

(2020) 08 MP CK 0290
In the Madhya Pradesh High Court
Case No : Writ Appeal No.545 Of 2020

Mahendra Kumar Malviya

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 29-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
High Court Of Madhya Pradesh Rules, 2008 — Rule 8(3)
Madhya Pradesh Police Vidheyak, 2002 — Regulation 36
Police Act, 1861, — Section 2, 7, 46(2)

Citation : (2020) 08 MP CK 0290

Hon'ble Judges : Sanjay Yadav, J;B. K. Shrivastava, J

Bench : Division Bench

Advocate : Amit Seth, Ashish Anand Bernard, Sanjay K. Agrawal,

Final Decision : Disposed Of

Judgement

Sanjay Yadav, J

1. This intra-court appeal under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005, is directed against an order dated 19.03.2020 passed in Writ Petition No.6847/2020; whereby, learned Single Judge while disagreeing with the decision by a Division Bench in the case of Devi Singh Thakur vs S.N. Pathak and others : Writ Appeal No.693/2019 decided on 06.12.2019, which held that the CSP/DSP are not involved in operational duties, has stayed the transfer of the petitioner and simultaneously, has directed to place the matter before Hon'ble the Chief Justice to refer the matter to a Larger Bench.

2. The writ petition at the instance of the petitioner, a Sub-Divisional Officer (Police) posted at Itarsi District Hoshangabad was directed against the order dated 11.03.2020; whereby, he was transferred to Women's Crime Cell, Bhopal on the post of Deputy Superintendent of Police. By the same order, the present appellant, a Sahayak Senani, was transferred from 34th Battalion Visbal, District

Dhar to Itarsi District Hoshangabad on the post of Sub-Divisional Officer (Police). Consequent whereof, as is evident from the documents on record, the present appellant was relieved of his duties from earlier place of posting vide order dated 13.03.2020. Similarly, the petitioner, respondent No.4 herein, was also relieved vide order dated 17.03.2020.

3. However, learned Single Judge without adverting to these aspects and merely on the basis of the contention raised on behalf of the petitioner that the petitioner was on operational duties, stayed the transfer by order dated 19.03.2020 passed in Writ Petition No.6847/2020, while *prima facie* disagreeing with the decision in *Devi Singh Thakur* (supra).

4. This intra-court appeal takes exception to the impugned order on the ground that the judgment by Division Bench in *Devi Singh Thakur* (supra) was binding on learned Single Bench and it was beyond the jurisdiction of learned Single Bench to have disagreed with it and place the matter before Hon'ble the Chief Justice for its placing before a larger Bench. Instead, it is urged that, the learned Single Judge ought to have referred the matter to the Chief Justice as contemplated under sub-rule (3) of Rule 8 of Chapter 4 of the High Court of Madhya Pradesh, 2008 instead of holding that the petitioner, being an SDO(P), is on operational duty. It is further contended that since the Division Bench in *Devi Singh Thakur* (supra) had already held that an incumbent holding the post of City Superintendent of Police/Deputy Superintendent of Police being not "an operational post" as could enure benefit from the judgment in *Prakash Singh vs Union of India* (2006) 8 SCC 1. It is urged that learned Single Judge who was bound by the decision ought not to have stayed the transfer, more particularly, when the petitioner was relieved from his post on 17.03.2020. On these contentions, the appellant seeks indulgence.

5. Respondent No.4, on his turn, opposes the relief and indulgence sought by the appellant. It is urged that, the issue regarding competency of learned Single Judge to place the matter before Hon'ble Chief Justice to refer the matter to a Larger Bench cannot be adjudicated in a writ appeal and can, at best, be considered by the Bench to which the matter is directed to be referred. In other words, it is urged that, it is for the Bench other than the Division Bench hearing a Writ Appeal to which the matter be referred by Hon'ble the Chief Justice, will have the competence to determine whether the controversy deserves a reference. It is urged that learned Single Judge was well within his competence to arrive at a *prima facie* opinion that the petitioner, an SDO(P), is on operational duty. It is contended that being a *prima facie* opinion, it cannot be said that it runs counter to the decision by Division Bench in *Devi Singh Thakur* (supra). It is urged that in the case of *Devi Singh Thakur* (supra), the provisions of Prevention of Corruption Act, 1988 and that of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995, which empowers Deputy Superintendent of Police to investigate the crime, were not considered; therefore, it is urged that, learned Single Judge was well within its jurisdiction in

raising doubt about the correctness of said decision holding that the CSP/DSP was not an 'operational post' as could be protected by the verdict in Prakash Singh (supra). Referring to Rule 8 of Chapter 4 of the High Court of Madhya Pradesh, 2008, it is urged that sub-rule (3) of Rule 8 empowers a Judge sitting alone while hearing a case if is of the opinion that an earlier decision of co-ordinate Bench or larger Bench of this Court needs reconsideration, to formulate question(s) and refer the same to the Chief Justice with a recommendation that it be placed before a larger Bench. Being so empowered, it is contended that the order of reference cannot be interfered with in an intra-court appeal. Justifying the reference, it is urged that since under the provisions of the Prevention of Corruption Act, 1988 and of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995, the Deputy Superintendent of Police are empowered to investigate their cadre cannot be treated to be 'non-operational post'. It is further contended that in a hot haste manner in which the petitioner was relieved from 34th Battalion Visbal, District Dhar on 17.03.2020 was indicative of the fact that the present appellant was favoured and; therefore, learned Single Judge was well within its jurisdiction in staying the operation of his transfer even after relieving. It is further contended that the appellant, if he had any grievance against the impugned order, he ought to have sought the review. On these contentions, the respondent No.4 seeks dismissal of appeal.

6. Considered the rival submissions.

7. The foremost question is, whether it will be within the jurisdiction of the Division Bench in seisin with an intra-court appeal against the order impugned, to examine its correctness ?

8. The intra-court appeal is governed by the Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005, which is an Act providing an appeal from a judgment or order passed by one Judge of the High Court in exercise of the original jurisdiction, to a Division Bench of the same High Court. Sub-section (1) of Section 2 of the Adhiniyam provides for that "an appeal shall lie from a judgment or order passed by one Judge of the High Court in exercise of original jurisdiction under Article 226 of the Constitution of India, to a Division Bench comprising of two Judges of the same High Court." The proviso stipulates that "no such appeal shall lie against an interlocutory order or against an order passed in exercise of supervisory jurisdiction under Article 227 of the Constitution of India."

9. The expression "original jurisdiction" in the context of exercise of jurisdiction under Article 226 of the Constitution of India came up for consideration before the Hon'ble Supreme Court in Jogendrasinhji Vijaysinghji vs State of Gujarat (2015) 9 SCC 1 wherein, relying on its earlier decision in State of U.P. vs Vijay Anand Maharaj AIR 1963 SC 946, it is held :

9. In this context, we may usefully refer to another Constitution Bench decision in State of Uttar Pradesh and others v. Dr. Vijay Anand Maharaj AIR 1963 SC

946, wherein it has been ruled :

"9. Article 226 confers a power on a High Court to issue the writs, orders, or directions mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. This is neither an appellate nor a revisional jurisdiction of the High Court. Though the power is not confined to the prerogative writs issued by the English Courts, it is modelled on the said writs mainly to enable the High Courts to keep the subordinate tribunals within bounds."

10. After so stating, the larger Bench referred to the decision in *Hamid Hassan v. Banwarilal Roy* AIR 1947 PC 90 wherein the Privy Council had observed that the original civil jurisdiction which the Supreme Court of Calcutta had possessed over certain classes of persons outside the territorial limits of that jurisdiction was a matter of original jurisdiction. Thereafter, the Court referred to certain High Court decisions and opined : (*Vijay Anand Maharaj case*, AIR p. 951, para 9)

"9. It is, therefore, clear from the nature of the power conferred under Article 226 of the Constitution and the decisions on the subject that the High Court in exercise of its power under Article 226 of the Constitution exercises original jurisdiction, though the said jurisdiction shall not be confused with the ordinary civil jurisdiction of the High Court. This jurisdiction, though original in character as contrasted with its appellate and revisional jurisdictions, is exercisable throughout the territories in relation to which it exercises jurisdiction and may, for convenience, be described as extraordinary original jurisdiction. If that be so, it cannot be contended that a petition under Article 226 of the Constitution is a continuation of the proceedings under the Act."

10. A Full Bench of our High Court in *Jaidev Siddha (Dr.) and others vs Jaiprakash Siddha and others* 2007 (3) MPLJ 595 had an occasion to examine the expression "in exercise of its original jurisdiction" appearing in sub-section (1) of Section 2 of the *Adhiniyam*, 2005, wherein it is held that the jurisdictional perspective in the constitutional context are to be examined and that Section 2 of the Act cannot be given a restricted and constricted meaning.

11. Further, the Five Judges Bench of our High Court in *Manoj Kumar vs Board of Revenue* I.L.R. (2007) M.P. 1504 held :

"65. It has to be borne in mind that the power of the High Court under Article 226 of the Constitution are not confined to prerogative writs inasmuch as it can issue directions, orders, writs and can mould the relief to meet the peculiar requirements. The powers conferred on the High Court under the said Article is of wide expanse'. In *Director of settlements, A.P. vs M.R. Apparao* (2002) 4 SCC 638, it has been held that the power under Article 226 is essentially a power upon the High Court for issuance of high prerogative writs for enforcement of fundamental rights as well as non-fundamental or ordinary legal rights, which may come within the expression 'for any other purposes'. The powers of the High Courts under Article 226 though are discretionary and no limits can be placed

upon their discretion they must be exercised along the recognised lines and subject to certain self-imposed restrictions. It is a constitutional power conferred on the High Court to see no man is subject to injustice by violation of law. In exercise of this Article the High Court is expected to erase injustice and not to make justice a by-product."

12. The question is, as to what will be scope of intra-court appeals which are directed against the judgment and order of a Single Judge passed in exercise of its original jurisdiction ?

13. It must be remembered that the exercise of powers under Article 226 of the Constitution are discretionary and no limits can be placed upon their discretion. However, the discretion must be exercised along the recognized lines and subject to certain self-imposed restrictions. If such a decision is shown to have been exercised arbitrarily or capriciously or perversely or where the Court had ignored the settled principle of law, then in that case, it will be within the jurisdiction of the Appellate Court, in an intra-court appeal, to interfere with the exercise of such discretionary power by the court of first instance. In this context, reference can be had of the decision in *Wander Ltd. vs Anton India Pvt. Ltd.* 1990 (Suppl) SCC 727, wherein it is observed :

"14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle." (Emphasis added)

14. Furthermore, in the case of *Baddula Lakshmiah vs Sri Anjaneya Swami Temple* (1996) 3 SCC 52, it is held that, in an intra-court appeal, the appellate Court is a Court of Correction which corrects its own orders, in exercise of the same jurisdiction as was vested in the Single Judge. Such is not an appeal against an order of subordinate court. In such appellate jurisdiction the High Court exercises the powers of a Court of Error. :

"2. A letters patent appeal, as permitted under the Letters Patent, is normally an intra-court appeal whereunder the Letters Patent Bench, sitting as a Court of Correction, corrects its own orders in exercise of the same jurisdiction as was vested in the Single Bench. Such is not an appeal against an order of a subordinate court. In such appellate jurisdiction the High Court exercises the powers of a Court of Error. So understood, the appellate power under the Letters Patent is quite distinct, in contrast to what is ordinarily understood in procedural language." (Emphasis supplied)

15. Recently, following the principle of law laid down in *Wander Ltd.* (supra), it is observed by their Lordship in *Wockhardt Limited vs Torrent Pharmaceuticals*

Limited (2018) 18 SCC 346, that it will be within the jurisdiction of Division Bench to interfere on a matter of principle, pointing out errors of law by the Single Judge :

10. We are of the view that this is not a case where Wander Ltd. (supra) has not been heeded. On the contrary, the Division Bench has interfered on a matter of principle, pointing out errors of law by the learned Single Judge. ..."

16. In view whereof, the contention raised on behalf of the respondent No.4 that it is beyond the jurisdiction of the Appellate Court in intra-court appeal to examine the correctness of an order of reference, cannot be countenanced. In our considered opinion, in view of the law laid down in Baddula Lakshmiah (supra), Wander Ltd. (supra) and Wockhardt Limited (supra), it will be within the jurisdiction of Division Bench in seisin with an intra-court appeal, to interfere on a matter of principle, pointing out error of law by the learned Single Judge. Our view also find support from the decision by the Constitution Bench in Central Board of Dawoodi Bohra Community vs State of Maharashtra (2005) 2 SCC 673; wherein, their Lordships, in a fact situation as the present one, were pleased to hold :

"12. Having carefully considered the submissions made by the learned senior counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms :

(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.

(2) A Bench of lesser quorum cannot doubt the correctness of the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of co-equal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of co-equal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

(3) The above rules are subject to two exceptions : (i) The abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and

(ii) In spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule)

and for reasons it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of Chief Justice constituting the Bench and such listing. Such was the situation in *Raghubir Singh* (1989) 2 SCC 754 and *Hansoli Devi* (2002) 7 SCC 273."

(Emphasis supplied)

17. The objection raised as to jurisdiction is, therefore, overruled.

18. Now, coming to the issue as to whether learned Single Judge was justified in placing the matter before Hon'ble the Chief Justice to refer the matter to a Larger Bench.

19. For dealing with the question, we straightaway refer to the principle laid down in *Devi Singh Thakur* (supra).

20. In *Devi Singh Thakur* (supra), the Division Bench dwelt on the issue as to whether a Sub-Divisional Officer (Police) can be said to be holding an "operational post" and thus, immune from transfer within two years of his posting, which is a minimum tenure laid down in *Prakash Singh vs Union of India* (2006) 8 SCC 1; wherein, it is held :

"31. With the assistance of learned counsel for the parties, we have perused the various reports. In discharge of our constitutional duties and obligations having regard to the aforementioned position, we issue the following directions to the Central Government, State Governments and Union Territories for compliance till framing of the appropriate legislations :

.....

.....

Minimum Tenure of I.G. of Police & other officers

(3) Police Officers on operational duties in the field like the Inspector General of Police in-charge Zone, Deputy Inspector General of Police in-charge Range, Superintendent of Police in-charge district and Station House Officer in-charge of a Police Station shall also have a prescribed minimum tenure of two years unless it is found necessary to remove them prematurely following disciplinary proceedings against them or their conviction in a criminal offence or in a case of corruption or if the incumbent is otherwise incapacitated from discharging his responsibilities. This would be subject to promotion and retirement of the officer."

..... "

21. It is pertinent to note that learned Single Judge, in Writ Petition No.4461/2019 (*S.N. Pathak vs State of M.P. and others*) which gave rise to appeal of *Devi Singh Thakur* (supra) relying on the decision of another Single

Bench in Writ Petition No.3287/2019 : Dr. Kripa Shankar Dwivedi vs State of M.P. and others decided on 22.02.2019, held that the police officer holding rank of City Superintendent of Police/Deputy Superintendent of Police/Sub-Divisional Officers (Police) were on operational post.

22. In Dr. Kripa Shankar Dwivedi (supra), learned Single Judge made following observations while dwelling on the contention of the State that immunity of transfer within two years of posting as per the verdict in Prakash Singh (supra) was to officer on operational duties :

19. The Ld. Additional Advocate General's submission that judgments cannot be read as statute, is appreciated in the correct prospective by this court. Undoubtedly, the judgments of superior courts are not to be interpreted as statutes. They are not to be considered as Euclidean theorem whereby a strict and a mechanical application of the judgments should be given effect to. Judgments of the Supreme Court elucidate the law where it interprets a statute and in cases like Prakash Singh's prematurely if there is (1) disciplinary proceedings initiated against him, (2) he is convicted for a criminal offence, (3) there is a case of corruption pending against him, or (4) he is incapacitated from discharging his responsibilities. These four condition precedents, have been laid down by the Supreme Court after much deliberation. If the same is not followed in letter and spirit, then the protection given to the police officer on operational duties in the field will be rendered superfluous.

...

21. The other contention of the Ld. Additional Advocate General that the Petitioner being a Dy. SP was not "In-charge" either of a zone, range, district or of a police station which, according to the Ld. Additional Advocate General, is a condition precedent to be satisfied before the protection of two years continuous service at the place of posting can be accorded to the Petitioner. According to the Ld. Additional Advocate General, the Petitioner being a Dy. SP, his position is in between a Station House Officer and the Superintendent of Police of a district and, therefore, he does not occupy a post where he is In-charge of any field operational duties. Yet again, with great respect, this court begs to differ. Direction No.3 commences with the words "police officers on operational duties in the field" even in the position of a Dy. SP, the Petitioner was on operational duties in the field and this stands is established by the document filed by the State itself in its reply, which is Annexure R/3 at page 12, which is a list of fourteen cases in which notices have been given to the Petitioner. All those cases relate to the conduct of the investigation in criminal cases by the Petitioner. Investigation falls in the category of operational duties in the field as it is not purely administrative. Therefore, even though the Deputy Superintendent of Police and the SDO(P) have been omitted, by necessary implication they were also police officers on operational duties in the field.

23. These observations in Dr. Kripa Shankar Dwivedi (supra) were examined in

the light of the provisions contained in Madhya Pradesh Police Regulation whereon, it was found that the CSP/DSP/SDO(P) were not involved in "operational duties in field". It was, accordingly, held in *Devi Singh Thakur (supra)* :

"Evidently, the minimum tenure of two years is fixed for the Police officer on operational duties in the field like the Inspector General of Police in Charge Zone, Deputy Inspector General of Police in Charge Range, Superintendent of Police in Charge District and Station House Officer in Charge of Police Station. Thus, the SDO(P)/CSP; are kept out of the periphery as they are not in the operational duties in field. Though learned Single Judge in *Dr. Kripa Shanker Dwivedi (supra)* in paragraph 21, of the order therein has observed that the Superintendent of Police being engaged in investigation therefore "by necessary implication they were also police officers on operational duties in the field." We, however, respectfully disagree with the observation. Firstly, the SDOPs/DSPs/CSPs, being omitted in paragraph 30 of the Judgment in *Prakash Singh (supra)* cannot be treated to be "cassus omisus", a well settled Rule of interpretation, unprovided for by a Statute. Applying the principle to a Judgment by a Superior Court by including the post by "necessary implication," is unwarranted. Even otherwise the Madhya Pradesh Police Regulation framed by the State Government in exercise of its powers conferred by sub-Section (2) of Section 46 read with Section 2 and 7 of the Police Act, 1861, lays down under Regulation 36 the duties and power of the Assistant Superintendent of Police and Deputy Superintendent of Police. It envisages:

"36- A.S.P and D.S.P.- duties and power of- Assistant Superintendents and Deputy Superintendents may do any of the Superintendent's work which he is not obliged by law or rules to do personally. They may make inquiries and recommendations about matter on which they are not empowered to pass final orders. They should go on tours and make inspections. Assistant and Deputy Superintendents who have been conformed in their appointments have been empowered to perform the duties of a Superintendent under section 7 of the Police Act, in so far as they relate to the suspension of police officers and the award of the punishments specified in Section 7(b). All deputy Superintendents except probationers are empowered to perform the duties of a Superintendent under Section 30 and 30-A of the Act."

Even Part VI Chapter I of the Regulation which deals with the Investigation of Crime empowers the Police Officer-in-charge of Police Station to investigate (Regulation 734), we are not apprised of any provision in regulation which empowers the SDO(P)/CSP/DSP to investigate the crime. Therefore, they cannot be treated as "on operational duties in fields." The contrary view taken in (*sic*) cannot be held to be correct; therefore, overruled."

24. It is this view which is doubted by learned Single Judge on the anvil of stipulations contained in the Prevention of Corruption Act, 1988 and in the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules,

1995. Learned Single Judge noted the following submissions made on behalf of the petitioner and respondent :

"As per the learned counsel for the petitioner, the aforesaid provisions clearly indicate that the SDO(P)/DSP/CSP are the investigating officers as they investigate the matter under the provisions of Rules, 1995 and Act, 1988 and, as such, they are on operational duties. This aspect has not been brought to the notice of the Division Bench, therefore, the view of the Division Bench is incorrect, whereas the view taken by coordinate Bench in W.P. No.4461/2019 and also in case of Dr. Kripa Shankar Dwivedi (supra), was proper. He also submits that the Division Bench has held contrary to law, but he is relying upon the decision of the Supreme Court which deals with the police officers who are on operational duties and, therefore, the order impugned, according to him, is contrary to law and is not sustainable. Accordingly, the impugned order deserves to be set aside.

In the above facts situation of the case, the petitioner has also claimed for grant of interim relief saying that the operation of the order of transfer in respect of the petitioner, be stayed.

Per contra, Shri Seth appearing for respondent No.4 submits that even otherwise while taking the said view, the Division Bench has not taken note of specific provision of Rules 1995 so also the Act, 1988, but the view of Division Bench is binding to this Court unless it is finally decided that the view taken by the Division Bench is proper, therefore, this Court has no other option, but to follow the view of the Division Bench. He has also submitted that in compliance of the order of transfer, the petitioner has already been relieved and respondent No.4 has submitted his joining and, therefore, no case for grant of interim relief is made out. He further submits that so far as the approval of transfer from the Police Establishment Board is concerned, at this stage merely because the order impugned is silent in that regard, inference cannot be drawn that the same has been issued without the approval of the Police Establishment Board.

Pursuant to a query made by this Court, the learned Government Advocate appearing for the respondents /State after seeking instructions has apprised this Court showing a document that the transfer of the petitioner has been made on the basis of the recommendations of the Police Establishment Board, therefore, the ground urged by the petitioner that the order impugned has been issued without the recommendation of the Police Establishment Board, is baseless."

- and drew a prima facie opinion that "the petitioner being an SDO(P), is on operational duty and, accordingly, the law laid down by the Supreme Court in the case of Prakash Singh (supra) is applicable to him." Accordingly, the transfer order was stayed. That, while agreeing with the petitioner's contention that the decision in Devi Singh Thakur (supra), being structured on defective foundation, learned Single Judge, contrary to what was held in Devi Singh Thakur (supra), held the post of SDO(P) to be an operational post, then referred the matter to

Hon'ble the Chief Justice for placing it before a Larger Bench. The question formulated is :

'Whether the view taken by the Division Bench in case of *Devi Singh Thakur vs S.N. Pathak and others* (W.A. No.693/2019) holding that the SDO(P)/CSP/DSP are not on operational duties, therefore, the view taken by the Supreme Court in case of *Prakash Singh* (supra) would have no application for these police officers, is proper or not inasmuch as the provisions of Prevention of Corruption Act, 1988 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 would prevail over the Police Regulations and therefore these officers should be treated as on operational duties in field.'

25. Was this course proper is the question ?

26. Rule 8 of Chapter IV of High Court of Madhya Pradesh Rules 2008 stipulates:

"8. Reference to a Larger Bench

"8. (1) A single bench or a division bench may refer any proceeding, pending before it. to the Chief Justice with a recommendation that it be placed before a larger bench where it involves a substantial question of law of general importance.

(2) In such proceeding, the referring Judge(s) may formulate question(s) and may either refer such question(s) for opinion or may request that entire proceeding be heard and decided by the larger bench.

(3) Where a Judge sitting alone while hearing a case is of the opinion that for the decision of that case, an earlier decision of coordinate or larger bench of this Court needs reconsideration, he may formulate question (s) and refer the same to the Chief Justice with a recommendation that it be placed before a larger bench."

27. That, sub-rule (3) of Rule 8 of the Rules, 2008 came up for consideration before Full Bench of our High Court in *Farooq Mohammad vs. State of M.P.* 2015 (4) MPLJ 450 wherein, it is held by their Lordships :

"10. This legal position has been in vogue since then. Therefore, that legal position was not only binding on the Single Judge of this Court; but it was also not open to be doubted on the principles of stare decisis, in particular by the Single Judge. The Constitution Bench of the Supreme Court in the case of *Central Board of Dawoodi Bohra Community and another vs. State of Maharashtra and another*³⁴ in paragraph 12 has observed thus:-

"12. Having carefully considered the submissions made by the learned Senior Counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms :-

(1) The law laid down by this Court in a decision delivered by a Bench of larger

strength is binding on any subsequent Bench of lesser or coequal strength.

(2) A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

(3) The above rules are subject to two exceptions : (i) The abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and (ii) in spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons given by it, it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of the Chief Justice constituting the Bench and such listing. Such was the situation in *Raghubir Singh and Hansoli Devi*."

(emphasis supplied)

Keeping in mind the principles underlying this decision, it is not open to the learned Single Judge of the High Court to doubt the correctness of the view expressed by the Division Bench as the decision of the Division Bench is binding on the Single Judge.

20. Following these decisions, the learned Single Judge should have eschewed from referring the matter to the Larger Bench. We may now usefully refer to Rule 8 in Chapter IV of the High Court of Madhya Pradesh Rules, 2008, in particular, Clause 3 thereof, which reads thus:-

"Reference to Larger Bench

8. (1)

(2)

(3) Where a Judge sitting alone while hearing a case is of the opinion that for the decision of that case, an earlier decision of coordinate or larger bench of this court needs reconsideration, he may formulate question (s) and refer the same to the Chief Justice with a recommendation that it be placed before a larger

bench."

21. The expression "reconsider" and "reconsideration as mentioned in The Major Law Lexicon by P Ramanatha Aiyar, 4th Edition, read thus:-

"Reconsider. "Reconsider", as used in an Act, providing that, upon the return by the mayor of a vetoed ordinance with his objection, the aldermen shall at their regular meeting order the objection entered on the journal, after which they shall proceed to re-consider the same, means the taking up of the matter and discussing it. The word "re- consider" is not given the artificial meaning which it may have acquired in strict parliamentary proceedings, but only the ordinary meaning, which is to think or consider the matter over again, for the purpose of passing upon the matter on such second consideration.

A resolution adopted by the city council that a certain ordinance theretofore enacted "be reconsidered" does not amount to a repeal of such ordinance.

Reconsideration. Reconsideration, in parliamentary law, is defined to be taking up for renewed consideration that which has been passed or acted on previously."

22. Indeed, the learned Single Judge sitting alone while hearing a case is free to refer the decision of Coordinate or Larger Bench of this Court for reconsideration. The expression "reconsideration", will have special connotation when the Judge sitting alone while hearing a case doubts the opinion of a Division Bench. The Single Judge cannot opine that another view or opinion is possible; or that he disagrees with the decision of the Division Bench. *Sensu stricto*, in the light of the principles underlying the decision of the Constitution Bench of the Supreme Court in *Central Board of Dawoodi Bohra Community and Anr. (supra)*, he can merely invite the attention of the Chief Justice and request for the matter being placed for hearing before a larger quorum than the Bench whose decision has come up for consideration. At best, he may delineate the points which may require reconsideration, such as, that the Division Bench decision is *per incuriam* or has failed to refer to the settled legal position or any decision of the Supreme Court on the subject or for that matter the relevant statutory provisions of the Act or Rules have gone unnoticed."

28. When the impugned order is tested on the anvil of above analysis, we are of considered opinion that the same being contrary to the principle of law laid down in *Farooq Mohammed (supra)* in respect of as to how the matter is to be referred to a larger Bench, we set aside the order and remit the matter to learned Single Judge. At this stage, a question arises as to whether when apprised of the controversy qua the status of an SDO(P)/CSP/Dy. S.P., whether this Court, in intra-court appeal, can decide the same. The answer, in our considered opinion, is emphatic 'No'. That will be within the domain of the reference Court in case of a reference made in accordance with the law laid down in *Farooq Mohammad (supra)*. 29. The appeal is disposed of finally in above terms. No costs.