

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA**

**ON THE 19<sup>th</sup> OF DECEMBER, 2023**

**WRIT PETITION No. 23807 of 2022**

**BETWEEN:-**

**HEERALAL AWASTHI S/O SHRI SHAUKHILAL  
AWASTHI, AGED ABOUT 55 YEARS,  
OCCUPATION: UNEMPLOYEE B-17 PROFESSOR  
COLONY TRS CAMPUS DISTRICT REWA  
(MADHYA PRADESH)**

**....PETITIONER**

***(BY SMT.ANCHAN PANDEY - ADVOCATE)***

**AND**

- 1. THE STATE OF MADHYA PRADESH  
THROUGH PRINCIPAL SECRETARY  
HIGHER EDUCATION DEPARTMENT  
MANTRALAYA VALLABH BHAWAN  
BHOPAL (MADHYA PRADESH)**
- 2. THE COMMISSIONER HIGHER EDUCATION  
DEPARTMENT SATPURA BHAWAN  
BHOPAL (MADHYA PRADESH)**
- 3. THE ADDITIONAL DIRECTOR HIGHER  
EDUCATION DEPARTMENT DIVISION  
DISTRICT REWA (MADHYA PRADESH)**
- 4. THE PRINCIPAL GOVT. SCIENCE  
COLLEGE DISTRICT REWA (MADHYA  
PRADESH)**

**....RESPONDENTS**

***(BY SHRI GAJENDRA PARASHAR – PANEL LAWYER)***

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

**ORDER**

1. This petition under Article 226 of the Constitution of India has been filed seeking the following reliefs :-
  - i) The Hon'ble court may be pleased to allow the petition and direct the respondents to grant provisional pension/living encashment to the petitioner till today because he has not been dismissed from the service.
  - ii) That, the Hon'ble court may be pleased to direct respondent not to dismissed from the service till the pendency of the case or any other order in favour of the petitioner.
2. It is submitted by counsel for the petitioner that the petitioner was caught red handed and accordingly an offence under section 7 and 13(1)(d)(i) read with section 13(2) of the Prevention of Corruption Act was registered and by judgment dated 16.3.2022 passed by the Special judge (P.C.Act) Rewa in Special Case (Lok) No.5/2019, he has been convicted and sentenced to undergo imprisonment of four years with fine of Rs.2,000/-. It is submitted that now the respondents have stopped making payment of provisional pension and they have also not released the leave encashment. It is further submitted that the petitioner has preferred an appeal which has been registered as Criminal Appeal No.2829/2022 and the sentence of the petitioner has been suspended. Since appeal is continuation of trial, therefore, the petitioner is entitled to continue to receive the provisional pension as provided under Rule 64 of the M.P. Civil Services (Pension) Rules, 1976, hereinafter referred to as 'the 1976 Rules'.

3. Per contra, the petition is vehemently opposed by counsel for the State. It is submitted that it is true that appeal is continuation of trial but the provisions of Rule 64 of the 1976 Rules would not apply because after conviction, the petitioner has to face the disqualification attached to the conviction unless and until the conviction is stayed. By taking guidance from Order 42 Rule 5 CPC it is submitted that mere filing of an appeal would not operate as a stay. It is further submitted that if a decree is passed and the execution of the same is not stayed then the decree is executable in spite of the fact that the appeal is pending. Similarly, in the case of conviction, the accused/delinquent employee has to face the disqualification attached to the conviction unless and until they are stayed. There is no provision in the Cr.P.C. which provides that filing of appeal would automatically operate as stay of conviction. Furthermore, it is submitted that the Supreme Court in the case of **K.C.Sareen Vs. CBI, Chandigarh, reported in (2001)6 SCC 584**, has held that in the case of Prevention of Corruption Act, the conviction should not be stayed. Thus, the disqualification which is attached to the conviction has to be faced by the petitioner and even the provisions of Rule 64 of the 1976 Rules would not apply.
4. Heard the learned counsel for the petitioner.
5. The question involved in the present case is no more *resintegra*. This Court in the case of **Badelal Pathak Vs. State of Madhya Pradesh and others, decided on 5.9.2023 in W.P.No.18341/2023** has held as under :-
  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 subsection 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, de hors 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 (LandS) 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 Maharashtra 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.

6. Counsel for the petitioner could not point out any provision in the Cr.P.C. to the effect that mere filing of an appeal under section 374 of the Cr.P.C. would automatically apply as a stay of conviction. On the contrary, the Supreme Court in the case of **K.C.Sareen (supra)** and other cases has held that in a matter arising out of Prevention of Corruption Act, the conviction should not be stayed. The corruption is spreading like a cancer in the society and it is like a menace in the society. It is not the case of the petitioner that his conviction has been stayed. There is a distinction between conviction and sentence.
7. The Supreme Court in the case of **Govt. of A.P. v. B. Jagjeevan Rao**, reported in **(2014) 13 SCC 239** has held as under :-

6. It is not in dispute that the respondent was convicted by the Principal Special Judge for SPE & ACB cases for the offences punishable under the Act. The High Court, as the order would reflect, had only directed suspension of sentence. There was no order of stay of conviction. It is well settled in law that there is a distinction between suspension of sentence and stay of conviction. This has been succinctly stated in *Rama Narang v. Ramesh Narang* [*Rama Narang v. Ramesh Narang*, (1995) 2 SCC 513] : (*S. Nagoor Meera case* [*Director of Collegiate Education (Admn.) v. S. Nagoor Meera*, (1995) 3 SCC 377 : 1995 SCC (L&S) 686 : (1995) 29 ATC 574] , SCC pp. 380-81, para 7)

“7. ... ‘15. ... Section 389(1) empowers the appellate court to order that the execution of the sentence or order appealed against be suspended pending the appeal. What can be suspended under this provision is the execution of the sentence or the execution of the order. Does “order” in Section 389(1) mean order of conviction or an order similar to the one under Section 357 or Section 360 of the Code? Obviously, the order referred to in Section 389(1) must be an order capable of execution. 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. ...

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 consequence that is 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? ... If such a precise request was made to the Court pointing out the consequences likely to fall on the

continuance of the conviction order, the court would have applied its mind to the specific question and if it thought that case was made out for grant of interim stay of the conviction order, with or without conditions attached thereto, it may have granted an order to that effect.’ (*Rama Narang case* [*Rama Narang v. Ramesh Narang*, (1995) 2 SCC 513], SCC pp. 524-25, paras 15-16)”

7. A similar view has been expressed in *K.C. Sareen v. CBI* [(2001) 6 SCC 584 : 2001 SCC (Cri) 1186].

8. Conviction is executable and it would incur disqualification unless and until it is stayed. Therefore, merely because the appeal filed by the petitioner against his conviction is pending, it would not mean that he is not required to face the disqualification attached on account of his conviction. However, it is submitted by counsel for the petitioner that the petitioner has not been dismissed from service, therefore, he is entitled to receive the suspension allowance.
9. Heard the learned counsel for the State.
10. Counsel for the State after seeking instructions from the Principal, Govt. Adarsh Vigyan Mahavidyalaya has stated that by order dated 20.4.2023 the petitioner has been dismissed from service. The recommendation was made by a Six Member Committee of the College on 30.11.2022 which was accepted by the Addl. Director, Higher Education, Rewa Division Rewa by his order dated 18.4.2023. Accordingly, it is clear that the petitioner has been dismissed from service on 20.4.2023. Under these circumstances, this court is of the considered opinion that the petitioner is entitled for suspension allowance till March, 2023.

11. So far as other dues are concerned, it is directed that although he petitioner might have been convicted but any amount which is not liable to be forfeited on account of conviction cannot be withheld. Accordingly, it is directed that because the petitioner has been dismissed from service on account of his conviction for the offence under sections 7 and 13(1)(d)(i) read with section 13(2) of the Prevention of Corruption Act, he is not entitled for provisional pension. So far as other heads are concerned, respondents shall consider as to whether they are liable to be forfeited upon conviction or not. If they are not liable to be forfeited then the same shall be released within a period of four months from today.
12. Accordingly, respondents are directed to pass a speaking order pointing out which amount is liable to be forfeited and except that/those amounts, the respondents shall release the remaining amount payable to the petitioner under different heads.
13. With aforesaid observation, the petition is finally **disposed of**.

**(G.S. AHLUWALIA)**  
**JUDGE**

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