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**(2014) 11 MP CK 0019**

**In the Madhya Pradesh High Court**

**Case No :** Writ Petition Nos. 8116/2014, 8117/2014, 9719/2014, 10133/2014, 13824/2014, 14440/2014 and 14444/2014

Pralekh Tiwari

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

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**Date of Decision :** 10-11-2014

**Acts Referred:**

**Citation :** (2014) 11 MP CK 0019

**Hon'ble Judges :** A.M. Khanwilkar, C.J.; Vandana Kasrekar, J

**Bench :** Division Bench

**Advocate :** Rajesh Maindiretta, Advocate, Amitabh Gupta, Advocate and Ritwik Parashar, Advocate for the Appellant; P.K. Kaurav, Additional Advocate General, Advocate for the Respondent

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## **Judgement**

1. Heard counsel for the parties.
2. In all these matters, the petitioners are challenging the decision of VYAPAM, who cancelled examination results of the respective petitioners.
3. It is noticed that that action was taken by VYAPAM merely on the basis of intimation received from Special Task Force (STF) about the unfair means committed by the concerned petitioners during the subject examinations. Admittedly, no independent enquiry was conducted by VYAPAM or for that matter opportunity was given to the petitioners.
4. The argument of the respondents that no opportunity was necessary and other contentions raised on behalf of the petitioners have already been considered by the Division Bench of this Court in the case of Shishuvendra Singh Tomar vs. State of Madhya Pradesh and others, in Writ Petition No. 9690/2014 and companion cases, decided on 24th September, 2014. For the same reasons, even these petitions ought to succeed and deserve to be disposed of on the same terms as noted in the above said decision. In that, VYAPAM will be at liberty to commence independent enquiry on the basis of information received from the

Investigating Agency (Special Task Force) and to proceed against the concerned petitioners and similarly placed persons on the basis of view formed by it in the proposed enquiry. The enquiry to be resorted by VYAPAM must proceed on its own merits and in accordance with law. All questions in that behalf are left open.

5. Accordingly, impugned decision of VYAPAM in the respective petitions is quashed and set aside with liberty to VYAPAM as aforesaid.

In W.P. Nos. 8116/2014(S), 8117/2014(S) & 10133/2014(S):

6. The additional relief claimed by the concerned petitioners in these three petitions is that of setting aside the consequential action taken by the Department in removing the said petitioners from service relying on the order passed by VYAPAM.

7. As the order passed by VYAPAM has been set aside in terms of this order, that being the basis for passing consequential order by the Department to remove the concerned petitioners from service, we have no hesitation in setting aside even those decisions with liberty to the Department to proceed in the matter against the concerned petitioners, in accordance with law, by following due process.

8. Accordingly, even the order passed by the Department against these petitioners is set aside with liberty to VYAPAM as well as the Department to proceed in accordance with law.

In Writ Petition Nos. 9719/2014(S) and 13824/2014(S):

9. In these two petitions, the petitioners have challenged the order passed by VYAPAM cancelling the written test examination results as also the decision taken by the Department to remove the concerned petitioners from service on the ground of remaining absent without notice. In other words, the services of the petitioners in these two petitions were terminated before the action was taken by VYAPAM; and against which decision of the Department, the petitioners have resorted to remedy of departmental appeal. Be that as it may, even if the petitioners succeed in challenging the decision of VYAPAM qua them, that would not automatically entitle these petitioners to be reinstated in service until the appeal preferred by them against the order of removal passed by the Department is finally decided and answered in their favour. Further, even if they were to succeed in departmental appeal, their reinstatement in service after setting aside the departmental action for remaining absent without notice, would not extricate them from the possibility of taking departmental action against them after the VYAPAM finally answers the issue after due inquiry as per the liberty given in terms of this order. In the event of cancellation of the examination results of these petitioners by VYAPAM, the Department would be obliged to proceed against the said petitioners by way of consequential order as the said petitioners would not be competent to continue in service. Those questions will have to be considered on its own merits, in accordance with law, as and when occasion arises.

In Writ Petition No. 14440/2014(S) and 14444/2014(S)

10. In both these cases, the petitioners are not only challenging the order passed by VYAPAM, but, also by the Department removing them from service on the ground of misconduct of non-disclosure of the material fact of having been arrested by STF in connection with VYAPAM Examination Scam Criminal Case.

11. As regards the challenge to order passed by VYAPAM, for the reasons already recorded, that decision will have to be quashed and set aside on the same terms with liberty to VYAPAM to proceed against these petitioners as well.

12. As regards challenge to order passed by the Department removing concerned petitioners from service on the ground of misconduct for not disclosing the fact of having been arrested by STF in connection with Crime No. 18/2013 by STF Police Station, Bhopal, the petitioners would be free to challenge that decision by way of statutory departmental appeal. All questions in that behalf are left open to be decided in the proposed appeal to be filed by these two petitioners.

13. Moreover, the observations made whilst dealing with W.P. No. 9719/2014 (S) and 13824/2014 (S) hitherto will apply on all fours to these petitioners in the event VYAPAM after due inquiry decides to once again cancel the examination results of any of these petitioners.

14. Accordingly, all these petitions are partly allowed on the above terms.

15. Ordered accordingly.