



NEUTRAL CITATION NO. 2026:MPHC-JBP:9093

IN THE HIGH COURT OF MADHYA PRADESH  
 AT JABALPUR  
 BEFORE  
 HON'BLE SHRI JUSTICE VIVEK RUSIA  
 &  
 HON'BLE SHRI JUSTICE PRADEEP MITTAL  
 ON THE 28<sup>th</sup> OF JANUARY, 2026

**WRIT PETITION No. 11415 of 2018**

***MOHD. SHAMIM AND OTHERS***

***Versus***

***THE STATE OF MADHYA PRADESH AND OTHERS***

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**Appearance:**

**Shri Manoj Kumar Sharma, Senior Advocate with Ms. Lavanya Verma,  
 Advocate for petitioners.**

**Shri Brajesh Nath Mishra, Advocate for respondents No. 2 and 3.**

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**WRIT PETITION No. 18436 of 2017**

***ARUN THAKUR***

***Versus***

***THE STATE OF MADHYA PRADESH AND OTHERS***

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NEUTRAL CITATION NO. 2026:MPHC-JBP:9093

**Appearance:**

**Shri Kaustubh Shanker Jha - Advocate for the petitioner.**

**Shri Brajesh Nath Mishra, Advocate for respondents No. 1 and 2.**

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**WRIT PETITION No. 20072 of 2017**

***VILAS KALE***

***Versus***

***THE STATE OF MADHYA PRADESH AND OTHERS***

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**Appearance:**

**Shri Siddhant Jain, Advocate for petitioner.**

**Shri Brajesh Nath Mishra, Advocate for respondent No. 2.**

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**WRIT PETITION No. 20158 of 2017**

***MUKESH KASHIV***

***Versus***

***THE STATE OF MADHYA PRADESH AND OTHERS***

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**Appearance:**

**Shri Siddhant Jain, Advocate for petitioner.**

**Shri Brajesh Nath Mishra, Advocate for respondent No. 2.**



## ORDER

*Per: Justice Pradeep Mittal,*

As all these writ petitions involve a common issue, they are heard and decided concomitantly by this common order. References to annexures and documents are taken from W.P. No. 11415 of 2018 for convenience.

**2.** That, petitioners by way of the instant writ petition are challenging the impugned order/s dated 28.10.2017 issued by the respondents whereby petitioners have been removed from service on the ground that the appointment of the petitioners on the post of Assistant Grade-III in the Establishment of the respondent No.3 has been found to be contrary to the procedure provided for such appointment, hence illegal. It is further stated in the order action of removal from service has been in view of the order passed by this Court in W.P.No.198/99, Mansukh Lal Saraf Vs Arun Kumar Tiwari & Others. It is found proper to remove the petitioners from service.

**3.** Facts leading to the filing of the present petitions are that the fathers of the petitioners were working in the establishment of the respondent No. 3 and sought voluntary retirement for personal reasons, including their health condition under Rule 42 of the Madhya Pradesh Civil services (Pension) Rules, 1976 in the year 1995. Father/s of petitioners also requested for considering their son/ (petitioner/s) for appointment. Accordingly, their applications were processed subject to regular selection process. The petitioners in W.P. No.11415 of 2018, the fathers of the petitioners applied for voluntary retirement vide applications dated 3.2.1994, 29.03.1995 and



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30.03.1995. The petitioners were appointed vide order dated 22.04.1995 and 09.03.1995 on the post of Lower Division Clerk and they were promoted to the post of Assistant Grade-II. In W.P. No. 18436/2017, the petitioner was appointed vide order dated 03.09.1994 on the post of Process Writer and after that he was promoted on the post of Lower Division Clerk on 17.10.1996. In W.P. No. 20072 of 2017, the mother of the petitioner applied for voluntary retirement on 01.05. 1995 and the petitioner was appointed on 06.05.1995 on temporary basis and vide order dated 19.07.2002 his services were regularized and vide order dated 04.11.2009 and on 05.11.2016 he was promoted and in W.P. No. 20158 of 2017, the petitioner was appointed vide order dated 03.09.1994 on temporary basis and was regularized on 06.02.1996 and finally was promoted vide order dated 14.11.2011 and they have served for about more than 22-24 years of service in the establishment of the respondents.

4. It is submitted by the learned Senior counsel for the petitioners that circular dated 03.01.1995 was issued cancelling the earlier circular dated 10.06.1994 wherein it is not provided that the benefit extended under the circular dated 10.06.1994 is to be recalled and neither the subsequent circular dated 03.01.1995 had any retrospective applicability.

5. The petitioners in W.P. No. 18436 of 2017 and W.P. No. 20158 of 2017 were the appointees prior to the circular dated 03.01.1995 whereas the petitioners in W.P. No. 11415 of 2018 and W.P. No. 20072 of 2017 were the appointees after the circular dated 03.01.1995.



6. It is submitted by the learned Senior counsel for the petitioners that at the relevant point of time in the year 1995 a policy regulating grant of compassionate appointment to the dependents of the deceased government servant/s and the government servant/s who have been retired from services on medical ground was in vogue. However, for the appointment of petitioners, they were subjected to regular selection process. That the petitioners were called for written examination as well as for the interview and were duly selected. It is submitted by the learned senior counsel for the petitioners that at the relevant time there were no recruitment rules for class three employees in the establishment of District Courts.

7. It is further submitted by the learned Senior Counsel that, a Division Bench of this Court while deciding the case of Mansukh Lal Saraf Vs. Arun Kumar Tiwari and others, in W.P.No.198/1999 issued certain directions in Paragraph 52 of the order dated 06.08.2015. In compliance whereof, the Chief Secretary, Government of Madhya Pradesh issued a letter addressed to all Additional Chief Secretaries, Principal Secretaries and Secretaries of the various departments of Government of Madhya Pradesh on 09.11.2015 to comply with the directions passed in the order dated 06.08.2015 passed by the Division Bench.

8. In pursuance to the said letter, the Secretary, Department of Law and Legislative Affairs addressed a letter to the Registrar General, Madhya Pradesh, High Court on 15.09.2015 asking to furnish the information regarding appointments made illegally and contrary to the Recruitment Rules, for onward submission to the Chief Secretary.



The Registrar General in turn asked the aforesaid information from the District and Session Judges, State of Madhya Pradesh vide letter dated 13.10.2015. That after that the petitioners were served with a notice and they were asked to submit their explanation as to why their appointment be not cancelled and they be not treated as contract employees as their appointments are dehors the provisions of M.P. Civil Service (Medical Examination), 1972 and in view of the order passed by a Division Bench of this Court in the case of Mansukh Lal Saraf (supra). It is submitted that the respondent No. 3 issued the impugned orders on 28.10.2017 whereby the petitioners have been removed from service on the ground that their appointment have been found to be illegal as the same was made contrary to the existing policy for compassionate appointment and also without following the provisions of M.P. Civil Services (Medical Examination) Rules, 1972. Hence, this petition on the following grounds.

**9.** It is stated that the impugned orders dated 28.10.2017 issued by respondents are absolutely illegal, arbitrary and contrary to the settled principles of law. That the appointment of the petitioners are not illegal appointment, and could not have been reopened after 22 years, contrary to the directions issued by the Hon'ble Apex Court in various cases. That the appointment of the petitioners were in accordance with the then prevailing policy and it was neither tainted with any misrepresentation nor with fraud.

**10.** That the petitioners were qualified and eligible for appointment, hence the appointment could not be termed as illegal. That this vital aspect escaped attention of the scrutiny process, that



there are no recruitment rules for class III posts in the District Court Establishment, hence the appointment of petitioners cannot be termed as or treated to be in violation of Rules. That this vital aspect escaped attention of the scrutiny process, that in absence of any recruitment rules for class III posts in the District Court establishments, invariably all appointments have been made on the basis of application of incumbents, subject to clearing the selection process and health and police verification. Sans the factum of voluntary retirement of fathers of applicants, even otherwise the petitioners were entitled to appointments, once having applied for the same and clearing the selection process and after formalities of Health and Police verification.

**11.** It is further submitted that the impugned order is based on misconstruction and misinterpretation of the directions contained in the case of Mansukh Lal (Supra). That the impugned orders violate the fundamental rights of petitioners as enshrined and guaranteed under Articles 14, 16 & 21 of the Constitution. That the impugned order/s is/are in teeth of the law laid down by the Apex Court in the case of State of Karnataka Vs Umadevi, reported at (2006)4SCC 1.

**12.** Per contra, learned counsel for respondents No. 2 and 3 submits that Mansukh Lal Saraf had filed a public interest litigation questioning appointments made to public posts in an arbitrary and illegal manner in the State of Madhya Pradesh, resulting in the denial of fair opportunity of employment to eligible persons. By way of the said petition, being Writ Petition No. 198/99, titled Mansukh Lal Saraf v. Arun Kumar Tiwari & Ors., reported in (2016) 2 MPLJ 283, it was



contended that the action of the State Government in appointing certain persons not only amounted to arbitrariness in the decision-making process but also resulted in the bestowal of undue favour upon respondent No. 1 therein.

**13.** The Division Bench of this Court, after hearing the parties at length, was pleased to pass a detailed order holding that the appointment of the respondent therein was contrary to the selection procedure prescribed under the recruitment rules. It was further held that all future regular appointments to public posts in the respective departments must be made strictly in conformity with the selection procedure specified in the relevant recruitment rules.

**14.** Further, the Chief Secretary of the State of Madhya Pradesh was directed to call upon the Secretaries of the respective departments of the State to enquire whether any employee in their Department has been or was appointed on a regular basis without following the selection process prescribed in the relevant rules after such rules came into force. The Secretaries shall take appropriate action against all such persons, as well as against the person(s) responsible for making such appointments, in accordance with law, and submit a report in that regard to the Chief Secretary of the State of Madhya Pradesh within four months from the date of this order. Thereafter, the Chief Secretary of the State of Madhya Pradesh shall initiate the necessary proposal for issuance of a general Government Order, or, on a case-to-case basis, to formally revoke all such illegal appointments made in a similar manner without following the selection procedure prescribed by the relevant recruitment rules. The services



rendered by such persons, consequential to the revocation of appointment, shall be treated as contractual appointments for the relevant period, and no other benefits shall be given to, or accrue to, them as in the case of regular appointees appointed in accordance with the prescribed selection process. It is submitted that in compliance of the aforesaid order passed in Mansukh Lal Saraf (supra) an enquiry was initiated regarding appointments which were made dehors the rules and a relevant information was sought from the all the District Judges.

**15.** It is submitted that undisputedly the post on which the petitioners came to be appointed is a public post appointments and service conditions whereof are governed by statutory rules framed by the State Government. Reference in the context of the issue involved in the controversy at hand may be made to the Madhya Pradesh Civil Services (Medical Examination) Rules, 1972 and the Madhya Pradesh Civil Services (Pension) Rules, 1976 (hereinafter referred to as the Medical Disability rules and the Pension Rules respectively for the sake of brevity). Whereas the Medical Disability rules confer power in the State Government to terminate the services of a government servant where it has reason to believe based on the opinion of a medical authority that the concerned government servant is suffering from some contagious disease or a physical or mental disability of such nature which in its opinion, interferes with the efficient discharge of his duties, Rule 42(1)(a) and (b) of the Pension Rules confers authority in the government servant to seek voluntary retirement or to be retired in public interest as the case may be, on the fulfilment of the statutory requirements. Attention is also invited to Rule 35 of the Pension Rules supra which provide for the



payment of invalid pension to a government servant if he retires from service on account of any bodily or mental infirmity which permanently incapacitates him for the service subject to certification by a medical authority. Respondents further submit that in order to carry out the directions issued in Mansukh Lal's case, vide the aforesaid communications Annexure R-1 and Annexure R-2 (supra), a three Members Committee was constituted to examine and verify the appointments made during the relevant period on the basis of the medical disability clause in the government policy/circular dated June, 1994. The said Committee submitted its report on 30.03.2016 wherein so far as petitioners were concerned it was found by the Committee that the appointment was given to the petitioners on compassionate ground in view of the provisions i.e. Clause (x) made in this regard in the policy/circular dated 10.06.1994 being the medical disability clause. In view of the enquiry conducted by the Committee it was found that the fathers of the respective petitioners No.1 & 2 was not found to be suffering from any medical disability nor he was declared to be unfit for discharging duties on medical grounds in terms of the Madhya Pradesh Civil Services (Medical Examination) Rules, 1972 for which reason the appointment given to the petitioners was contrary to law. It is stated that in the instant cases there was not even a whisper of any medical disability being suffered by the respective fathers of the petitioners No.1, 2 & 3 nor were they boarded out by employment on medical grounds. There existed no eventuality for giving appointment to any of their dependents. In the parawise reply, the respondents denied all the allegations made by the petitioners and further state that the appointments being made in contravention to the



statutory rules are *void ab initio* and the writ petitions deserve to be dismissed.

**16.** The petitioner by way of rejoinder denied the contentions of the respondents and stated that all the petitioners were appointed to the post in question after clearing due process and also in a sanctioned vacant post but the respondents make a conclusion that the appointments are illegal. They state that neither the appointments of the petitioners are illegal or irregular nor a back door entry or in violation of any rules. It is further stated that the petitioners as well as their fathers were not made aware of the rules and schemes/circulars of the GAD, it is the then authority concerned who informed the fathers of the petitioners that now the health condition of the fathers of the petitioners are declined day by day and they were not able to work properly, if the fathers of the petitioners were taken voluntary retirement from service on medical grounds, then one of the family members of the fathers of the petitioners may get the appointment in their place. The fathers of the petitioners seeking voluntary retirement from service on the ground that one of the family members of the petitioners were appointed in their places. No detailed scrutiny has been conducted by the committee in this regard and the impugned orders have been passed without mentioning the rules which has been violated by the petitioners for appointment to the post in the place of their fathers.

**17.** Heard the learned counsel for the parties at length.

**18.** For the selection process of Class-III employees, the High Court issued directions vide Memo No. 4014/III-18-34/84, Jabalpur, dated 1st May, 1984, regarding the application of the Madhya Pradesh



Junior Services Selection Board Rules, 1983, which are reproduced hereinbelow

*"With reference to M.P. Junior Service Selection Board Ruled, 1983 publish in M.P. Rajpatra dated 26-01-1983, I am directed to inform you that the term "Junior Service" does not include the post of Class III employee of the Subordinate Courts of the State. These posts of Class III employees are deemed to be the "Posts on the establishment of High Court" as defined in Sub-rules (c)(ii) of Rule 2 of the M.P. Junior Selection Board in view of the Article 235 of the Constitution. Hence, M.P. Junior Service Selection Board Rules, 1983 are not applicable for the appointment of Class III employees of the establishment of District Judges in the State.*

*As such, I am directed to inform that the District Judges are entitled to recruit candidates in the usual manner against the vacancies (of class III employees) as and when they occur in their respective establishments."*

19. The Rules framed by the High Court of Madhya Pradesh at Jabalpur, vide Memo No. 770/IV-1/65 dated 16th August, 2004, govern the filling up of vacancies in the cadre of Class-III, Class-IV, and Contingent Paid Employees in District Court Establishments. Prior to the promulgation of these Rules, there were no rules applicable for the appointment of Class-III and Class-IV employees; only guidelines existed with respect to Contingent Paid Employees in District Court Establishments.

*"In supersession of all previous Circulars/Directions I am directed to issue the following directions for the purpose of recruitment of Class-III, Class-IV and Contingent Paid Employees in District Establishment.*



- 1) *That prior permission of the Registry be sought in respect of filling up the vacancies in the cadre of Class-III, Class-IV and Contingent Paid Employees. While seeking the permission to fill up the vacancies the details as to how the post has fallen vacant be informed to the Registry.*
- 2) *That the Selection Committee be comprised of Senior Judicial Officers available at District Headquarter.*
- 3) *That directions/instructions issued from time to time by the State Government in respect of age, qualification, condition in respect of the bonafide certificate pertaining to SC/ST/OBC candidates be followed.*
- 4) *That appointments for 89 days be not made without prior permission and approval of the High Court.*
- 5) *That promotions of eligible junior employees be considered before initiating the process of recruitment as per rules.*
- 6) *That provisions of "Anusuchit Jati, Anusuchit Janjati Aur Anya Pichhada Varg ke Liye Arakshan Adhiniyam, 1994" and the provision of "Anusuchit Jati, Anusuchit Janjati Aur Anya Pichhada Varg Ke Liye Arakshan Adhiniyam, 1998" should strictly be followed in recruitment.*
- 7) *That the post of Steno-typist, Execution Clerk, Deposition Writer, Process Writer, Sale Amin be filled by the candidates having certificates/diploma in Computer Application from University/Institution/Board recognized by the Central Government/State Government.*
- 8) *That the qualifications of passing Hindi Typing and Stenography with 80 w.p.m. from recognized Board shall be necessary for the recruitment on the post of Class-III (Assistant Grade-III, Process Writer, Sale Amin, Execution Clerk, Deposition Writer).*



9) That the Vacancies in Class-III cadre must be published in "Rojgar Aur Nirman" Bhopal. The number of the posts available as per the roster should be indicated in the advertisement.

10) That the vacancies of Class-IV and Contingent Paid Servants can be filled from the list obtained from the Local Employment Exchange as per the roaster should be indicated in the advertisement.

11) That a composite advertisement be published taking into account all vacancies likely to be generated in a particular year.

12) Following details be transmitted to the Registry while sending the select list for approval.

a) Number of candidates appeared in the written Examination Interview.

b) Details list indicating names, full addresses, date of birth, educational qualifications, caste, details of domicile, marks obtained in Written and Oral Examination.

c) Attested copies of all the certificates.

d) The detail of the roaster followed."

**20.** On 20th August, 1992, the High Court issued directions vide Memo No. 3447/II-19-21/57, Part-IV(E), Jabalpur, dated 20th August, 1992. The said directions are reproduced hereinbelow.

*"Regarding filling the vacant posts of class III and IV in continuation of the Registry Memorandum No. A/9870/3-19-21/57 (Part-4) dated 31-10-1991 issued earlier on the above subject, it is directed that before making appointments on the vacant posts of Class III and IV in the establishment or on the newly*



*created posts, the junior employees working in the establishment should be filled up by recruitment through promotion/appointment, but before making the appointment order of the selected candidates, the list should be sent to the Registry for approval.*

*As directed, it is also directed that before filling up the vacant posts in the establishment, permission should be obtained from the Registry and the vacant posts should be filled up only after obtaining permission from the Registry.”*

**21.** Learned counsel for the respondents has relied upon the judgment render in the case of **Umesh Kumar Nagpal Vs. State of Haryana and others (1994) 4 SCC 138** and **Union of India and others Vs. Amrita Sinha (2021) 20 SCC 695** and the order passed by this court in the case of **Sunny Sen Vs. the State of M.P. and others** passed in **W.P. No. 714 of 2024** in order dated 01.08.2025. The facts of the present case are different from those of the above-referred case; therefore, that judgment cannot assist in resolving the disputed issue.

**22.** Learned counsel for the respondents also relying upon the judgment of this Court rendered in the case of **Rakesh Dubey v. District & Session Judge, Jabalpur, dated 27.02.2020** in **W.P. No. 18610 of 2017**, submits that the facts of the present petitions are similar and identical to the aforesaid judgement. In the aforesaid judgement, it was opined that the appointment of the petitioner was illegal and *ab initio void* hence no error has been found in order of the termination of the employee.



**23.** Learned senior counsel for the petitioners submits that the aforesaid judgment (Rakesh Dubey) was rendered without considering the existing rules applicable to appointments at the relevant time; hence, the said judgment is *per incuriam*. It is further submitted that the judgment is under adjudication before the Supreme Court in SLP No.(C) 7408/2022 and that the matter is *sub judice* before a Larger Bench of the Supreme Court pursuant to the order dated 21.03.2023. It is also submitted that the said matter has been tagged with SLP No. 30335/2017 for answering the question formulated by the Supreme Court, namely, whether the compassionate appointment scheme applicable is the one in force at the time of death of the employee or the one in force at the time of consideration of the application. The petitioner has pointed out that although the appointment was made after withdrawal of the scheme, the application had been filed before the competent authority prior to such withdrawal; therefore, the judgment of the Division Bench need not be followed.

**24.** A *per incuriam* judgment is a judicial decision rendered in ignorance or forgetfulness of a binding statutory provision. This doctrine allows courts to disregard previous rulings that ignored statutory provision. A judgment is *per incuriam* if it ignores a statute, rule, or a decision from a higher or co-equal bench. Such judgments need not be followed by courts.

**25.** Order passed in W.P No. 18610/17 is *sub judice* in appeal before the Hon'ble Supreme Court in Special Leave to Appeal (C) No.7409/2022 (Rakesh Dubey v/s District and Sessions Judge, Jabalpur) order passed by the Hon'ble Supreme Court on 29/4/22 is as under:-



*“1. Senior counsel appearing on behalf of the petitioner submits that though the circular dated 10 June 1994 providing for appointment on compassionate basis in favour of any one member of the employees family where the employee had retired voluntarily on medical basis was withdrawn on 3 January 1995 and the appointment of the petitioner was made thereafter on 9 March 1995, the application for the grant of compassionate appointment was made on 6 December 1994. Hence, it has been submitted that since the application was made on 6 December 1994 under the policy which was then in existence, the subsequent decision of the policy will not affect the rights of the petitioner.*

*2. In the present case, it has been submitted that the services of the petitioner were terminated after he worked for over 21 years in October, 2017.*

*3. Issue notice, returnable in six weeks.*

*4. Liberty to serve the Standing Counsel for the State of Madhya Pradesh, in addition.*

*5. No recovery shall be made from the petitioner in the meantime.”*

**26.** The order passed on 21-03-2023 by the Hon’ble Supreme Court is as under:-

*“The issue relating to the question raised in this petition has been referred for consideration to the Larger Bench of three Judges, through the order dated 08.02.2019 in SLP (C) No.30335 of 2017 reported in (2019) 5 SCC 600. 1 SLP.*

*In that view, this petition be tagged alongwith the said petition for an appropriate consideration.*



*The framing of the additional question if need be, may be addressed to the larger Bench to be included for answering the reference.”*

**27.** It is fairly admitted by the respondents that prior to 2016 there were no statutory rules or laws governing the appointment of employees in the District Court establishment. For the first time, the High Court framed rules in the year 2016, which were subsequently amended in 2019. Therefore, it is evident that in the years 1994 and 1995 no rules were applicable for the appointment of Class-III employees in the District Court establishment.

**28.** Prior to the framing of the Rules in 2016, a circular was issued by the High Court of Madhya Pradesh at Jabalpur vide Memo No. 770/IV-1/65 dated 16 August 2004; however, the said circular was also not applicable in the years 1994 and 1995.

**29.** For the selection process of Class-III employees, the High Court had earlier issued directions vide Memo No. 4014/III-18-34/84 dated 1 May 1984, which were applicable at the time when the petitioners were appointed. As per the said circular, the District Judges were entitled to recruit candidates in the usual manner against vacancies of Class-III employees as and when they occur in their respective establishments. Therefore, the District Judge was competent to appoint employees at his discretion, as there was no specific procedure or rule governing such appointments at the relevant time.

**30.** The aforesaid applicable rules governing the appointment of employees were neither examined by the Committee constituted pursuant to the directions issued in the case of *Manshuklal* nor considered by the



Division Bench of this Court. Consequently, the judgment in *Rakesh Dubey* is *per incuriam*, as the findings were rendered without applying the relevant rules and circulars. Moreover, there was no adoption of the rules or laws governing the appointment of employees of the State Government.

**31.** There was no adoption of the State Government rules, namely the M.P. Civil Services (Medical Examination) Rules, 1972, at the relevant time. The petitioners were appointed vide orders dated 22.04.1995 and 09.03.1995 to the post of Lower Division Clerk and were subsequently promoted to the post of Assistant Grade-II. In W.P. No. 18436/2017, the petitioner was appointed vide order dated 03.09.1994 to the post of Process Writer. The High Court of Madhya Pradesh issued a circular on 17 August 1996 bearing Memo No. 5627/III-19-21/57 Pt. IV (G), whereby the rules of the State Government, namely the M.P. Civil Services (Medical Examination) Rules, 1972, were adopted. Therefore, the said rules were not applicable at the time of appointment of the petitioners.

**32.** It was the prerogative of the District Judge to decide which procedure or rule was to be applied or adopted, as no specific rule governed the appointment of employees of the District Court establishment at the relevant time. While appointing the petitioner, the District Judge applied the State Government rules relating to compassionate appointment. The compassionate appointment circular had a twofold scheme: first, an employee of the establishment could seek voluntary retirement on medical grounds; and second, upon creation of a vacancy due to such voluntary retirement, the employee's son could be appointed on compassionate grounds.



33. There was no adoption of the said circular by the High Court, which implies that it was within the prerogative of the District Judge whether to apply the circular or not. In the aforesaid circumstances, if the District Judge chose to apply the circular, it was equally within his prerogative to decide whether the subsequent withdrawal of that policy would be applied. If he chose not to apply the withdrawal, the withdrawal would not automatically become applicable.

34. The petitioner in W.P. No. 18436/17, Arun Thakur, and the petitioner in W.P. No. 20158/17, Mukesh Kashiv, were appointed on 03.09.1994, when the scheme was in operation. The petitioner in W.P. No. 11415/18, Mohammad Shamim, was appointed on 22.04.1995, and his father had submitted an application for voluntary retirement on 03.12.1994, when the scheme was in operation. The petitioner in W.P. No. 20072/17, Vikas Kale, was appointed on 06.05.1995, and his father had submitted an application for voluntary retirement on 01.05.1995, after the scheme had been withdrawn. Petitioner in W.P. No. 11415 of 2018 Sudhir Kumar Patel was appointed on 22.04.1995, and his father had submitted an application for voluntary retirement on 29.03.1995, when the scheme had already been withdrawn. Petitioner in W.P. No. 11415/2018 Rajeev Kashiv was appointed on 22.04.1995, and his father had submitted an application for voluntary retirement on 30.03.1995, when the scheme had been withdrawn.

35. In our view, employees have a right to seek voluntary retirement, and no one can be compelled to continue in service against his will. Once an application for voluntary retirement is accepted without requiring a



medical examination to assess the employee's competency, no irregularity can be attributed to such acceptance.

**36.** Secondly, the District Judge is vested with the power to appoint Class-III employees against vacant posts. Once a vacancy arose in the establishment, the District Judge was competent to exercise his authority and appoint an employee even without resorting to the compassionate appointment circular. At the relevant time, no rules or regulations governing such appointments were in force; therefore, it cannot be said that the appointment was made in violation of any applicable law or procedure.

**37.** For ready reference Notification No. 17(E) -289-79-XXI-B, Bhopal, Dated 11<sup>th</sup> December, 1981 is reproduced herein below:-

*“In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, The Governor of Madhya Pradesh, in consultation with the Hon’ble the Chief Justice hereby makes the following rules for regulating the recruitment and conditions of service of contingency paid employees, of the establishment of the District and Sessions Judges.*

**1- Short title and Commencement-** (1) These rules may be called "Rules relating to Recruitment and Conditions of service of Contingency paid (District and Sessions Judges Establishment) Employees Rules, 1980.

(2) These Rules shall be deemed to have come into force with effect from the 1st January, 1974.

**2- Definitions-** In these Rules unless the context otherwise requires:

-(a) "Appointing Authority" means the District and Sessions Judge of the District;

(b) "Contingency paid Employees" means a person employed for full time on the establishment of the District and Sessions Judge and who is paid on monthly basis and whose pay is charged to 'Office



*Contingencies' excluding the employees who are employed for certain period only in the year OR as parttime contingency-paid servants;*

- (c) "Employee" means a contingency-paid employee;
- (d) "Government" means the Government of the State of Madhya Pradesh; (d-i) "Member of Schedule Caste" means a member of any caste, race or tribe or part of or group within a caste, race or tribe specified as Schedule Caste with respect to the State of Madhya Pradesh under Article 342 of the Constitution of India;
- (d-ii) "Member of Schedule Tribe" means a member of any tribe, tribal community or part of or group within tribe or tribal community specified as Schedule Tribe with respect to the State of Madhya Pradesh under Article 343 of the Constitution of India;
- (e) "High Court" means the High Court of Madhya Pradesh including its Benches;
- (f) "District and Sessions Judge" means District and Sessions Judge of the Civil District;
- (g) "Regular Employees of the establishment of the District and Sessions Judge" means Government Servants who are in Regular Employment holding permanent or temporary posts on the establishment of the District and Sessions Judge as district from posts paid from Contingencies;
- (h) "Service" means the Service of the Contingent paid employee on the establishment of the District and Sessions Judge;
- (i) "Schedule" means the Schedule appended to these Rules.

**3. Scope and Application-** Save as provided otherwise in these Rules, Madhya Pradesh Civil Services (General Conditions of Service) Rules, 1961 shall be applicable to the member of this service.

**4. Constitution of the Service-** The Service shall consist of the following persons:

1. Persons who are in service as full-time Contingency-paid servants and who, on 1st January, 1974 had completed at least one year's service and who on that date were holding the posts specified in the Schedule and who on that date had not completed



*the age of superannuation prescribed the age of superannuation prescribed for employees holding comparable class of posts in the regular employment of the State Government.*

**2. Persons recruited to the service –**

- (a) After 1st January, 1973 but before the commencement of these rules;*
- (b) After the commencement of these rules, according to the provision of these rules on completion of five years service.*

**5- Classification, number of posts, etc-** *Classification, and the number of posts included in the service and the appointing authority therefore shall be in accordance with the provisions contained in the Schedule.*

**6- Categorization-** *(1) Contingency-paid employees for the purpose of these Rules shall be divided into the following two categories: -*

- (i) Permanent, and*
- (ii) Temporary.*

*(2) The employee-*

*(a) Who had completed not less than fifteen years of service on the 1st January, 1974.*

*(b) Appointed prior to the said date but had not completed fifteen years of service on the 1st January, 1974;*

*(c) Appointed after the said date;*  
*shall be, in case of (a) above, on the 1st January, 1974, and in case of (b) and (c), on completion of fifteen years of continuous service be eligible for the status of permanent, contingency-paid employees.*

**7. Recruitment and Promotion-** *(1) The establishment under the appointing authority specified in the Schedule shall constitute a unit for all purpose including recruitment, seniority and promotion.*

*(2) Appointment of the contingency-paid employees shall be made by one or more of the following methods as may be prescribed, namely: -*

- (i) Direct recruitment;*



(ii) *Promotion*;

(iii) *Transfer*.

(2-A) *There shall be constituted in every District a committee consisting of-*

(a) *Additional District and Sessions Judge - Chairman*

(b) *Chief Judicial Magistrate- Member*

(c) *Clerk of Court -.*

(2-B) *Promotion to any post under the service shall be made in accordance with the recommendations of the Committee constituted under sub-rule (2-A).*

(2-C) *Nothing in these rules shall affect reservations and other concessions required to be provided for the members of Scheduled Castes and members of Scheduled Tribes and other special categories of persons in accordance with the orders issued by the State Government from time to time in this regard.*

(2-D) *Direct recruitment to the posts under the service shall be made out of the list of candidates furnished by the Employment Exchange on being asked for by the establishment concerned for the purpose and where no suitable candidates are available at the Employment Exchange, the recruitment shall be made after inviting applications through advertisement.*

(2-E) *Educational qualifications for filling up the posts shall be such as are prescribed for regular employees under the State Government on corresponding posts where are no corresponding posts, the qualify.*

(3) *Promotion shall be made on the basis of seniority-cum-merit.*

8. *Age, Physical Fitness of new entrants and age of superannuation-*

(a) *In the matter of age, physical fitness and superannuation of new entrants; and*



(b) *Superannuation of all members of Service, the same rules and policies shall apply as are applicable to the Government Servants of Comparable categories in the regular employment.*

9. *Termination of Services of a Temporary contingency-paid employee Subject to any provisions contained in the order of appointment, the service of a temporary contingency-paid employee shall be liable to termination at any time by one month's notice in writing given either by the temporary contingency-paid employee to the appointing authority or by the appointing authority to the temporary contingency paid employee provided that the services of any such contingency-paid employee maybe terminated forthwith by payment to him of a sum equivalent to the amount of his pay plus allowances according to rules applicable from time to time, for the period of the notice, or as the case may be, for the period by which such notice falls short of one month.*

10. **Seniority list-** *Seniority lists of each category shall be maintained in each unit on a state-wide basis, as may be decided by the Government, for purpose of promotion as well as retrenchment. When an employee is transferred from one unit to another in the interest of Government work his continuity of service in the parent unit shall be taken into account in account in the matter of promotion or retrenchment, as the case may be.*

11. **Service records-** *Proper service records of employees permanent and temporary shall be kept duty verified at unit levels in the proforma "in which the service records of Non-Gazetted employees of the State are kept.*

12. **Discharge certificate-** *In case an employee leaves the service as a result of retrenchment or otherwise, he may be given, on demand, a certificate, in the following form, by the appointing authority, namely: -*



1. *Name*
2. *Father's/Husband's name*
3. *Identification marks (if any)* 4-
4. *Total Service from ..... to.....*
5. *Appointment held when leaving*
6. *Rate of Scale of Pay (If any)*
7. *Reason for quitting service*

*Employee's Signature, Seal and Designation or Thumb impression of appointing Authority.*

**13. Conduct-** *The provision of Madhya Pradesh Civil Services (Conduct) Rules, 1965 shall apply to the member of the service. Provided that 'misconduct' shall also include the following acts of commission and omissions on the part of employee, viz:-*

- (a) *Theft, fraud or dishonesty in connection with Government business or property.*
- (b) *Wilful insubordination or disobedience whether alone or in combination with others to any lawful or reasonable order of superior.*
- (c) *Wilful damage to or loss of Government goods or property.* (d) *Taking or giving bribes or illegal gratification.*
- (e) *Habitual absence without leave of absence without leave for more than ten days*
- (f) *Habitual late attendance.*
- (g) *Habitual breach of any law applicable to the establishment or department.*
- (h) *Riotous or disorderly behaviour during working hours at the establishment or department or any act subversive of discipline.* (i) *Habitual negligence or neglect of work including sleeping during working hours.*
- (j) *Frequent repetition of any act of Commission or omission.*
- (k) *Wilful slowing down in the performance of work.*



(l) Disclosing to any unauthorised person any information in regard to the process of the establishment or Department which may come into the possession of the employee in the course of his work.

(m) Gabling and speculation in the premises of the establishment of the Department.

(n) Striking work or inciting others to strike work in contravention of the provision of any law or rule having the force of law for the time being in force.

(o) Drinking or being found drunk during working hours.

(p) Action against the security of the State.

**14. Penalties-** The following penalties may, for good and sufficient reasons, be imposed on an employee, namely: -

(i) Censure.

(ii) Fine not exceeding one day's emoluments at a time.

(iii) Withholding of increments or promotions.

(iv) Recovery from pay of the whole or part of any pecuniary loss caused to the Government by negligence or breach of any law.

(v) Suspension for a period not exceeding 14 days at a time (without being entitled to any wages).

(vi) Reduction to a lower post or grade.

(vii) Removal from service which shall not be a disqualification for future employment.

(viii) Dismissal from service which shall be disqualification for future employment.

**15. Procedure for imposing penalties-** (1) No order imposing any of the penalties specified in clauses (vi), (vii) and (viii) of Rule 14 shall be passed except after: -

(i) The employee is informed in writing, when possible to do so, of the proposal to take action against him and of the allegations on which it is proposed to be taken;

(ii) The employee is, as soon as possible, given an opportunity to explain his position in regard to the allegations made against him;



*(iii) Such explanation, if any, is taken into consideration: Provided further that: -*

*(i) No person shall be dismissed without the order of the Competent Authority and provided further that*

*(ii) It shall not be necessary to do so where the Honourable the Chief Justice finds it necessary to remove an employee from service on the ground of security of the State.*

*(2) An order in writing referred to in sub-rule (1) shall take effect immediately on delivery to the employee and in the event of refusal by the employee to accept delivery of it, affixed on the notice board of the establishment on which he is borne and such affixing of the same on the notice board will be deemed to have been served on him.*

**16. Appeals-** *(1) The employee may prefer an appeal against any penalty imposed on him under Rule 14 above, except the penalty imposed under Rule 14 clause (i) and(ii), within one month of the imposition of the penalty to the authority immediately superior to the authority imposing the penalty. The decision of such appellate authority shall be final.*

*(2) An appeal sub-rule (1) may be submitted directly to the appellate authority.*

**17. Interpretation-** *If any question arises relating to the interpretation of these rules it shall be referred to the Honourable the Chief Justice whose decision thereon shall be final.*

**18. Relaxation-** *Nothing in these Rules shall be construed to limit or abridge the power of the Honourable the Chief Justice to deal with the case of any person to whom these rules apply in such manner as may appear to him to be just and equitable:*



*Provided that the case shall not be dealt with in any manner less favourable to him than that provided in these Rules.”*

### SCHEDULES.

(See Rule 5)

Name of post No. including in the service	(1)	(2)	Number of post	Classification	Appointing authority
			(3)	(4)	(5)
1. Choukidar					
2. Waterman			As may be fixed from time to time	To be paid from contingency (Class IV)	District and Sessions Judge
3. Khalasi					
4. Sweeper					
5. Mali					
6. Garden Mazdoor					

**Noti. No. 17 (E) -289-79-XXI-B, Bhopal, Dated 11<sup>th</sup> December 1981**

**38.** Above Rules applicable by Notification No. 17 (E)-289-79-XXI-B, Bhopal, dated 11th December, 1981 relating to Recruitment and Conditions of service of Contingency paid (District and Sessions Judges Establishment) Employees Rules, 1980." These Rules shall be deemed to have come into force with effect from the 1st January, 1974. Regular Employees of the establishment of the District and Sessions Judge" means Government Servants who are in Regular Employment holding permanent or temporary posts on the establishment of the District and Sessions Judge as district from posts paid from Contingencies; the petitioners were not appointed on the Contingencies head. Therefore, this rule is applicable only to employees appointed under the Contingencies head.

**39.** The procedure to be followed for appointment was within the discretion of the District Judge, who adopted a procedure he found



appropriate and issued the appointment order accordingly. Hence, the appointment cannot be termed illegal. At the highest, the only irregularity was the non-compliance with the circular requiring prior sanction of the High Court for such appointment, and the fact that post-appointment approval was not sought. Such lapses amount to an irregularity and not an illegality.

**40.** Further, the appointee continued in service for nearly 20 to 25 years, and orders of promotion were forwarded to the High Court for approval; however, the High Court never raised any objection. This clearly indicates deemed approval of the appointment.

**41.** In the *Mansukhlal* case, directions were issued that all appointments made in a similar manner, without following the selection process prescribed under the relevant recruitment rules and in breach of statutory provisions, shall be treated as *non est* in the eyes of law from their inception and shall stand annulled forthwith. The said judgment applies only to illegal appointments.

**42.** Although the aforesaid judgment was affirmed by the Hon'ble Supreme Court in *M.P. Nagar Palika Nigam Karamchari Sangh v. Mansukhlal Sarraf & Others*, it does not follow that the said judgment is also applicable to irregular appointments. In our considered opinion, the decision in *Mansukhlal* applies only to illegal appointments and not to irregular appointments.

**43.** While dismissing the petitioners from service, the relevant recruitment rules were not observed, and instead, rules that were not applicable to the petitioners, were applied. Consequently, the order of



scrutiny committee is not in accordance with the principles laid down in the *Manshukh* case, and the order of dismissal passed on the ground that the appointment was illegal and void *ab initio* is not sustainable. Any irregularity, if at all, could have been rectified; therefore, the decisions in *Manshukh Lal* and *Rakesh Dubey* do not apply to the petitioners' case.

**44.** In the aforesaid discussion, we are of the considered opinion that the judgment in *Rakesh Dubey* passed by this Court cannot be followed in the present petitions. The appointment of the petitioners was not illegal or void *ab initio*; at the most, it suffered from an irregularity which, after the petitioners rendered about 25 years of service, stood automatically cured. The Constitution Bench of the Supreme Court in *Secretary, State of Karnataka & Others v. Umadevi & Others, (2006) 4 SCC 1*, has opined that past cases should not be reopened, and in view of the said judgment, the appointment of the petitioners cannot be treated as an illegal appointment. The decision in *Mansukh Lal* applies only to illegal appointments and not to irregular appointments. There was no misrepresentation of facts by the petitioners, and the Department, with open eyes, considered their claim and appointed them. Therefore, the termination after about 22 years of service is bad in law. Accordingly, the petitions deserve to be allowed.

**45.** After due consideration of the facts and law, all the petitions are allowed. Accordingly, the impugned order dated 28.10.2017 is quashed and the petitioners are reinstated to their respective posts without back wages and all consequential promotional and service benefits in accordance with law.

**(VIVEK RUSIA)**  
**JUDGE**

**(PRADEEP MITTAL)**  
**JUDGE**



NEUTRAL CITATION NO. 2026:MPHC-JBP:9093

**MSP**