
(2010) 03 MP CK 0083
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3103 of 2010

Badri Prasad Yadav

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 29-03-2010

Acts Referred:

Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 — Section 26, 26(1)
State Mandi Board Service Regulations, 1998 — Regulation 35

Citation : (2010) ILR (MP) 1581 : (2010) 3 MPLJ 460

Hon'ble Judges : R.K. Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.K. Gupta, J.

The present petition is filed by the Petitioner challenging the order dated 7.1.2010 (Annexure P/6) by which the Respondents have directed to place the Petitioner under suspension in exercise of their powers vested with the competent authority under Regulation 35 of the State Mandi Board Service Regulations, 1998.

It is contended on behalf of the Petitioner that the order is without any jurisdiction as the same has not been passed by the appointing authority. Counsel for the Petitioner relied upon regulations framed by the Board which are known as State Mandi Board Service Regulations, 1998 (Annexure P/8). It is contended that by virtue of Regulation 35, the power to place an employee under suspension is vested with the appointing authority and, therefore, the power of suspension could only be exercised by the appointing authority because there is no delegation provided under these regulations that the powers can also be exercised by any other authority to whom such delegation is permissible.

It is contended on behalf of the Petitioner that under regulation 35 though the authority other than the appointing authority i.e. Disciplinary authority can issue

the charge sheet within a period of 90 days but issuance of the charge sheet in exercise of the powers which are vested with the Disciplinary authority under Regulation 35 does not mean that such Disciplinary authority would also have power to place an employee under suspension.

On behalf of the Respondents, it is contended that the Board has already passed a resolution on 18.6.98 in its 62nd meeting wherein the power to place under suspension to the category of employees holding the post of Assistant Sub Inspector, Mandi Accountant and Grade-II had been entrusted to the Dy. Director of the Division and the relevant documents in this regard has been filed as Annexure R/1 to the return. On this basis, it is contended that once the Board has passed a resolution wherein the power to place an employee belonging to the said categories, under suspension by the Dy. Director then the power as such can be validly exercised by such an authority to whom the power of suspension has been vested.

The rival submissions so made on behalf of the parties are considered.

Before considering the rival submissions made by the parties, it would be profitable to refer Section 26 of M.P. Krishi Upaj Mandi Adhiniyam, 1972 which is as under:

26 Constitution of State Mandi Board Service:

For the purpose of providing officers and employees to the Board and the Market committee there shall be constituted, a service by the board to be called the State Mandi Board Services.

The Board shall make regulations in respect of recruitment, qualification, appointment, promotion, scale of pay, leave, leave salary, acting allowance, loan, pension, gratuity, annuity, compassionate appointment fund, provident fund, dismissal, removal, conduct, other departmental enquiry, punishment, appeal and other service conditions of the members of the State Mandi Board Services.

The salary, allowances, gratuity and other payments required to be made to the members of the State Mandi Board service who are working under the control of the market committee shall be a control of the market committee shall be a charge on the Market Committee Fund.

The officers and employees appointed or absorbed under any rules or regulations and belonging to the State Marketing Board Service, Board Service and Nakedars (Assistant Sub-Inspector) of Market Committee Service immediately before the constitution of the State Mandi Board service under Sub-section (1) shall be treated as members of the State Mandi Board Services.

On the basis of the same, it is clear that by virtue of Section 26 of the Act, it is for the Mandi Board to make regulations in respect of recruitment, qualification, appointment promotion, scale of pay, leave, leave salary, acting allowance, loan, pension, gratuity, annuity, compassionate appointment fund, provident fund,

dismissal, removal, conduct, other departmental enquiry, punishment, appeal and other service conditions of the members of the State Mandi Board Services and accordingly under the Act, the final authority of making the regulation is the Board itself.

It is seen that initially when the regulations were made in the year 1998 by virtue of Regulation 35, though the power was vested with the appointing authority to place an employee under suspension but subsequently after its 62nd Meeting held on 18.6.98, regulation 35 has been amended and the power to place an employee under suspension to the category of Assistant Sub Inspector is vested with the Dy. Director of the Division.

In view of the aforesaid, it is clear that initially there is no dispute that the power to place an employee under suspension though was vested with the appointing authority but by way of subsequent resolution of the Board dated 18.6.98, the said power is vested with the Dy. Director to the class of employees those who have referred in Annexure R/1.

The Petitioner, being an Assistant Sub Inspector and according to the resolution, annexure R/I, he can be placed under suspension by a Disciplinary authority who is the Dy. Director of the Division in terms to the said resolution. It is thus the submission made by the Petitioner that in the absence of any delegation in the regulations, the power to place an employee under suspension cannot be delegated to any other authority then the appointing authority loses its importance in the light of the subsequent resolution dated 18.6.98.

It is also seen that in the present case, by virtue of the powers vested with the Board u/s 26 of the Act, ultimately the power is vested with the Board to frame regulations with regard to service conditions of an employee including the manner and procedure to be adopted for taking a disciplinary action against such an employee. The Board has already passed a resolution on 18.6.98 and the resolution as such is in conformity with Section 26 of the Act, therefore, I do not find any substance in the submission so made on behalf of the Petitioner that he could only be placed under suspension by the appointing authority and not by any other authority sub-ordinate to the appointing authority or otherwise.

Section 26 of the Act itself empowers the Board to make a regulation a(sic) the Board, in exercise of its powers conferred u/s 26 of the Act h(sic) already framed its regulation. Thus, I do not find any substance in the submission so made by learned Counsel for the Petitioner that the principle of "Delegatus & Non delegary" shall apply i.e. in the absence of any delegation in the regulations, no powers can be delegated to other authority other than the appointing authority. The principle as such has no application in the present case in view of Section 26 of the Act.

In view of the aforesaid, I do not find any case to hold that the order of suspension passed against the Petitioner in the present case is bad in law. Accordingly, the writ petition stands dismissed.

No other point is argued.

In view of the dismissal of the writ petition, the order of stay passed by this Court on 15.3.2010 also stands vacated.