

(2017) 02 MP CK 0096
In the Madhya Pradesh High Court
Case No : 7943 of 2010

Badri Prasad Raghuwanshi	Vs	APPELLANT
State of M.P. and others		RESPONDENT

Date of Decision : 03-02-2017

Acts Referred:

[Constitution of India](#), [Article 226](#) -
Power of High Courts to Issue certain writs
[Limitation Act, 1963](#), [Section 5](#) -
Extension of prescribed period in certain cases

Citation : (2017) 02 MP CK 0096

Hon'ble Judges : Sujoy Paul

Bench : Single Bench

Advocate : Sanjay K Agrawal, Pushpendra Yadav

Final Decision : Allowed

Judgement

1. This petition filed under Article 226 of the Constitution takes exception to the order of Collector, Raisen passed in Case No.16/Swa. Nig./Collector/2006-07, dated 26.6.2010 whereby the learned Collector set aside the order dated 27.6.2005 and restored the order of punishment of dismissal dated 12.4.1999. In short, the facts are that the petitioner at the relevant time was working as Patwari in Tehsil Silwani. The petitioner was subjected to a disciplinary proceedings. This proceeding ended with imposition of punishment of dismissal by order dated 12.4.1999 Annexure P/2. The case of the petitioner is that he came to know about the dismissal order dated 12.4.1999 at a later point of time. After gathering knowledge about the dismissal order aforesaid, petitioner preferred an appeal against the said order before Collector, Raisen under Section 44 of M.P. Land Revenue Code (for short "Code") seeking quashment of the dismissal order. The said appeal was pregnant with an application for condonation of delay under Section 5 of the Limitation Act. In para 5.8 of the Wp , it is averred that the said application for condonation of delay was allowed by respondent No.3 and thereafter appeal was admitted for hearing. The said

appeal of the petitioner was decided by learned Additional Collector by order dated 27.6.2005 Annexure P/8. The learned Additional Collector opined that the departmental enquiry was not conducted in consonance with principles of natural justice. Resultantly, the dismissal order dated 12.4.1999 was set aside and petitioner was directed to be reinstated in service with regular benefits.

2. Shri Sanjay K. Agrawal, learned counsel for the petitioner submits that in obedience of the order of Additional Collector aforesaid, the petitioner was reinstated. Thereafter, the Collector, Raisen by communication dated 23.12.2006 Annexure P/10 requested the Commissioner, Bhopal Division to authorise him to exercise the powers of suo-moto revision against the order of Additional Collector. In turn, he was authorised by order dated 15.6.2010 Annexure P/11. After such authorisation, the learned Collector exercised the powers of suo-moto revision and passed the impugned order dated 26.4.2010. The learned Collector set aside the order of learned Additional Collector and restored the order of dismissal dated 12.4.1999.

3. Shri Sanjay K. Agrawal by taking this Court to the order of Commissioner Annexure P/11 submits that the said authority has given a specific finding that against the dismissal order of a Patwari, first appeal under Section 44 of the Code can be preferred before the Collector. He gave a finding that Additional Commissioner was not competent to entertain an appeal which can be preferred under Rule 23 of Madhya Pradesh Civil Services (Classification, Control & Appeal), 1966. By criticising this order, it is contended that petitioner did not prefer any appeal under Rule 23 of CCA Rules against the punishment order. Indeed, he preferred the appeal under Section 44 of the Code before the Additional Collector. By taking this Court to the impugned order dated 26.4.2010, it is submitted that the learned Collector has also given a finding that an appeal under Section 44 of the Code can be entertained by the Additional Collector but Additional Collector is not competent to entertain the appeal filed under CCA Rules. He submits that point involved in this case is whether punishment order of a Patwari passed under the CCA Rules can be called in question by preferring an appeal under Section 44 of the Code by relying on Division Bench judgment of this Court reported in 1994 MPLJ 254 (Chandramani Prasad Patwari vs. State of M.P. And others), it is argued that this point is no more res integra. If services of a Patwari are terminated, in nutshell, the powers under Section 104(2) of the Code are exercised. He submits that Section 104 of the Code is a power to appoint a Patwari. As per Section 16 of M.P. General Clauses Act, the power to appoint includes the power to suspend or dismiss. Hence, if a Patwari is dismissed, the source of power remains the same i.e. Section 104(2) of the Code. Such an order is therefore assailable under the Code. Reliance is also placed on 1977 MPLJ 183 (Ramkishan Gaurishankar vs. State of M.P. and others).

4. Shri Agrawal further submits that the petitioner assigned adequate reasons for belatedly filing the appeal which was duly accepted by the competent appellate authority while allowing the application for condonation of delay. In nutshell, it is

submitted that as per the judgment of Chandramani Prasad Patwari (Supra), the findings given by learned Collector cannot sustain judicial scrutiny. It cannot be held that once order of dismissal is passed under the CCA Rules, it is unassailable under the Code.

5. Per contra, Shri Pushpendra Yadav, learned Government Advocate for the State supported the impugned order. He submits that the appeal memo shows that the appeal was preferred before the concerned Collector. There is no material on record to show as to how said appeal was placed before the Additional Commissioner. In absence of any such authorisation or document which empowered the Additional Collector to pass such order, the order of Additional Collector is bad in law. He submits that as per the circular of Commissioner, Bhopal Division dated 2.7.2002 mentioned in operative portion of the impugned order, it is clear that against the order of punishment of Patwari appeal can be preferred under the CCA Rules and Additional Collector is incompetent to entertain such appeal.

6. In addition, Shri Yadav submits that the delay in preferring the appeal was for more than four years and such delay could not have been condoned. Shri Yadav further submitted that against the order Annexure P/11, the petitioner preferred a revision before the Board of Revenue which was dismissed by the Board of Revenue and that order of Board of Revenue rejecting the revision is not called in question in this petition. Thus, by no stretch of imagination, the order authorising the Collector to exercise power under Section 50 of the Code can be said to be illegal or impermissible.

7. No other point is pressed by learned counsel for the parties.

8. I have heard the learned counsel for the parties and perused the record.

9. The record shows that the appeal was preferred by the petitioner under Section 44 of the Code against the impugned dismissal order. The impugned order dated 26.4.2010 (para 6) shows that there existed a work distribution order dated 20.8.2004 whereby the relevant work was distributed amongst the revenue officers. This is not the finding of the learned Collector that as per the said distribution order or otherwise, the learned Additional Collector was not competent to exercise the power under Section 44 of the Code. A Division Bench of this Court in Chandramani Prasad Patwari (Supra) has drawn the curtains on the issue whether a punishment order inflicted against the Patwari under the CCA Rules can be called in question as per the hierarchy provided under the Code. The Division Bench opined as under :- 2. In all these cases, orders of removal or dismissal of patwaris were passed preceded by departmental enquiries held against them. The matters ultimately reached Board of Revenue either in second appeal or revisions at the instance of the patwaris. In all the cases, the Board of Revenue held that second appeal or revision filed before it were not maintainable, since orders of removal and dismissal had been passed under M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 (hereinafter called

the Classification Control Rules"), which could not be interfered by the Board of Revenue, being not orders passed under the M.P. Land Revenue Code, 1959 (hereinafter called the "Code"). All these petitions under Articles 226/227 of the Constitution of India have been filed to quash the said orders of the Board of Revenue.

3. The power to appoint a patwari is conferred on the Collector under Section 104(2) of the Code. That power has been delegated by State Government notifications in S.D.O. As also to Record-of-rights Officer. By virtue of Section 16 of the M.P. General Clauses Act, the power to appoint includes the power to suspend or dismiss. Hence where a patwari is removed or dismissed, the source of power is the same, namely, section 104(2) of the Code. Such an order is therefore an order under the Code. See *Ramkishan Gaurishankar vs. State of M.P. and others*, in 1977 MPLJ 183.

4. It would not make any difference if such an order was preceded by a departmental enquiry held against the patwari. It has been reasoned by the Board in the impugned orders that such orders were passed under the provisions of Classification Control Rules. Leaving aside orders passed with respect to other officers or servants, confining ourselves to order of removal or dismissal of a patwari, albeit passed under the provisions of Classification Control Rules it is not anytheless and order under Section 104(2) of the Code. An illustration will make this point clear. An order dismissing an Agriculture Assistant of Agriculture Department of the State of Madhya Pradesh is passed after holding a departmental enquiry against him under the provisions of Classification Control Rules. Such an order is only an order passed under the Classification Control Rules and cannot be said to be an order passed under the Code. That cannot be said with respect to an order removing or dismissing a patwari after a departmental enquiry held against him under the provisions of Classification Control Rules. That order may be an order under the Classification Control Rules, but it is also an order under Section 104(2) of the Code. That being so, it is liable to interference in appeal or revision under the scheme of the Code. In *Shrigopal vs. State of M.P. And others*, 1979 RN 312, an order compulsorily retiring a patwari by way of punishment, was held to be subject to second appeal by the Commissioner. The Commissioner in that case had held that the order had been passed under the provisions of Classification Control Rules, and therefore, second appeal before him was not maintainable. It was held by this Court that the Commissioner was wrong and that the order in question being passed under the provisions of the Code, second appeal was maintainable before the Commissioner under Section 44(2) of the Code. It would not, therefore, matter in the present cases even if the orders removing or dismissing patwaris were passed as a sequel to departmental enquiries held against them. Such orders would not cease to be orders passed under the Code. As such they would be open to interference in appeal or revision under the Code....

(Emphasis supplied)

A plain reading of this order makes it crystal clear that punishment of dismissal passed under the CCA Rules can very well be called in question by preferring an appeal under Section 44 of the Code. Thus, I am unable to uphold the finding given by the learned Collector that the dismissal order of petitioner cannot be subject matter of challenge under Section 44 of the Code before the Additional Collector. The impugned order shows that as per work distribution order Additional Collector was competent to entertain an appeal under Section 44 of the Code although he may not be competent to entertain an appeal under Rule 23 of the CCA Rules. Thus, in my view, it cannot be said that the petitioner's appeal was decided by the Additional Collector without any authority of law. I find force in the argument of Shri Pushpendra Yadav that after having failed to assail and get the order Annexure P/11 set aside from the Revenue Board and without challenging the said order of Revenue Board, it cannot be said that Collector had no power to undertake the exercise of suo-moto revision. To this extent, I agree with the contention raised by Shri Pushpendra Yadav. The core issue is whether the order on merit passed by the Collector on suo-moto revision is legal and justified.

9. As analysed above, it is clear that the learned Collector has interfered with the order mainly on the ground that against the punishment order, appeal under CCA Rules is available which can be preferred before the Collector and not before the Additional Collector. This finding is based as per the provisions of CCA Rules and not as per the Land Revenue Code. As noticed, this point is finally concluded by the Division Bench in the case of Chandramani Prasad Patwari (Supra). The second finding of learned Collector is mentioned in para 2 of his order. The said authority opined that appeal was preferred by the petitioner after four years which was admitted for hearing contrary to established legal procedure and jurisdiction. Learned Collector has not taken pains to show as to how such admission of appeal was contrary to settled legal procedure and jurisdiction. In other words, the learned Collector has merely recorded his conclusion that appeal could not have been entertained but did not take pains to assign reasons for the same. Reasons are heart beat of conclusion. In absence of reasons, conclusion cannot sustain judicial scrutiny. If order of Additional Collector was erroneous, it was obligatory on the part of the Collector to assign reasons with accuracy and precession as to how said order suffers from procedural impropriety, perversity or jurisdictional error. In absence of such reasons, the aforesaid conclusion cannot be countenanced.

10. During the course of arguments, Shri Agrawal informed that petitioner has already attained the age of superannuation on 31.8.2016.

11. On the basis of foregoing analysis, it is clear that petitioner had a valuable right to assail his punishment order before the Additional Collector under Section 44 of the Code. As per the finding of respondents themselves, Additional Collector is competent to entertain such appeal under Section 44 of the Code. The learned Collector has failed to assign reasons as to why the impugned order

before him was bad in law or without jurisdiction. Thus, the said order of Collector cannot sustain judicial scrutiny. Accordingly, the order dated 26.4.2010 is set aside. Petition is allowed. No cost.