IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND SINGH BAHRAWAT

WRIT PETITION No. 21934 of 2017

CNR No.: MPHC030306282017

KEDARILAL VAISHYA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Sameer Kumar Shrivastava - Advocate for petitioner.
Shri K.K. Prajapati - Government Advocate for respondent/State.

Reserved on : 30.10.2026

Pronounced on : 23.11.2026

ORDER

This petition, under Article 226 of the Constitution of India, has been filed seeking following relief(s):-

> *"(I) That, Hon'ble court may kindly be pleased to set aside or quashed the order dated 10/10/2017 (Annexure P/1) in the interest of justice.*
>
> *(II) That, the Hon'ble High Court may kindly be pleased to direct the respondent authorities to reimburse the total expenditure 19,70,000/-*

Signature Not Verified
Signed by: PAWAN DHARKAR
Signing time: 11/24/2026 9:25:01 AM

Rs. with interest incurred in the legal proceedings due to the false criminal proceedings instituted by the state.

Any other relief which this Hon'ble Court deems fit in the facts and circumstances of the case same may kindly be granted to the petitioner."

2. It is submitted by learned counsel for the petitioner that the petitioner was initially appointed as Sub-Engineer in the Public Health Engineering Department on 15.07.1978 and was subsequently promoted to the post of Assistant Engineer vide order dated 04.12.1989. While the petitioner was posted at Shivpuri, certain complaints were made against him regarding disconnection of illegal water connections, pursuant to which an FIR was registered by the Lokayukta Police in the year 1994 under Section 13(1) of the Madhya Pradesh Lokayukt Evam Up-Lokayukt Adhiniyam, 1981.

3. It is further submitted by learned counsel for the petitioner that after investigation, the matter was forwarded to the State Government for grant of prosecution sanction. However, the Public Health Engineering Department, after examining the allegations and relevant documents running into 180 pages, refused to grant sanction vide letter dated 04.07.1996, having found that no case of disproportionate assets was made out against the petitioner. Subsequently, the prosecution agency again forwarded the matter to the Law and Legislative Department by suppressing the earlier refusal and relevant documents, and sanction was granted without consultation with the parent department. The departmental authorities also forwarded a proposal in the year 2002 for withdrawal of the prosecution, mentioning several grounds in favour of the petitioner, but no action was taken thereon.

Signature Not Verified
Signed by: PAWAN DHARKAR
Signing time: 11/24/2026 9:25:01 AM

4. It is contended by learned counsel for the petitioner that the learned Trial Court i.e. Special Judge [Prevention of Corruption Act], Shivpuri (M.P.), vide judgment of conviction and order of sentence dated 30.12.2005 in Special Sessions Trial No.04/1996, convicted the petitioner and sentenced him to three years' rigorous imprisonment along with a fine of Rs.15,000/- with default stipulation. The petitioner's criminal appeal (Cr.A.52/2006) was also dismissed by the High Court vide judgment dated 16.12.2010. Consequently, the petitioner was suspended and thereafter terminated from service, leaving him without any source of income and compelling him to incur substantial expenses in defending himself.

5. It is further submitted by learned counsel for the petitioner that the petitioner challenged the aforesaid judgments before the Hon'ble Supreme Court in Criminal Appeal No.782/2011, which was allowed vide judgment dated 23.03.2015. The Hon'ble Supreme Court set aside the judgments of the Trial Court and the High Court and acquitted the petitioner of all the charges, holding that there was no violation of Sections 13(1) and 13(2) of the Act. Thereafter, the petitioner's services were restored.

6. Learned counsel for petitioner submits that the General Administration Department, Government of Madhya Pradesh, had issued a circular/notification dated 05.04.1961 (Annexure P/6), providing that where criminal or civil proceedings instituted against a Government servant in respect of matters connected with his official duties ultimately end in his favour, the Government may reimburse the whole or reasonable proportion of the expenses incurred by

Signature Not Verified
Signed by: PAWAN DHARKAR
Signing time: 11/24/2026 9:25:01 AM

him in defending such proceedings, subject to satisfaction regarding the facts and circumstances of the case.

7. It is argued by learned counsel for the petitioner that in view of the aforesaid circular and his acquittal by the Hon'ble Supreme Court, the petitioner submitted a detailed representation dated 16.02.2016 (Annexure P/7), along with all relevant documents and the judgment of the Hon'ble Supreme Court, claiming reimbursement of Rs.17,74,000/- towards expenses incurred in defending the criminal prosecution. However, the authorities failed to decide the representation.

8. It is further submitted by learned counsel for the petitioner that the petitioner approached this Court by filing W.P. No.3974/2016, which was dismissed vide order dated 17.06.2016. The petitioner thereafter preferred Writ Appeal No.203/2016, which was allowed vide order dated 18.07.2016. This Court quashed the order passed by the learned Single Judge and directed the competent authority to decide the petitioner's representation dated 16.02.2016 in the light of the Circular dated 05.04.1961 within four months, without expressing any opinion on the merits of the claim.

9. Learned counsel for petitioner further submits that despite the aforesaid directions, respondent No.1 initially issued a letter dated 02.09.2016 stating that the representation did not fall within its jurisdiction. Thereafter, a hearing was fixed for 20.12.2016 and the petitioner submitted all the required documents vide letter dated 21.12.2016. Since the representation was still not decided, the petitioner filed Contempt Petition No.140/2017, which was disposed of vide order dated 28.08.2017, directing the respondents to decide the claim contained in the representation dated 16.02.2016 positively within four weeks, after

Signature Not Verified
Signed by: PAWAN DHARKAR
Signing time: 11/24/2026 9:25:01 AM

providing a reasonable opportunity to the petitioner, if any further material was required.

10. It is contended by learned counsel for the petitioner that during the contempt proceedings, the authorities sought details and supporting documents regarding the expenditure of Rs.17,74,000/- vide letter dated 12.07.2017, which were duly furnished by the petitioner on 16.08.2017. However, no decision was taken. The petitioner thereafter submitted another representation dated 16.09.2017 in compliance with the order dated 28.08.2017.

11. It is further submitted by learned counsel for the petitioner that due to the failure of the respondents to restore the petitioner's service and extend consequential benefits despite his acquittal, the petitioner was compelled to initiate several writ and contempt proceedings. He incurred an additional expenditure of Rs.1,96,000/- towards filing of various writ petitions, writ appeals, review petitions and contempt petitions, including W.P. No.6915/2015, W.P. No.8309/2015, W.P. No.3974/2016, WA.No.203/2016, W.P. No.166/2016 and the connected contempt and review proceedings. Thus, the total expenditure claimed by the petitioner comes to Rs.19,70,000/- (Rs.17,74,000/- towards criminal defence and Rs.1,96,000/- towards subsequent litigation).

12. Learned counsel for petitioner submits that the respondents, vide impugned order dated 10.10.2017 (Annexure P/1), rejected the petitioner's representation by taking into consideration the technical grounds and observations concerning disproportionate assets, without properly appreciating the acquittal judgment passed by the Hon'ble Supreme Court, the earlier departmental decision refusing prosecution sanction and the proposal for withdrawal of prosecution.

Signature Not Verified
Signed by: PAWAN DHARKAR
Signing time: 11/24/2026 9:25:01 AM

13. It is argued by learned counsel for the petitioner that the impugned order is wholly illegal, arbitrary and contrary to the object and spirit of the circular dated 05.04.1961. The said circular was issued to provide financial assistance to Government servants who are compelled to incur litigation expenses in defending proceedings arising out of their official duties and ultimately succeed in such proceedings. The petitioner was subjected to prosecution for several years, remained out of service for more than ten years and had to meet the expenses of litigation by collecting money from his relatives.

14. It is further contended by learned counsel for the petitioner that the authorities have failed to appreciate that the petitioner was acquitted by the Hon'ble Supreme Court and that the earlier departmental authority itself had found no *prima facie* case against him and had proposed withdrawal of the prosecution. The respondents cannot ignore these material circumstances while considering the petitioner's claim under the Government circular.

15. It is also submitted by learned counsel for the petitioner that the authorities had already considered the petitioner's case and allowed the benefit of the suspension and termination period from 30.12.2002 to 15.10.2015 without treating the said period as a break in service. Having regard to the earlier departmental decisions and the orders passed by this Court, the respondents could not have rejected the petitioner's claim in an arbitrary manner.

16. Lastly, learned counsel for petitioner submits that the impugned order dated 10.10.2017 deserves to be quashed as it is contrary to the Government circular dated 05.04.1961, the directions issued by this Court in Writ Appeal

Signature Not Verified
Signed by: PAWAN DHARKAR
Signing time: 11/24/2026 9:25:01 AM

No.203/2016 and Contempt Petition No.140/2017, and the findings recorded by the Hon'ble Supreme Court in the criminal appeal.

17. Accordingly, learned counsel for the petitioner prays that the impugned order dated 10.10.2017 be quashed and the respondents be directed to reimburse the total litigation expenditure of Rs.19,70,000/- along with interest, with any other appropriate relief.

18. *Per contra*, it is submitted by learned counsel for respondent/State that the present writ petition has been filed challenging the order dated 10.10.2017 (Annexure P/1), whereby the petitioner's representation seeking reimbursement of litigation expenses has been rejected by passing a detailed and reasoned speaking order after considering all relevant facts and circumstances. The petitioner has claimed Rs.19,70,000/- as compensation towards alleged malicious prosecution and litigation expenses on the ground that he was ultimately acquitted by the Hon'ble Supreme Court in a criminal case involving offences under the Prevention of Corruption Act, 1988, on technical grounds.

19. It is further submitted by learned counsel for respondent/State that the present petition is not maintainable insofar as the petitioner is seeking reimbursement of litigation expenses on account of alleged malicious prosecution, as he has an alternative remedy of filing a civil suit against the Government for recovery of money. If the petitioner feels aggrieved by any alleged malicious prosecution, he has an independent remedy under the law of torts for claiming damages and compensation. Such disputed claims cannot be adjudicated in proceedings under Article 226 of the Constitution of India.

Signature Not Verified
Signed by: PAWAN DHARKAR
Signing time: 11/24/2026 9:25:01 AM

20. Learned counsel for the State further submits that the petitioner has wrongly interpreted the Government circular dated 05.04.1961 (Annexure P/6). The circular does not confer any automatic or absolute right upon a Government servant to claim reimbursement of the entire litigation expenses merely because he has been acquitted in criminal proceedings. Under the circular, reimbursement is permissible only when the Government, after examining the facts and circumstances of the case, is satisfied that the Government servant was subjected to the strain of proceedings without proper justification. Even in such circumstances, the Government may reimburse the whole or only a reasonable proportion of the expenses incurred towards defence.

21. It is contended by learned counsel for respondent/State that mere acquittal of the petitioner does not establish that the prosecution was malicious or initiated without proper justification. The nature of acquittal is relevant for determining whether the prosecution was unjustified. An acquittal on technical grounds, benefit of doubt, misinterpretation of legal provisions or hostility of witnesses cannot automatically be treated as proof of malicious prosecution. The petitioner is required to establish that the criminal proceedings were initiated and continued without proper justification, which is a disputed question of fact requiring appreciation of evidence and cannot be determined in writ proceedings under Article 226 of the Constitution.

22. It is further submitted by learned counsel for respondent/State that the petitioner has claimed reimbursement of Rs.19,70,000/- towards criminal defence and other writ petitions, appeals, review petitions and contempt proceedings. However, the petitioner has not furnished duly authenticated bills and receipts

Signature Not Verified
Signed by: PAWAN DHARKAR
Signing time: 11/24/2026 9:25:01 AM

establishing the actual expenditure incurred by him, the payments made, and the persons to whom such payments were made. In the absence of cogent documentary evidence, the claim for reimbursement of such a huge amount cannot be accepted merely on the basis of the petitioner's assertion.

23. Learned counsel for respondent/State also submits that the circular dated 05.04.1961 provides only for reimbursement of the whole or a reasonable proportion of the expenses incurred in defending criminal or civil proceedings instituted by or on behalf of the State in respect of matters connected with the official duties or position of a Government servant. It does not create an enforceable right to claim reimbursement of every expense incurred in subsequent independent litigation or proceedings initiated by the petitioner.

24. It is further contended by learned counsel for respondent/State that the questions as to whether the prosecution was malicious, whether it was initiated without proper justification, whether the petitioner suffered any legally compensable loss and what amount, if any, is liable to be reimbursed, involve disputed questions of fact which can appropriately be decided by a competent civil court after recording evidence.

25. Lastly, learned counsel for the respondent/State submits that the competent authority has considered the petitioner's representation in the light of the Government circular dated 05.04.1961 and has rightly rejected the same vide order dated 10.10.2017. The impugned order is neither arbitrary nor illegal and does not warrant interference by this Court in exercise of its extraordinary writ jurisdiction under Article 226 of the Constitution of India.

Signature Not Verified
Signed by: PAWAN DHARKAR
Signing time: 11/24/2026 9:25:01 AM

26. Accordingly, learned counsel for the respondent/State prays that the writ petition, being devoid of merit and not maintainable, deserves to be dismissed.

27. No other point is raised by learned counsel for the parties.

28. Heard learned counsel for the parties and perused the record.

29. The principal question which arises for consideration is whether the petitioner's claim for reimbursement of expenses incurred in defending the criminal prosecution is required to be considered under the Government Circular dated 05.04.1961, particularly when he has been acquitted by the Hon'ble Supreme Court.

30. Before considering the rival submissions, it would be appropriate to refer to the Government Circular dated 05.04.1961 issued by the General Administration Department, Government of Madhya Pradesh. The said circular provides that where criminal or civil proceedings are instituted against a Government servant in respect of matters connected with his official duties or position and such proceedings ultimately end in his favour, the Government may reimburse the whole or a reasonable proportion of the expenses incurred by him in defending such proceedings, subject to satisfaction regarding the facts and circumstances of the case.

31. The aforesaid circular has been considered by the Division Bench of this Court in **P.G. Kshatriya Vs. State of M.P. and Another, Writ Appeal No.235/2006, decided on 25.07.2008, reported in 2008 (5) MPHT 82 and ILR (2009) ILR (MP) 10**.

Signature Not Verified
Signed by: PAWAN DHARKAR
Signing time: 11/24/2026 9:25:01 AM

32. The Division Bench considered the applicability of the Government Circular dated 05.04.1961 in a case where a Government servant had faced criminal prosecution under the Prevention of Corruption Act. The Division Bench held that the Government circular is applicable to such proceedings also and the Government is required to consider the claim for reimbursement of legal expenses in accordance with the facts and circumstances of the case.

33. It was further observed that the Government has to examine whether the Government servant was subjected to the strain of proceedings without proper justification and, if so, whether the whole or a reasonable proportion of the expenses incurred by him deserves to be reimbursed.

34. Thus, the aforesaid judgment makes it clear that the claim for reimbursement under the Government Circular dated 05.04.1961 cannot be rejected merely on the ground that the employee has an alternative remedy of filing a civil suit.

35. In the present case, it is not in dispute that the petitioner was prosecuted in connection with allegations relating to his official duties. It is also not in dispute that the parent department had initially refused to grant prosecution sanction vide letter dated 04.07.1996 after examining the relevant documents. Further, the departmental authorities had also forwarded a proposal in the year 2002 for withdrawal of prosecution.

36. It is also an admitted position that the petitioner was ultimately acquitted by the Hon'ble Supreme Court vide judgment dated 23.03.2015 in Criminal Appeal No.782/2011, whereby the judgments of conviction passed by the Trial Court and this Court were set aside.

Signature Not Verified
Signed by: PAWAN DHARKAR
Signing time: 11/24/2026 9:25:01 AM

37. In view of the aforesaid circumstances, this Court is of the considered opinion that the petitioner's claim required proper consideration under the Government Circular dated 05.04.1961. The earlier refusal of prosecution sanction by the parent department, the proposal for withdrawal of prosecution and the final judgment of acquittal passed by the Hon'ble Supreme Court were material circumstances which were required to be considered by the competent authority.

38. It is true that mere acquittal in a criminal case does not automatically entitle an employee to reimbursement of the entire expenses incurred by him. The competent authority is required to examine whether the prosecution was initiated and continued without proper justification and whether the petitioner was subjected to the strain of proceedings without proper justification. However, the authority cannot ignore the relevant circumstances and reject the claim without proper consideration.

39. So far as the objection raised by learned counsel for the respondent/State regarding maintainability of the writ petition is concerned, the same cannot be accepted. In view of the law laid down by the Division Bench of this Court in ***P.G. Kshatriya*** **(supra)**, the claim for reimbursement of legal expenses under the Government Circular dated 05.04.1961 is required to be considered by the Government. Therefore, the petitioner cannot be relegated to the remedy of filing a civil suit merely for seeking consideration of his claim under the aforesaid circular.

40. However, so far as the claim of Rs.1,96,000/- towards expenses incurred in filing various writ petitions, writ appeals, review petitions and contempt

Signature Not Verified
Signed by: PAWAN DHARKAR
Signing time: 11/24/2026 9:25:01 AM

proceedings is concerned, the same stands on a different footing. The Government Circular dated 05.04.1961 deals with reimbursement of expenses incurred in defending criminal or civil proceedings instituted by or on behalf of the Government in connection with the official duties or position of the Government servant. Therefore, the expenses incurred in subsequent independent litigation initiated by the petitioner cannot automatically be treated as reimbursable under the aforesaid circular.

41. So far as the claim of Rs.17,74,000/- towards expenses incurred in defending the criminal prosecution is concerned, the respondents are required to examine the supporting bills, receipts and other documents furnished by the petitioner and determine the actual expenses incurred by him. The competent authority shall also examine the circumstances in which the prosecution was initiated and continued, the earlier refusal of prosecution sanction, the proposal for withdrawal of prosecution and the judgment of acquittal passed by the Hon'ble Supreme Court.

42. In the considered opinion of this Court, the impugned order dated 10.10.2017 does not reflect proper consideration of the aforesaid material circumstances in the light of the principles laid down by the Division Bench in ***P.G. Kshatriya*** **(supra)**. The claim of the petitioner could not have been rejected without properly examining the effect of the judgment passed by the Hon'ble Supreme Court and the relevant departmental records.

43. Consequently, the impugned order dated 10.10.2017 (Annexure P/1) is hereby quashed. The matter is remitted to the competent authority for fresh consideration of the petitioner's claim in accordance with the Government

Signature Not Verified
Signed by: PAWAN DHARKAR
Signing time: 11/24/2026 9:25:01 AM

Circular dated 05.04.1961 and the law laid down by the Division Bench of this Court in ***P.G. Kshatriya*** **(supra)**.

44. The competent authority shall reconsider the petitioner's representation dated 16.02.2016, along with the subsequent representations and documents, and shall pass a reasoned and speaking order after giving an opportunity of hearing to the petitioner. While deciding the claim, the authority shall specifically consider the following aspects:

(i) The judgment of acquittal passed by the Hon'ble Supreme Court dated 23.03.2015 passed in Criminal Appeal No(s) 782/2011.

(ii) The earlier refusal of prosecution sanction by the parent department vide letter dated 04.07.1996.

(iii) The proposal forwarded by the departmental authorities in the year 2002 for withdrawal of prosecution.

(iv) The bills, receipts and other documents furnished by the petitioner towards expenses incurred in defending the criminal prosecution.

(v) Whether the petitioner was subjected to the strain of criminal proceedings without proper justification and whether he is entitled to reimbursement of the whole or a reasonable proportion of the expenses claimed by him.

45. The competent authority shall complete the aforesaid exercise within a period of three months from the date of receipt of a certified copy of this order.

46. It is made clear that this Court has not expressed any final opinion regarding the actual amount payable to the petitioner. The competent authority shall independently examine the claim and determine the admissible amount in accordance with law.

Signature Not Verified
Signed by: PAWAN DHARKAR
Signing time: 11/24/2026 9:25:01 AM

47. So far as other reliefs are concerned, the petitioner would be at liberty to file the Civil Suit before the competent court of jurisdiction.

48. With the aforesaid directions, the writ petition stands ***partly allowed***. No order as to costs.

(Anand Singh Bahrawat)
Judge

pd

Signature Not Verified
Signed by: PAWAN DHARKAR
Signing time: 11/24/2026 9:25:01 AM