IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 5TH OF SEPTEMBER, 2023

WRIT PETITION No.18341 of 2023

BETWEEN:-

1. BADELAL PATHAK S/O SHRI CHANDRA BHAVAV PATHAK, AGED ABOUT 65 YEARS, OCCUPATION: UNEMPLOYED R/O ISHAN PARISAR COLONY NARMADAPURAM (MADHYA PRADESH)

.....PETITIONER

(BY SMT. ANCHAN PANDEY - ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH THROUGH SECRETARY HOME DEPARTMENT R/O VALLABH BHAWAN BHOPAL (MADHYA PRADESH)

2. THE DIRECTOR GENERAL MP POLICE HEADQUARTERS JAHANGIRABAD BHOPAL (MADHYA PRADESH)

3. THE DEPUTY INSPECTOR GENERAL NARMADAPURAM DISTRICT NARMADAPURAM (MADHYA PRADESH)

4. THE SUPRITENDENT OF POLICE NARMADAPURAM DISTRICT NARMADAPURAM (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI SWAPNIL GANGULY – DEPUTY ADVOCATE GENERAL)

This petition coming on for orders this day, the court passed the following:

ORDER

This petition under Article 226 of Constitution of India has been filed against the order dated 17.12.2014 passed by Deputy Inspector General, Narmadapuram, M.P. in File No.DIG/HO.KS/PA/PUNISHMENT/625A/2014 by which the services of petitioner have been terminated on the ground of his conviction under Sections 7, 13(1)D read with Section 13(2) of Prevention of Corruption Act, 1988.

2. It the case of petitioner that in light of Rule 64 of M.P. Civil Services (Pension) Rules, 1976 (for brevity, 'Rules, 1976'), petitioner is entitled for provisional pension for the reason that pension is the property of petitioner and which cannot be withheld in light of provisions of Article 300-A of Constitution of India. It is further submitted that non-payment of Gratuity, Leave Allowances, GPF, GIS and other allowances to petitioner is bad. It is further submitted that the Supreme Court in the case of **Shankar Dass vs. Union of India & Another** reported in **AIR 1985 SC 772,** has held that a person should not be dismissed upon his conviction for trivial offence.

3. *Per contra*, petition is vehemently opposed by counsel for State. It is submitted that once petitioner has been convicted then there is no presumption of innocence in his favour and the provisions of Rule 64 of Rules, 1976 would not apply.

4. Heard learned counsel for parties.

5. Appeal is a continuation of trial. Now, the only question of consideration is as to whether petitioner is entitled for provisional pension merely on the ground of pendency of criminal appeal against his conviction or not ?

6. When a person is facing trial, then there is an element of innocence attached to it. Merely, because a criminal trial is pending, a person cannot be treated as convicted. However, after conviction of the accused, if his conviction is not stayed and only his sentence is suspended then it cannot be presumed that the accused/employee is an innocent person. If the conviction is not stayed then the disqualifications attached to the conviction must follow.

7. In Criminal Appeal No.3647/2014 which was filed against the judgment of conviction dated 11.12.2014 passed by Special Judge (Prevention of Corruption Act, 1988), Hoshangabad, following order was passed :-

Criminal Appeal No.3647/2014

14.1.2015

Shri Sanjeev Kumar Tiwari, Advocate, for the appellant.
Shri Pankaj Dubey, Advocate, for the respondent.
Heard on admission.
Admit.
Record of the trial court be called for.
List the case for final hearing.
Also heard on I.A. No.24998/2014, which is an application for suspension of sentence and grant of bail on behalf of sole appellant Bade Lal Pathak.

> The appellant was on bail during and has been released on bail after conviction. He has deposited the fine amount.
>
> On due consideration of the facts and circumstances of the case, we deem it proper to grant bail to the appellant. It is, therefore, directed that if he executes a personal bond in the sum of Rs.50,000/- and furnishes a solvent surety in the like amount to the satisfaction of the Chief Judicial Magistrate, Hoshangabad, the execution of sentence of imprisonment alone passed against him shall remain suspended and he shall be released on bail. He shall now appear before the Registry of this Court on 20.4.2015 and on such other dates as may be directed by the office. It is made clear that conviction of the appellant is not suspended.
>
> The application is allowed to the extent mentioned above.
>
> Certified copy as per rules."
>
> **(emphasis supplied)**

The use of word "alone" after the word imprisonment in the order makes it abundantly clear that Coordinate Bench of this Court had left no element of doubt that except the sentence nothing else has been stayed.

8. Even otherwise, the Supreme Court in the case of **K.C. Sareen vs. CBI, Chandigarh** reported in **(2001) 6 SCC 584**, has held as under :-

> **"10.** A three-Judge Bench of this Court has elaborately considered the scope and ambit of the powers of the appellate court envisaged in Section 389 of the Code (vide *Rama Narang* v. *Ramesh Narang* [(1995) 2 SCC 513]). Ahmadi, C.J., who authored the judgment for the Bench said that what can be suspended under Section 389(1) of the Code is the execution of the sentence or

execution of the order and obviously the "order" referred to in the sub-section must be an order which is capable of execution. Learned Chief Justice then observed thus: (SCC p. 524, para 15)

> "An order of conviction by itself is not capable of execution under the Code. It is the order of sentence or an order awarding compensation or imposing fine or release on probation which are capable of execution and which, if not suspended, would be required to be executed by the authorities. Since the order of conviction does not on the mere filing of an appeal disappear it is difficult to accept the submission that Section 267 of the Companies Act must be read to apply only to a 'final' order of conviction. Such an interpretation may defeat the very object and purpose for which it came to be enacted."

Nevertheless, the three-Judge Bench further stated that in a certain situation the order of conviction can be executable and in such a case the power under Section 389(1) of the Code could be invoked. The ratio of the judgment can be traced out in the said paragraph which is extracted below: (SCC pp. 524-25, para 16)

> "*16*. In certain situations the order of conviction can be executable, in the sense, it may incur a disqualification as in the instant case. In such a case the power under Section 389(1) of the Code could be invoked. In such situations the attention of the appellate court must be specifically invited to the consequences which are likely to fall to enable it to apply its mind to the issue since under Section 389(1) it is under an obligation to support its order 'for reasons to be recorded by it in writing'. If the attention of the court is not invited to this specific consequence which is likely to fall upon conviction how can it be expected to assign reasons relevant thereto? No one can be allowed to play hide and seek with the court; he cannot suppress the precise purpose for which he seeks suspension of the conviction and obtain a general order of stay and then contend that the disqualification has ceased to operate."

11. The legal position, therefore, is this: though the power to suspend an order of conviction, apart from the order of sentence, is not alien to Section 389(1) of the Code, its exercise should be limited to very exceptional cases. Merely because the convicted person files an appeal in challenge of the conviction the court should not suspend the operation of the order of conviction. The court has a duty to look at all aspects including the ramifications of keeping such conviction in abeyance. It is in the light of the above legal position that we have to examine the question as to what should be the position when a public servant is convicted of an offence under the PC Act. No doubt when the appellate court admits the appeal filed in challenge of the conviction and sentence for the offence under the PC Act, the superior court should normally suspend the sentence of imprisonment until disposal of the appeal, because refusal thereof would render the very appeal otiose unless such appeal could be heard soon after the filing of the appeal. But suspension of conviction of the offence under the PC Act, dehors the sentence of imprisonment as a sequel thereto, is a different matter.

12. Corruption by public servants has now reached a monstrous dimension in India. Its tentacles have started grappling even the institutions created for the protection of the republic. Unless those tentacles are intercepted and impeded from gripping the normal and orderly functioning of the public offices, through strong legislative, executive as well as judicial exercises the corrupt public servants could even paralyse the functioning of such institutions and thereby hinder the democratic polity. Proliferation of corrupt public servants could garner momentum to cripple the social order if such men are allowed to continue to manage and operate public institutions. When a public servant is found guilty of corruption after a judicial adjudicatory process conducted by a court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior court. The mere fact that an appellate or revisional forum has decided to entertain his challenge and to go into the issues and findings made

against such public servants once again should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction, it is public interest which suffers and sometimes, even irreparably. When a public servant who is convicted of corruption is allowed to continue to hold public office, it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction, the fallout would be one of shaking the system itself. Hence it is necessary that the court should not aid the public servant who stands convicted for corruption charges to hold only (*sic*) public office until he is exonerated after conducting a judicial adjudication at the appellate or revisional level. It is a different matter if a corrupt public officer could continue to hold such public office even without the help of a court order suspending the conviction.

13. The above policy can be acknowledged as necessary for the efficacy and proper functioning of public offices. If so, the legal position can be laid down that when conviction is on a corruption charge against a public servant the appellate court or the revisional court should not suspend the order of conviction during the pendency of the appeal even if the sentence of imprisonment is suspended. It would be a sublime public policy that the convicted public servant is kept under disability of the conviction in spite of keeping the sentence of imprisonment in abeyance till the disposal of the appeal or revision.

14. We are fortified in holding so by two other decisions of this Court. One is *Dy. Director of Collegiate Education (Admn.)* v. *S. Nagoor Meera* [(1995) 3 SCC 377 : 1995 SCC (L&S) 686 : (1995) 29 ATC 574] . The

following observations of this Court are apposite now: (SCC p. 381, para 9)

"The more appropriate course in all such cases is to take action under clause (*a*) of the second proviso to Article 311(2) once a government servant is convicted of a criminal charge and not to wait for the appeal or revision, as the case may be. If, however, the accused government servant is acquitted on appeal or other proceeding, the order can always be revised and if the government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to had he continued in service. The other course suggested, viz., to wait till the appeal, revision and other remedies are over, would not be advisable since it would mean continuing in service a person who has been convicted of a serious offence by a criminal court."

15. The other decision is *State of T.N.* v. *A. Jaganathan* [(1996) 5 SCC 329 : 1996 SCC (Cri) 1026] which deals with the case of some public servants who were convicted, inter alia, of corruption charges. When the appeal filed by such public servants was dismissed, the High Court entertained a revision and ordered suspension of the sentence as well as the order of conviction, in exercise of the powers under Section 389(1) of the Code, taking cue from the ratio laid down in *Rama Narang* v. *Ramesh Narang* [(1995) 2 SCC 513]. But when the State moved this Court against the order of suspension of conviction, a two-Judge Bench of this Court interfered with it and set aside the order by remarking that in such cases the discretionary power to order suspension of conviction either under Section 389(1) or even under Section 482 of the Code should not have been exercised."

9. The Supreme Court in the case of **State of Maharastra vs. Gajanan and Another** reported in **2003 (12) SCC 432** has held as under :-

"4. Having perused the impugned order as also the judgment of this Court in *K.C. Sareen* [(2001) 6 SCC 584 : 2001 SCC (Cri) 1186] we find the High Court had no room for distinguishing the law laid down by this Court in *K.C. Sareen case* [(2001) 6 SCC 584 : 2001 SCC (Cri) 1186] even on facts. This Court in the said case held: (SCC p. 589, para 11)

> "*11*. The legal position, therefore, is this: though the power to suspend an order of conviction, apart from the order of sentence, is not alien to Section 389(1) of the Code, *its exercise should be limited to very exceptional cases. Merely because the convicted person files an appeal in challenge of the conviction the court should not suspend the operation of the order of conviction*. The court has a duty to look at all aspects including the ramifications of keeping such conviction in abeyance. It is in the light of the above legal position that we have to examine the question as to what should be the position when a public servant is convicted of an offence under the PC Act. No doubt when the appellate court admits the appeal filed in challenge of the conviction and sentence for the offence under the PC Act, the superior court should normally suspend the sentence of imprisonment until disposal of the appeal, because refusal thereof would render the very appeal otiose unless such appeal could be heard soon after the filing of the appeal. *But suspension of conviction of the offence under the PC Act, dehors the sentence of imprisonment as a sequel thereto, is a different matter.*"
>
> (emphasis supplied)

5. In the said judgment of *K.C. Sareen* [(2001) 6 SCC 584 : 2001 SCC (Cri) 1186] this Court has held that it is only in very exceptional cases that the court should exercise such power of stay in matters arising out of the Act. The High Court has in the impugned order nowhere pointed out what is the exceptional fact which in its opinion required it to stay the conviction. The High Court also failed to note the direction of this Court that it

> has a duty to look at all aspects including ramification of keeping such conviction in abeyance. The High Court, in our opinion, has not taken into consideration any of the above factors while staying the conviction. It should also be noted that the view expressed by this Court in *K.C. Sareen case* [(2001) 6 SCC 584 : 2001 SCC (Cri) 1186] was subsequently approved followed by the judgment of this Court in *Union of India* v. *Atar Singh* [(2003) 12 SCC 434 : JT (2001) 10 SC 212] .

10. Under these circumstances, when a person has been convicted for offence under Prevention of Corruption Act, 1988, then stay of conviction should not be granted in a light manner. Therefore, when there is no stay of conviction then the disqualifications attached to the conviction must follow. The services of petitioner have been terminated on the ground of his conviction. Learned counsel for petitioner could not point out as to how the termination of his services is bad in law. Furthermore, the services of petitioner were terminated in the year 2014 and the petition has been filed in the year 2023. The age of petitioner is 65 years therefore, he has already attained the age of superannuation.

11. So far as the question of non-grant of provisional pension is concerned, Rule 64 of the Rules, 1976 reads as under :-

> **"64.Provisional pension where departmental or judicial proceeding may be pending**. -
>
> (1) (a) In respect of Government servants refer to in sub-rule (4) of Rule 9 the Head of Office shall authorise the payment of provisional pension not exceeding the maximum pension and 50% of gratuity taking into consideration the gravity of charges levelled against such Government servant, which would have been admissible on the basis of

> qualifying service up to the date of retirement of the Government servant or if he was under suspension on the date of retirement, up to the date immediately preceding the date on which he was placed under suspension.
> (b) The provisional pension shall be drawn on establishment pay bill and paid to retired Government servant by the Head of Office during the period commencing from the date of retirement to the date on which upon conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.
> (c) Provisional gratuity shall be drawn on establishment pay bill and paid to retired Government servant by the Head of Office after adjusting dues mentioned in sub-rule [(2)] of Rule 60, under intimation to Audit Office. Payment of provisional pension/gratuity made under sub-rule (1) shall be adjusted against final retirement benefit sanctioned to such Government servant upon conclusion of such proceedings, but no recovery shall be made where the pension/gratuity finally sanctioned is less than the provisional pension/gratuity or the pension/gratuity is reduced or withheld either permanently or for a specified period."

From a plain reading of Rule 64, it is clear that provisional pension shall be drawn on establishment pay bill and paid to retired Government servant by the Head of Office during the period commencing from the date of retirement to the date on which upon conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.

Thus, it is clear that Rule 64(1)(b) is applicable only when the trial is pending where an element of innocence is attached to the accused. Once the trial has concluded in conviction of the accused/delinquent officer and merely because an appeal against his conviction is pending in which the conviction order has not been stayed then for the purpose of Rule 64 of the Rules, 1976, it cannot be said that judicial proceedings have not come to an end for the simple reason that petitioner has to face the disqualifications attached to the conviction.

12. So far as non-payment of gratuity is concerned, Section 4(6) of the Payment of Gratuity Act, 1972 reads as under :-

> **"4. Payment of Gratuity. -** (1) x x x
> (2) x x x
> (3) x x x
> (4) x x x
> (5) x x x
> (6) Notwithstanding anything contained in sub-section(1).-
> (a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer shall be forfeited to the extent of the damage or loss so caused;
> (b) the gratuity payable to an employee may be wholly or partially forfeited-
> (i) if the services of such employee have been terminate for his riotous or disorderly conduct or any other act of violence on his part, or
> (ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment."

13. So far as the question of non-payment of GPF, GIS, Leave Encashment etc. are concerned, it is true that upon termination of services, the past service of petitioner would stand forfeited but GPF is nothing but a contribution made by the delinquent officer. Furthermore, in absence of provision, leave encashment and GIS cannot be withheld.

14. Accordingly, this petition is **disposed of** with the following observations :-

(1) So far as the termination of services of petitioner is concerned, it is clarified that in case if the appeal is allowed and petitioner is acquitted, then he may reagitate before the authorities challenging his order of termination.

(2) So far as the amount under the head like GIS, GPF, Leave Encashment, etc. are concerned, respondents shall pass a specific order. If the aforesaid amount is the personal property of petitioner and does not stand forfeited on account of his conviction, then it shall be paid to petitioner within a period of three months from today.

(G.S. AHLUWALIA)
JUDGE

Priya.P