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(2008) 02 MP CK 0002

In the Madhya Pradesh High Court

Case No : Writ Petition No. 7459 of 2003

Chetan Lal Thakur — APPELLANT

Vs

State of M.P. and Others — RESPONDENT

Date of Decision : 15-02-2008

Acts Referred:

Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 — Rule 10, 12
Madhya Pradesh Land Revenue Code, 1959 — Section 65, 88

Citation : (2008) ILR (MP) 1114 : (2008) 3 JLJ 400 : (2008) 2 MPLJ 468

Hon'ble Judges : J.K. Maheshwari, J

Bench : Single Bench

Advocate : L.C. Patne, for the Appellant; Smt. Rashmi Pandit, Panel Lawyer, for the Respondent

Final Decision : Allowed

Judgement

J.K. Maheshwari, J.

This petition was filed before the M.P. State Administrative Tribunal, assailing the order dated 28.6.2000 Annexure A-6 of reversion of petitionei from the post of Revenue Inspector to the post of Patwari by the Settlement Officer, Ratlam. On abolition of the Tribunal, it is received to this Courl for final adjudication.

In the facts, Petitioner was promoted as Revenue Inspector vide order dated 9.4.1984 passed by the Collector, District Durg while the order imposing penalty of reversion was passed by the settlement officer. It is contended that under Rule 12(2)(3) of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 (hereinafter it be referred to as "Rules"), penalty of reversion cannot be inflicted by the authority subordinate to appointing authority; however, it is urged that the order impugned of reversion passed by the Settlement Officer, Ratlam is without jurisdiction, void ab initio, and liable to be quashed.

Shri Patne, learned Counsel submits that the order inflicting penalty of reversion is also not tenable on merits, it is argued by him that for the cause of action of year 1993-94 a departmental enquiry was initiated in the year 1999 after about five years and without following procedure prescribed in Rule 14 of the Rules, the settlement officer, who was biased got concluded the enquiry and passed the order of penalty of reversion; however, on merit also the order impugned is liable to be quashed.

Per contra, Respondents have filed their reply and to show the competence of the settlement officer, produced a copy of the order Annexure R-7 dated 18.4.1994, whereby the power of Collector Ratlam has been delegated to the settlement officer for the purpose or in exercise of the power u/s 88 of the M.P. Land Revenue Code. It is also contended that the Collector Ratlam vide order dated 4.8.1994 Annexure R-8 has further delegated the powers vested on him under Chapter IX and XVIII of the M.P. Land Revenue Code. However, urged that settlement officer has rightly passed the order of reversion in exercise of the said powers and the action taken by him is within its competence. On merit it is stated that the Petitioner was served with a charge-sheet for the alleged misconduct and after holding a regular departmental enquiry and after giving him due opportunity of hearing the order of reversion has rightly been passed; however, without indicating any procedural infirmity interference by this Court is beyond the scope of judicial review, prayer is made to dismiss the petition.

After having heard the learned Counsel for the parties, the question of competent of settlement officer, as raised by the Petitioner is required to be dealt with first. In the facts, it is not in dispute that the Petitioner was promoted as Revenue Inspector by the order dated 9.4.1984, passed by the Collector District Durg; however, appointing authority of the Petitioner is the Collector. Rule 12 of the M.P. CS (CCA) Rules, 1966 specifies the disciplinary authorities, as per Rule 12(1) the Governor may impose any of the penalties specified in Rule 10. In Sub-clause (2) of Rule 12 without prejudice to the provisions of Sub-rule (1), the member of a State Civil Services may be punished by the appointing authority or by the authority specified in the Schedule or by any other authority empowered in this behalf by a general or special order of the Governor,and in case of appointment to a State civil post, by the appointing authority specified in the Schedule, or by the authority empowered, by a general or special order of the Governor, in Sub-rule (3) of Rule 12, penalty specified in Clause (v) to (ix) of Rule 10 shall not be imposed by any authority subordinate to appointing authority. Thus, it is clear, to inflict the penalties specified under Clause (v) to (ix) of Rule 10, the competence is only vested to the appointing authority or to the authorities specified in the Schedule or on any other authority empowered by the Governor by a general or special order. It is not a case of the Respondents that Settlement Officer, Ratlam is the appointing authority or the authority specified in the Schedule or the authority empowered by the Governor by a general or special order. The Respondents have made out a case that the settlement officer is empowered to exercise the powers of the Collector, as delegated on him vide Annexure R-7 dated 18.4.1994 and by the order of the

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Collector dated 4.8.1994 Annexure R-8 and the letter of the Additional Commissioner Settlement dated 5.8.1982 Annexure R-9. However, the issue of delegation of the powers of the Collector on the settlement officer is required to be dealt with here.

On going through the document Annexure R-7 dated 18.4.1994, makes it clear that, the Governor has issued the notification of delegation of the power of the Collector to the Settlement Officer in exercise of powers u/s 88 of the M.P. Land Revenue Code, 1959; however, such notification is relatable to the powers of Section 88 of the M.P''. Land Revenue Code. Thus, language of Section 88 is relevant, which is reproduced herein below :

88. Power to transfer duty of maintaining maps and records to Settlement Officer. -- When a local area is under revenue survey, the duty of maintaining the maps and records may, under the orders of the State Government, be transferred from Collector to the Settlement Officer, who shall thereupon exercise all the powers conferred on the Collector in any of the provision in Chapter IX and XVIII.

On reading the aforesaid it is apparent that u/s 88, the State Government may have power to transfer the duty of the Collector of maintaining the maps and records, to the Settlement Officer, when a local area is under revenue survey. On delegation of duty of maintaining maps and records the Settlement Officer shall exercise all the powers of the Collector conferred on him in any of the provisions of Chapters IX and XVIII of the M.R. Land Revenue Code. Chapter IX related to maintaining the land records and Chapter XVIII specifies the right in occupied and unoccupied land and its produces. Therefore, it is clear that u/s 88 of the M.R. Land Revenue Code the powers of disciplinary authority vested with the Collector cannot be delegated to the settlement officer. The Respondents have not filed any order or notification, general or special, issued by the Governor, delegating the powers of the disciplinary authority of the Collector in favour of the Settlement Officer. Learned Panel Lawyer or the officer who is present in the Court are not in a position toshow any notification indicating delegation of the power of disciplinary authority to the settlement officer. They are alsonot in a position, to show how and wherefrom, the Settlement Officer has been vested withthe power under the rules to impose the penalty of (v) to (ix) of Rule 10 of the M.P. CS (CCA) Rules. Thus, it is clear that by the documents Annexures R-7, R-8 and R-9 the powers of the Collector or of disciplinary authority have not been delegated to the Settlement Officer.

The language of Rule 12 of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 is illustrative enough and makes it clear that the penalty of Clause (v) to (ix) of Rule 10 may be imposed by the appointing authority. Learned Panel Lawyer Smt. Pandit is not in a position to dispute that the order impugned is the order of Clause (vi) of the Rule 10. Thus, in view of the discussion as made hereinabove, it is to be held that Settlement Officer is not the appointing authority, or the authority as specified in the Schedule having

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delegation of the powers of the appointing authority or disciplinary authority by the general or special order of the Governor; however he cannot impose the said penalty by the order impugned, under Sub-rule (3) or Rule 12, the penalty of reversion cannot be imposed by the authority subordinate to the appointing authority. Thus, it is to be further held, the Settlement Officer is the authority subordinate to the Collector and by virtue of the notifications Annexure R-7, R-8 and R-9, issued by the Government, he has not delegated with the powers of appointing authority. It is to be observed here that the notification issued u/s 88 of the Code, merely delegate or transfer the duty of Collector on Settlement Officer, only to the extent, specified therein, and not beyond. Therefore, in exercise of such power, Settlement Officer cannot pass the order impugned, more particularly in disciplinary proceedings.

At the last it is argued by Smt. Pandit, Panel Lawyer that Settlement Officer is competent to exercise the power of Collector as per Section 65 of the M.P. Land Revenue Code, which deals with the powers of Settlement Officer, Deputy Settlement and Assistant Settlement Officer, however, reproduced herein below :

65. Powers of Settlement, Deputy Settlement and Assistant Settlement Officer. -- (1) The State Government may invest any Settlement Officer or Deputy Settlement Officer or Assistant Settlement Officer with all or any of the powers of a Collector under this Code, to be exercised by him in such cases or classes of cases as the State Government may direct.

(2) The State Government may invest any deputy Settlement Officer or Assistant Settlement Officer with all or any of the powers of a Settlement Officer under this Code or any other enactment for the time being in force.

Bare reading of it flushes much light that the State Government may invest any Settlement Officer, with all or any of the powers of the Collector, which may be exercised under the Code, in those cases or class of cases, as State Government may direct. Learned Panel Lawyer or the officer-in-charge present in the Court has not produced any notification, issued by the State Government, delegating the powers of the Collector to Settlement Officer of Section 65 of the M.P. Land Revenue Code. In the present case, the order impugned of penalty has not been passed in exercise of the powers of the Collector invested in this Code. Moreover, since the order impugned is an outcome of disciplinary action under M.P. Civil Services (Classification, Control and Appeal) Rules, 1966, where under the powers of the appointing authority or the disciplinary authority may be delegated by the general or special order of the Governor and by the State Government, therefore also the order impugned of reversion cannot be passed by the authority subordinate to the appointing authority. Accordingly, the argument as advanced by the Respondents is meritless.

The pleadings and the documents of the case indicate that the charge-sheet was issued to Petitioner by the Settlement Officer and the Enquiry Officer was also appointed by him. The notice to show cause for the proposed penalty and the

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final order imposing penalty of reversion was also passed by the Settlement Officer. Thus, it is apparent that since initiation of Departmental Enquiry till passing the order impugned, the entire action was taken by the Settlement Officer, who was not competent under the law, in view of the discussion made herein above. Thus, the order impugned passed by the Settlement Officer is without jurisdiction, void ab initio which is liable to be quashed.

At this stage Smt. Pandit, Panel Lawyer made a prayer to grant liberty to initiate the departmental enquiry against Petitioner through competent authority. But, I am not inclined to grant such liberty at such a belated stage, for the reason, that cause of action arose to them in the year 1993-94 to which Respondents had initiated the enquiry after five years, and the penalty of reversion was ordered in the year 2000 about eight years back. Thus, after 15 years, issuance of such direction, to initiate departmental enquiry afresh is wholly unreasonable and inequitable.

Accordingly, this petition is allowed, order impugned dated 26.8.2000 Annexure A-6 passed by the Settlement Officer, Ratlam reverting the Petitioner as Patwari is illegal and without jurisdiction, hence, quashed, Respondents are directed to grant him all other consequential and monetary benefits, treating him as Revenue Inspector and also to release it within the period of four months from the date of communication of this order. In the facts and circumstances of the case, there shall be no order as to costs.

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