicial mind set.

3.9 Petitioner further submitted that he has served the institution for 28 years and his ACRs were also satisfactory and his integrity was beyond any doubt therefore, only on the basis of the allegations of disposal of the bail applications by passing the erroneous orders, it cannot be assumed that the charges of corruption were proved and therefore, the findings of the enquiry report were incorrect, unjust, illegal and liable to be quashed.

3.10 Counsel for the petitioner prays for quashment of the order of the removal dated 02.09.2014 and rejection of appeal dated 17.03.2016.

4. <u>SUBMISSIONS OF COUNSEL FOR THE RESPONDENTS</u>

Respondents supported the order of removal and dismissal of appeal mainly on the following grounds:

4.1 Jaipal Mehta forwarded a complaint, but action was not taken only on the basis of the complaint of Jaipal Mehta and it was initiated after being satisfied that delinquent was indulged in adopting double standard

at the time of deciding bail applications in respect of offences registered under Section 34 (2) of the M.P. Excise Act therefore, non examination of Jaipal Mehta during enquiry is of no consequence.

4.2 During enquiry, Execution Clerk of court of delinquent was examined as departmental witness, who produced and proved 19 bail orders passed by the delinquent and the factum of passing the orders by the delinquent was not disputed therefore, there was no need to examine any other witness during enquiry and the allegations were duly proved.

4.3 Learned counsel for the respondents pointed out that the proper procedure was adopted during enquiry and the enquiry was conducted in fair and impartial manner. Full opportunity was afforded to delinquent and after securing reply/written arguments, the enquiry report was prepared on the basis of available material and evidence and there is no scope for interference in the order of removal.

4.4 Counsel for the respondents submitted that when there is no flaw in the decision making process and the process was not contrary to the principles of natural justice or any other violation and prejudical to the petitioner, no interference is warranted under Article 226 of the Constitution of India.

4.5 Counsel for the respondents relied on the judgment delivered by the coordinate Bench in the matter of ***J.K. Verma Vs. State of M.P. & Ors ILR 2011 MP 1695*** wherein the coordinate Bench has held that matter of taking disciplinary action against a judicial officer is required to be evaluated with due care as a judicial officer is required to maintain very high standard of devotion of duty and when there is no violation of breach of statutory or constitutional provisions, decision taken to remove

a judicial officer cannot be interfered with by this Court in writ jurisdiction. The relevant paragraphs are as under:

> *"31- Accordingly, we are of the considered view that the contentions of Shri Brian D'Silva, learned Senior Advocate, to the effect that mere negligent way of dealing with the matter is not sufficient to take action against the petitioner cannot be accepted even though there may not be any direct proof with regard to use of improper motive or extraneous consideration by the petitioner, but when a judicial officer like the petitioner, having an experience of more than 20 years, shows total recklessness and disregard in the matter of deciding more than 30 cases, particularly bail applications, in a manner which cannot be approved, inference of extraneous consideration and improper motive can be imputed and disciplinary action taken. It cannot be lost sight of that decision in the matter of taking action against the petitioner is undertaken by the High Court after the allegations levelled were proved in the departmental enquiry and a Committee of Judges scrutinized the same and finally the matter was approved by a Full Court, of the High Court. Under such circumstances, this Court in exercise of its limited jurisdiction in a petition under Article 226 of the Constitution cannot sit over the said decision as if it is exercising further appellate jurisdiction. This Court can interfere only if statutory rules or regulations are found to be violated or the enquiry is found to be held in total disregard to or in contravention to settled norms of conducting the enquiry. In the present case nothing of this sort is brought to the notice of this Court. The only ground canvassed is to the*

effect that no corrupt motive or the allegation of doubtful integrity is proved and, therefore, the action is unsustainable. But, when the law on the subject is clear and when the law permits the competent authority to take action against the delinquent person if consistently he shows act of negligence and recklessness in the discharge of his duties, we are of the considered view that no interference in the matter is called for.

32- This Court while exercising the powers of judicial review in the matter of taking disciplinary action against a judicial officer is required to evaluate the case keeping in view the fact that a case of a judicial officer has to be dealt in a different manner and not like a normal case of disciplinary enquiry. A judicial officer is required to maintain a very high standard of devotion to duty and if it is found that a judicial officer has time and again shown utter disregard to settled principles and norms of justice in discharging his duty, a decision taken to remove such a judicial officer cannot be interfered with by this Court until and unless the material available on record shows non-application of mind and violation or breach of statutory and constitutional provisions. In the present case, no such breach or irregularity is found warranting consideration."

4.6 Counsel for the respondents further relied on the order of coordinate Bench delivered in the matter of ***Suresh Kumar Aarsey Vs. State of M.P. & Anr. Passed in W.P.No.13437/2016,*** wherein the coordinate Bench has held inadequacy of evidence cannot be subject matter of judicial review and the High Court can interfere with the order

of punishment only in case violation of the provisions of rules or principles of natural justice are proved. The relevant paragraph reads as under:

> *"13. As per the principles laid down in the aforesaid cases, it is clear that interference can be made against the findings of the inquiring authority and other authorities provided finding are perverse or it is a case of no evidence. If there is some evidence to support the conclusion of Inquiring Authority, no interference can be made. Adequacy of evidence cannot be subject matter of judicial review."*

4.7 Reliance is further placed on the judgment delivered in the matter of ***Kirti Kumar Dwivedi Vs. Registrar General, High Court of M.P. 2022 (2) MPLJ 296*** wherein the coordinate Bench had held that the scope of judicial review in case of disciplinary proceedings in a petition under Article 226 of the Constitution of India is limited.

4.8 Further reliance is placed upon the judgment of coordinate Bench in the matter of ***Hindustan Petroleum Corporation Limited Vs. Kailash Chandra 2021 (4) MPLJ 121*** wherein the coordinate Bench opined that judicial review of disciplinary proceedings is related to legality of decision making process and not to the decision and if enquiry suffers from serious procedural impropriety or finding of enquiry are perverse then only interference can be made.

The respondents pray for dismissal of the petition.

5. <u>CONSIDERATION AND CONCLUSION</u>

5.1 It is not in dispute that Petitioner was discharging the duties as Additional District and Sessions Judge and the allegations levelled against the Petitioner was for adopting double standard in deciding the

bail applications arising out of the offences punishable under Section 34 (2) and 49 (A) of the M.P. Excise Act, 1950. The allegations were leveled in respect of some other offences also, but as the Charge No.2 was not found proved, the same is not the subject matter of this petition. However, various cases were examined by the inquiring authority meticulously and we do not propose to putforth those orders by referring in each and every case relied upon by the inquiring authority. Suffice it to say, in some of the cases wherein the bail was granted in a liberal manner without considering the relevant provisions whereas in most of the cases, same approach was not adopted which amounts to application of double standard.

5.2 After receipt of the complaint submitted by one Jaipal Mehta, Jaitapura Khargon, the copies of the orders were collected and orders were examined. The enqiuiry was initiated against the Petitioner under Rule 14 of the Rules 1966. The bail orders were examined by the inquiring authority and inquiring authority was of the view that the Petitioner adopted the double standards at the time of deciding the bail applications meaning thereby, the Petitioner has extended benefits to some of the applicants, which was not extended to the other applicants and the same was evident from bare perusal of the bail orders passed at the time of deciding the bail applications. Therefore, the finding was recorded by the inquiring authority that the charge no.1 was proved against the petitioner.

5.3 Proper procedure was adopted during enquiry; show cause notice was issued, the Petitioner was granted opportunity to file reply to the show cause, the article of charges and all other relevant documents were supplied along with show cause notice, enquiry was conducted in the

presence of the delinquent and he was granted opportunity to cross examine the departmental witness and he examined the defence witness, delinquent was permitted to file the written arguments, enquiry report was forwarded to the delinquent along with the show cause notice issued for inflicting punishment, matter was placed before the Administrative Committee (HJS) of High Court and thereafter before Full Court and order of removal was passed in accordance with resolution passed in Full Court. In this way, complete procedure was adopted in the matter and order of removal was passed after conducting full fledged departmental enquiry and there is no scope for interference in the order of removal.

5.4 It is no more *res integra* that High Court in exercise of powers under Article 226 of the Constitution of India is not supposed to sit as a Court of Appeal to re-appreciate or reweigh the entire evidence and subject matter of judicial review is only limited to the decision making process. If the process runs contrary to the principles of natural justice and such violation prejudices the delinquent, the interference can be made otherwise not. Similarly, if the conclusion or finding is such as no reasonable person would have ever reached, the High Court may interfere with the conclusion or finding or mold the relief so as to make it appropriate in the facts of the case otherwise not.

5.5 On close scrutiny of the enquiry report and the finding of the inquiring authority, we are of the considered view that allegations against the Petitioner to the effect that he had granted bail to some of the applicants without considering the provisions of Section 59-A of the M.P. Excise Act and in other cases, bail applications were dismissed after applying the said provision and the conclusion of enquiry that the allegation was proved, is based on sound reasoning.

5.6 Even though there may not be direct evidence to show corrupt or improper motive but on bare perusal of the bail orders, it can be seen that the judicial officer has acted in a manner which cannot be approved to any manner whatsoever. The inference of improper motive and extraneous consideration was properly drawn against the Petitioner. It is also trite law that while exercising the powers of judicial review, the High Court should not normally substitute its own conclusion on penalty and impose some other penalty in the absence of any shockingly disproportionate quantum of punishment.

5.7 Similarly the strict rules of evidence are not applicable to departmental enquiry proceedings and the only requirement of law is that allegations against delinquent officer must be established by such evidence acting upon which reasonable person may arrive at a finding recorded by the enquiry officer. It is settled position of law that Court exercising the jurisdiction of judicial review should not interfere with the findings of fact arrived at by the departmental enquiry proceedings except in a case of malafide or perversity. The jurisdiction of the Court in the judicial review is limited. The Apex Court held in the matter of ***All India Judges Association Vs. Union of India, (1993) 4 SCC 288*** that "Judicial service is not a service in the sense of 'employment'. The judges are not employees. As members of judiciary, they exercise sovereign judicial powers of the State, absolute uprightness of behaviors and conduct is required to be maintained."

5.8 The Supreme Court, in the case of ***State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya, (2011) 4 SCC 584***, has considered the scope of judicial review into findings of departmental authorities and the test for determining perversity in a finding of the enquiry officer is

considered and the law is laid down in paragraph 7, in the following terms:

> *"7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a Tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous consideration. [Vide B.C. Chaturvedi Vs. Union of India, (1995) 6 SCC 749; Union of India Vs. G. Ganayutham, (1997) 7 SCC 463; Bank of India Vs. Degala Suryanarayana, (1999) 5 SCC 762; and, High Court of Judicature at Bombay Vs. Shashikant S. Patil (supra)].*

If the principles laid down by the Supreme Court, in the case referred to herein above, are taken note of, then a reasonable finding arrived at by the Inquiring Authority in the present case based on material available on record can neither be interfered with by this Court nor can it termed as perverse or unreasonable to such an extent that interference can be made by this Court.

5.9 Considering the material available in the present case, it is apparent that the petitioner was holding the post of Additional Sessions Judge with which comes a great responsibility and he was under obligation to

conduct himself in a manner befitting the post held by him. He was under duty to conduct the proceedings of bail applications in conformity with the provisions of law. He extended the benefit of bail to some applicants relying on the pronouncement of High Court and refused to grant bail to others without considering those pronouncements. No violation of principles of natural justice or error is found in the procedure followed in the enquiry in the present case. In the absence of any procedural illegality, irregularity in the conduct of departmental enqiury, in the considered opinion of this Court, no interference is warranted and after considering the over all material available in the record and in view of the settled position of law, we do not find any reason to interfere in the order of punishment/removal dated 02.09.2014 and the order of rejection of appeal on 17.03.2016 and accordingly, the writ petition is dismissed. There shall be no order as to costs.

(SANJEEV SACHDEVA) **(VINAY SARAF)**

ACTING CHIEF JUSTICE **JUDGE**

P/-