

CIVIL APPELLATE JURISDICTION

Writ Petition (C) No. 454 of 1999@@
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Eugene Lucas ... Petitioner(s)

Vs.

Government of Madhya Pradesh and Ors. ... Respondent (s)

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The petitioner herein was a member of the Madhya Pradesh judicial service. It appears that on the basis of certain charges the petitioner was suspended. It is at that stage, the petitioner filed a petition under Article 32 of the Constitution challenging the order of suspension as well as the charge sheet. Subsequently, on 14th May, 1998 this Court declined to entertain the said writ petition by passing the following order:

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"The petitioners may, if so advised, move the High Court under Article 226 and 227 of the Constitution. This petition under Article 32 of the Constitution is not entertained for this reason. The said W.P. is disposed of."

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After the aforesaid order was passed, the petitioner filed a petition under Article 226 of the Constitution before the Madhya Pradesh High Court, ...2/-

challenging the departmental proceedings initiated against him as well as the order of suspension. It appears that while the said writ petition was pending, the petitioner was removed from service. In view of the said subsequent event, the petitioner moved an application (I.A. No. 2953W/98) for withdrawal of the petition with liberty to file a fresh writ petition. The Court allowed the said application and permitted the petitioner to file a fresh amended petition, challenging the order of removal subsequently passed. However, the petitioner instead of filing a petition under Article 226 of the Constitution before the High Court, choose to file the present writ petition under Article 32 of the Constitution.

When this matter was taken up for hearing, Shri P.P. Rao, learned senior counsel, raised a preliminary objection that in view of the order dated 14th May, 1998, the petition may be transmitted to the High Court for decision on merits. After hearing Mr. Prashant Bhushan, learned counsel, we are of the view that the judicial discipline demands that the petitioner may be directed to pursue his remedy before the High Court by filing a petition under Article 226 of the Constitution. Since ...3/-

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the matter is pending for a considerable time and the petitioner is out of employment for many years, we are of the view that this matter be remitted to the High Court of Madhya Pradesh. We, accordingly, issue an order to that affect. This petition shall be converted into a petition under Article 226 of the Constitution. The petitioner has undertaken to move an application to this respect within two weeks' from today before the High Court. The High Court may expeditiously decide the writ petition.

Let the record of this petition be transmitted to the High Court of Madhya Pradesh at Jabalpur forthwith.

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(S.B. Sinha)@@
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(AR. Lakshmanan) @@
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New Delhi,
February 19, 2003.