

**(2019) 04 MP CK 0023**  
**In the Madhya Pradesh High Court**  
**Case No : Writ Petition No. 1651 Of 2010**

Balbeer Singh Lodhi

APPELLANT

Vs

State Of Madhya Pradesh & Others

RESPONDENT

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**Date of Decision :** 23-04-2019

**Acts Referred:**

Constitution Of India, 1950 — Article 226  
Madhya Pradesh Panchayat (Appeal And Revision) Rules, 1995 — Rule 3  
Madhya Pradesh Gram Panchayat (Power And Functions Of the Secretary) Rules, 1999 — Rule 3  
Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 — Section 11, 49, 86(2), 91

**Citation :** (2019) 3 MPLJ 83

**Hon'ble Judges :** S.A.Dharmadhikari, J

**Bench :** Single Bench

**Advocate :** M.P.S. Raghuvanshi, Sanjay Bahirani

**Final Decision :** Allowed

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## Judgement

1. In this petition, under Article 226 of the Constitution of India, petitioner has assailed the legality, validity and propriety of the order dated 3/3/2010 (Annexure P/1) passed by the Additional Commissioner, Gwalior Division, Gwalior in Case No. 256/2006-007/Appeal, whereby the order dated 4/6/2007 (Annexure P/9) appointing the petitioner on the post of Panchayat Secretary of Gram Panchayat Bastari, Janpad Panchayat Morar, District Gwalior has been quashed.

2. The brief facts leading to filing of this case are that the State Government had formulated a policy dated 12/9/1995 providing method of recruitment to the post of Panchayat Karmi. A further notification dated 27/1/2006 was issued clarifying the policy dated 12/9/1995 wherein provision has been made in respect of exercise of powers after 30 days on failure of Gram Panchayat to make appointment after orders of Collector of the district and thereby Chief Executive Officer of the Janpad Panchayat has been empowered to make the appointment in exercise of powers under section 86(2) of the M.P. Panchayat Raj Avam Gram

Swaraj Adhiniyam, 1993 (for short "the Act"). Since Gram Panchayat Bastari did not appoint Panchayat Karmi as provided, the Collector, Gwalior directed Chief Executive Officer, Janpad Panchayat, Morar, District Gwalior to make appointment of Panchayat Karmi and to inform him accordingly. In compliance, the Chief Executive Officer issued an advertisement dated 24/4/2007. In all three applications were received in the office of Chief Executive Officer, Janpad Panchayat, Morar, District Gwalior including that of the petitioner. A merit list was prepared and petitioner was appointed as Panchayat Secretary being more meritorious. The appointment order was issued by the Chief Executive Officer appointing the petitioner as Panchayat Secretary. Being aggrieved, respondent no.5-Sarpanch filed an appeal before Additional Commissioner, Gwalior Division under section 91 of the Act read with Rule 3 of the M.P. Panchayat (Appeal and Revision) Rules, 1995 (for short "the Rules"). It was registered as Case No.256/2006-007/appeal. The aforesaid appeal was finally decided on 3/3/2010 by setting aside the order of appointment on the ground that no advertisement was issued for appointment of Panchayat Karmis at Gram Panchayats Tiholi, Bilheti and Bastari and only Panchanama to that effect was available on record which could not have been prepared in absence of the advertisement and that the Chief Executive Officer had undertaken the exercise of appointment of Panchayta Karmi without advertisement which itself was de hors the rules.

3. Learned counsel for the petitioner submitted that due procedure for appointment on the post of Panchayat Karmi had been followed. The Collector vide letter dated 10/11/2006 (Annexure P/4) had asked the Sarpanch of the Gram Panchayat to initiate the process of appointment of Panchayat Secretaries within thirty days. Thereafter, the Collector again issued a reminder on 28/12/2006 (Annexure P/5) for filling up the posts of Panchayat Karmi, but respondent no.5/Sarpanch failed to fill-up the posts. Ultimately, the Chief Executive Officer after approval of the Collector passed the order of appointment dated 4/6/07 (Annexure P/9).

4. Learned counsel for the petitioner raised a preliminary objection regarding maintainability of the appeal filed by respondent no.5-Sarpanch before the Additional Commissioner on the ground that there is no resolution about filing of appeal by Sarpanch, passed by the Gram Panchayat. Therefore, without taking authority from the Gram Panchayat and without resolution of the Gram Panchayat, respondent no.5/Sarpanch had no power to file an appeal. Consequently, the Commissioner, who passed the impugned order also had no power to entertain the same under Rule 3 of the Rules whereby the appeal lied before the Collector against the order of Chief Executive Officer. In support of his contention, learned counsel placed reliance on decision of a Division Bench of this Court in the case of Gram Panchayat, Bamrol Vs. Jagdish Singh Rawat (2008 (3) MPLJ 127) in which it has been held that Gram Panchayat is a body corporate having power to sue or to be sued. It has to authorize somebody to act on its behalf and without resolution authorizing someone to act on its behalf, Sarpanch cannot sue and file an appeal independently, therefore, the appeal was

incompetent and not maintainable. It is further submitted that the impugned order is based on the fact that no advertisement was issued, whereas it is an admitted position that advertisement was issued and three persons applied in which petitioner was found to be most meritorious. This aspect has not been denied by the respondents in their return wherein they have categorically admitted that advertisement was issued.

5. Per contra learned Government Advocate has supported the order passed by the Additional Commissioner. However, he was unable to point out any resolution passed by the Gram Panchayat in favour of respondent no.5/Sarpanch with regard to filing of appeal. Further, issuance of advertisement has been admitted in the return.

6. Section 11 of the Act reads as under:-

"Incorporation of Panchayats. - Every Gram Panchayat, Janpad Panchayat and Zila Panchayat shall be body corporate by the name specified, therefor in the order under Section 3 for village or notification under Section 10 for Janpad Panchayat and Zila Panchayat as the case may be, having perpetual succession and a common seal and shall by the said name, sue and be sued and shall subject to the provisions of this Act and the rules made thereunder, have power to acquire, hold or transfer property movable or immovable, to enter into contracts and to do all other things necessary for the purpose of this Act."

Section 49 of the Adhiniyam, 1993 deals about the function of Gram Panchayat. Rules have been framed regarding the power and functions namely: "Madhya Pradesh Panchayat (Powers and Function of Sarpanch and Up-sarpanch of Gram Panchayat) Rules, 1994" (for short Rules of 1994), but in these rules, it is nowhere provided that who will sue on behalf of the Panchayat. On the basis of section 11 of the Adhiniyam 1993, Gram Panchayat being body corporate can sue and can be sued.

As per the general interpretation of section 11, the power shall not vest in the Sarpanch but it will vest in the whole body of the Gram Panchayat and if the Panchayat wants to sue or to file an appeal, the Panchayat has to pass a resolution authorizing either to Sarpanch, or Up-sarpanch or to any Panch or to file appeal or Writ Petition or any other petition. Rule 3 of the M. P. Gram Panchayat (Power and Functions of the Secretary) Rules, 1999 provides that executive power of Gram Panchayat shall vest in the Panchayat Secretary, who will exercise the executive power, but in these rules also it is nowhere provided that who will sue on behalf of the Panchayat. Therefore, this Court is of the view that Gram Panchayat has to authorise somebody to act on its behalf and without the resolution by authorising any person to sue on behalf of the Panchayat, the Sarpanch cannot sue and file an appeal independently.

7. Even otherwise, advertisement was issued before appointment of petitioner, which is available on record as Annexure P/6. Thereafter, after following due process and preparation of merit list, petitioner was appointed on the post of

Panchayat Secretary. In the return also, in paragraph 6, respondents have admitted issuance of advertisement and preparation of Panchnama. As such, the finding of the Court below regarding non issuance of advertisement is perverse and is not sustainable.

8. In view of the foregoing discussion, the impugned order dated 3/3/2010 (Annexure P/1) is set aside. Since petitioner is already working in the wake of interim order dated 7/4/10, no further directions are necessary.

9. Petition, accordingly, stands allowed.