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WP-13787-2020

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANIL VERMA

ON THE 20th OF JANUARY, 2025WRIT PETITION No. 13787 of 2020*SHAIENDRA SINGH RAGHUVANSHI**Versus**THE STATE OF M.P. AND OTHERS*

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Appearance:

Shri Shivendra Singh Raghuvanshi, Advocate for the petitioner.

Shri Dilip Awasthi, Government Advocate for respondent/State.

.....

ORDER

Both the parties heard finally.

2. Petitioner has preferred this petition under Article 226 of the Constitution of India seeking following reliefs:-

"(i) Quashing the impugned order dated 27/08/2020 (Annexure P-1).

(ii) Directing respondents follow the rules which are in consonance with the principle of natural Justice as mentioned in the Rules 2016 Rule no 25 (A).

(iii) Any other relief which this Hon'ble Court finds appropriate in the matter.

(iv) Costs."

3. Brief facts of the case are that petitioner has served Home Guard



Sainik No.260 in District Shivpuri. He was accused in criminal case No.45/1993 registered under Sections 541, 294, 323, 341, 34 of IPC, No.81/1994 registered under Sections 147, 148, 149, 323 of IPC and No.103/2014 (Crime No.1/2014) registered under Sections 456, 354 of IPC, No.941/2017 (Crime No.133/2017) registered under Sections 456, 354 of IPC. He has been terminated by respondent No. 3 vide order dated 09.12.2019 (Annexure P-5). Thereafter, he has been reinstated in service but again vide order dated 27.08.2020, his services have been terminated without giving any opportunity of hearing as per Rule 25(A) of M.P. Home Guards Act, 1947 and M.P. Home Guards Rules, 2016 (in short "Rules, 2016"), principles of natural justice were also violated. . Being aggrieved by the aforesaid, petitioner has preferred this petition.

4. Learned counsel for the respondents/State opposed the prayer and prays for its rejection by submitting in their reply that in exercise of power conferred under Rule 25(A) of the Rules, 2016, services of the petitioner have been put to an end. The order is legal and in consonance with the Rules. Petitioner was having criminal record, therefore, he is not entitled to get benefit of service in a disciplined force. The petitioner was liable to intimate the respondent about criminal cases registered against him. Offence under Section 354 of IPC involves the sexual harassment of a woman, which is offence of moral turpitude. This petition is also not maintainable as the petitioner has alternative remedy to file an appeal before the Appellate Authority. Therefore, this petition is devoid of substance and deserves to be dismissed.



5. Learned counsel for the petitioner also contended in his rejoinder that petitioner has already given the information to District Commandant Office on 10.09.2017 within time that he has been finally acquitted in such offence. He has also filed copy of receipt. In the instant matter, principle of natural justice has been violated, therefore, the question of alternative remedy does not arise.

6. Both the parties heard at length and perused the entire record with due care.

7. Petitioner relied upon the order dated 04.04.2018 passed by coordinate Bench of this Court in the case of **Neelesh Shukla Vs. State of M.P. and others** [W.P. No.8455/2017], judgment dated 26.03.2008 passed by Division Bench of this Court in the case of **Sohan Singh and others Vs. State of M.P. and others** [(2008) 3 MPLJ 365] and judgment passed by Division Bench of this Court in the case of **Sanjay Nagayach Vs. State of M.P. and others** [2012 RN 252].

8. It is a case where the petitioner, who is appointed on the post of Police Constable, is duty bound to disclose the offence registered against him and from perusal of the petition, it appears that the aforesaid four offences have been registered against the petitioner.

9. The jurisdiction of the High Court in writ petition under Article 226 of the Constitution of India is to examine the decision-making process rather than to act as a Court of Appeal to substitute its own decision. In appropriate cases, if the Court finds that the decision-making process is arbitrary or illegal, the Court will direct the authority for consideration rather than to



substitute the decision of the competent authority with that of its own.

10. In the case at hand, allegation has been levelled against the petitioner is that he has concealed the material information regarding registration of aforesaid four offences against him.

11. Although the petitioner in his rejoinder contended that he has informed the District Commandant, Shivpuri regarding registration of a criminal case for the offences under Sections 354, 456 of IPC against him but he has never disclosed the factum of other three offences registered against him.

12. Suppression of material information sought by the employer or furnishing false information itself amounts to moral turpitude and is also separate and distinct from involvement in a criminal case [See : **Devendra Kumar Vs. State of Uttaranchal [(2013) 9 SCC 363]**].

13. The Hon'ble Apex Court in the case of **State of West Bengal and Others Vs. SK.Nazrul Islam, (2011) 10 SCC 184**, it has been held as under: -

"We have heard learned counsel for the parties and we fail to appreciate how when a criminal case under Sections 148, 323, 380, 448, 427, 506 of IPC, against the respondent, was pending in the Court of the Additional Chief Judicial Magistrate, Uluberia, Howrah, any mandamus could have been issued by the High Court to the authorities to appoint the respondent as a Constable. Surely, the authorities entrusted with the responsibility of appointing constables were under duty to verify the antecedents of a candidate to find out whether he is suitable for the post of



constable and so long as the candidate has not been acquitted in the criminal case of the charges under Sections 148, 323, 380, 448, 427, 506, IPC, he cannot possibly be held to be suitable for appointment to the post of Constable".

14. Although the appellant has submitted copy of two judgments (Annexures P-2 and P-3) in regard with two offences [Criminal Case No.103/2014 (Crime No.1/2014) & No.941/2017 (Crime No.133/2017)] registered against him, but he did not produce the judgments/orders passed in other two offences [Criminal Case No.45/1993 & No. 81/1994], which were registered against him, therefore, it appears that the petitioner has concealed the material facts regarding registration of offences against him.

15. The larger Bench of this Court in the case of **Ashutosh Pawar Vs. High Court of Madhya Pradesh and another** [W.P. No.5865/2016, decided on 12.01.2018] has held as under:-

"Decision of Criminal Court on the basis of compromise or an acquittal cannot be treated that the candidate possesses good character, which may make him eligible, as the criminal proceedings are with the view to find culpability of commission of offence whereas the appointment to the civil post is in view of his suitability to the post. The test for each of them is based upon different parameters and therefore, acquittal in a criminal case is not a certificate of good conduct to a candidate. The competent Authority has to take a decision in respect of the suitability of the



candidate to discharge the functions of a civil post and that mere acquittal in a criminal case would not be sufficient to infer that the candidate possesses good character. Division Bench judgment of this Court in W.P.No.5887/2016 (Arvind Gurjar vs. State of M.P.) is overruled. Another Division Bench judgment in W.A. No.367/2015 (Sandeep Pandey vs. State of M.P. and others) is also overruled."

16. In view of the aforesaid, this Court is of the considered opinion that four criminal offences have been registered against the petitioner, although out of four, in two offences, he has been acquitted by the competent Court, but he has been acquitted after giving benefit of doubt, therefore, his acquittal cannot be treated as an honorable acquittal.

17. Apart from the above, petitioner has concealed the material facts of registration of four offences against him. He has intimated his department regarding one offence only. Suppression of material information regarding aforesaid criminal antecedents also amounts to moral turpitude act of the petitioner.

18. Accordingly, on the basis of the aforesaid, this Court is of the considered opinion that as per Rule 23(*cha*) of the Rules, 2016, petitioner has failed to furnish the requisite information regarding registration of offence against him within 48 hours to the District Commandant, therefore, as per the Rule 23(*cha*), petitioner has not followed the terms of the discipline and he deserves to be terminated, therefore, the order dated 27.08.2020 (Annexure P-1) passed by the respondent No. 3 is in accordance with law



and does not call for any interference and the citations filed by the petitioner are not applicable in the instant matter.

19. Apart from the above, petitioner is having four criminal antecedents, therefore, he is not entitled to remain in the service in a disciplined police force. Petitioner did not file any departmental appeal as per Section 26 of the Rules, 2016 before the competent higher authorities, hence, due to availability of efficacious alternative remedy, this petition is also not maintainable.

20. Accordingly, this writ petition fails and is hereby **dismissed**.

(ANIL VERMA)
JUDGE

Abhi