

(2018) 01 MP CK 0152
In the Madhya Pradesh High Court
Case No : 15365 of 2017

Deepak Kumar Saxena Vs Managing Director, M. P. State Civil Supply Corporation Ltd, Bhopal

Date of Decision : 05-01-2018

Acts Referred:

Citation : (2018) 01 MP CK 0152

Hon'ble Judges : Vandana Kasrekar

Bench : Single Bench

Advocate : Vipin Yadav, Shobhitaditaya

Judgement

1. The petitioner has filed the present petition challenging the order dated 22/09/2017 passed by the respondent.

2. Brief facts of the case are that the petitioner was initially appointed on the post of Assistant Manager vide order dated 15/01/1990 and was

posted at District Office Itarasi. He was promoted to the post of District Manager in the year 2012 and was posted at present place of posting i.e.

District Manager Raisen on 27/09/2016. The petitioner is due for retirement on 30/06/2019. The State Government has issued a circular dated

13/01/2005 stating that an employee can be suspended in the cases where prima facie allegations are in the nature where penalty of

dismissal/compulsory retirement can be passed. On 06/09/2017 a show cause notice was issued to the petitioner in respect of purchase of Tuar

(Arhar) Dal under Market Intervention Scheme whereby societies were authorized to purchase food articles from farmers directly and it was

alleged that out of 22,705 metric ton 2099 metric ton of Tuar (Arhar) Dal was found non-fair average quality and the petitioner is required to

accept only fair average quality . The petitioner has filed the reply to the said show cause notice denying the allegation made therein. However, no

decision has been taken in the matter and initiated departmental enquiry and an order was passed on 22/09/2017 thereby placing the petitioner

under suspension and his Head Quarter was fixed for Regional Office Narmada Puram. Being aggrieved by the order of suspension, petitioner has

filed the present petition.

3. Learned counsel for the petitioner argues that show cause notice was issued to the petitioner under Rule 16 of the CCA Rules, 1966 and the

petitioner has submitted the reply to the said show cause notice. Thereafter, vide order dated 22/09/2017 has been passed whereby the petitioner

was placed under suspension by way of punishment, although such punishment has not been provided under Rule 10(i to iv) of CCA Rules, 1966.

As under Rule 16 only penalties mentioned under Rule 10 (i to iv) can be imposed and, therefore, order dated 22/09/2017 is without jurisdiction.

He further submits that as per the Circular dated 13/01/2005, an employee can be placed under suspension only when the prima facie employee is

liable to be punished for major punishment. However, in the present case, no such decision has been taken to initiate the departmental enquiry as

provided under Rule 14 of the CCA Rules against the petitioner. In such circumstances, he submits that the order of suspension be set aside.

4. Respondent has filed reply and in the said reply, respondent has stated that the petitioner has an alternative remedy of filing an appeal under Rule

23 of the M. P. Civil Services (Classification, Control & Appeal) Rules, 1966. He further submits that answering respondents have also adopted

the said MP CCA Rules, 1966 and as per Rule 23 of the M.P. Rajya Nagrik Aapoorti Nigam Ltd. (Class I, II, III & IV) Service, Recruitment

and Promotion Rules, 1984. Rule 24 provides that any person in service of the respondent-corporation, including a person who has ceased to be

in service, aggrieved by an order of the appointing authority may appeal to the Board. Thus, in light of the aforesaid provision, he submits that the

petition is liable to be dismissed on the ground of availability of an alternative remedy. He further submits that the suspension is neither punitive or

stigmatic nor the same amounts to a punishment. He further argues that the Circular dated 13/01/2005 cannot prevail over the statutory Rules

which duly authorized the answering respondent to suspend any erring employee even for a minor misconduct.

5. Heard learned counsel for the parties and perused the record. From perusal of the record as well as Regulations filed by the parties, it reveals

that the petitioner has an alternative remedy of filing an appeal against the order of suspension. In the present case, petitioner has approached to

this Court without availing the said alternative remedy. However, the availability of the remedy is no bar in case when the order is without

jurisdiction or has been passed in violation of principle of natural justice. In the present case, the petitioner has not challenged the order of

suspension on the ground of competency and it is violation of principle of natural justice and, therefore, in such circumstances, the petitioner should

have avail the remedy before approaching to this Court.

6. Thus, in light of the aforesaid, instead of entering into the merits of the case, I deem it proper to dispose of this writ petition with a liberty to the

petitioner to file an appeal against the order dated 22/09/2017. If such an appeal is filed within a period of 15 days from the date of receipt of

certified copy of the order passed today, then the appellate authority shall consider and decide the same in accordance with law by a speaking

order on merits.

7. With the aforesaid observation, the petition stands disposed of, with no order as to costs.