

(2018) 08 MP CK 0059
In the Madhya Pradesh High Court
Case No : Writ Appeal No.951 Of2018

Dr. Smt. Anusuya Gawali Sinha	Vs	APPELLANT
State Of Mp & Others		RESPONDENT

Date of Decision : 07-08-2018

Acts Referred:

Constitution of India, 1950 — Article 77(1), 77(2), 166(1), 166(2)
Madhy Pradesh Civil Service (Classification, Control and Appeal) Rules, 1966 — Rule 7, 9(1), 12

Citation : (2018) 08 MP CK 0059

Hon'ble Judges : P.K. Jaiswal, J;S.K. Awasthi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

They are heard.

2. By this intra-court appeal, the appellant is assailing the order dated 19.07.2018 passed in W. P. No.15506/2018, whereby learned Writ Court upheld

the order of suspension of the appellant dated 29. 06.2018 relying on the judgement of the Division Bench passed in W. A. No.885/2015 dated

30.11.2016 (Dr. R. P. Shrivastava vs. The State of MP) holding that the suspension has been taken by the competent authority and the Additional

Director (Administration) has only issued the order of suspension and, therefore, there is no violation of Rule 9 (1) of the M. P. Civil Service

(Classification, Control and Appeal) Rules, 1966 (in short the CCA Rules, 1966).

3. Facts of the case are that the appellant is holding the substantial post of Specialist Gynaecologist and she is a Class-I officer and while posted as

Incharge Chief Medical and Health Officer, Rajgarh (Biaora), she has been

suspended on account of the fact that she has incurred expenditure of Rs.98,54,991/-. The order of suspension dated 29.06.2018 was challenged by filing writ petition on the ground that Additional Director (Administration), Health Services is neither the disciplinary authority nor the appointing authority, therefore, the impugned order passed by him is without any authority and prayed for its quashment.

4. The stand of the appellant is that after conducting preliminary enquiry, report was placed before the Commissioner, Health Services, Director and the Minister on 27.06.2018 and 28.06.2018 and all have granted approval for placing the appellant and other Chief Medical & Health Officer (CMHO) under suspension and thereafter, the Additional Director (Administration) issued the impugned order of suspension.

5. The order of suspension also discloses the fact about approval by Principal Secretary, Public Health and Family Welfare, Government of MP, Bhopal.

6. The stand of the State Government was that before passing the order of suspension, a note sheet was placed before the Principal Secretary on 27.06.2018, who proposed the suspension of Civil Surgeon, Dhar; CMHO, Rajgarh; CMHO, Sehore and CMHO, Harda. Thereafter, the note sheet was put up before the concerned Minister on 28.06.2018, who has granted approval for suspension of all delinquents. Thereafter, the Additional Director (Administration) has issued the order of suspension dated 29.06.2018 in which it is clearly mentioned that the suspension is approved by the Principal Secretary. Learned Writ Court considered the fact that before passing the suspension order, approval was taken from the competent authority i.e., the appointing/disciplinary authority and, thereafter, the Additional Director (Administration) has only issued the suspension order.

7. The case of the writ petitioner is fully covered by the judgement in the case of Dr. R. P. Shrivastava (supra) and dismissed the writ petition.

8. Learned counsel for the appellant has submitted that the noting in the file, even on merit cannot be termed as decision of the government unless it is acted upon by the issuing an order in terms of Article 166 (1) and (2) of the Constitution of India. She further submitted that as per the CCA Rules, 1966, the appellant is a Class-I employee and the State Government is the appointing authority and the post of Assistant Director is equivalent to the

appellant, who is not the appointing authority of the appellant, was not having any power to issue the order of suspension and, therefore, the order

passed by the Additional Director (Administration) is bad in law. To support the aforesaid, she has drawn our attention to the law laid down by the

Apex Court in the case of Union of India & another vs. Ashok Kumar Aggarwal reported in 2013 (6) SCC 147, wherein the issue, as to whether the

noting recorded in the file can be relied upon has been considered and the Apex Court relying on the decision in the case of Shanti Sports Club vs.

Union of India reported in 2009 (15) SCC 705 has held that a noting recorded in the file is merely a noting simpliciter and nothing more. It merely

represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government.

Even if the competent authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision

of the Government unless it is sanctified and acted upon by issuing an order in accordance with Articles 77(1) and (2) or Articles 166 (1) and (2). The

noting in the file or even a decision get culminated into an order affecting right of the parties only when it is expressed in the name of the President or

the Governor, as the case may be, and authenticated in the manner provided in Article 77(2) or Article 166(2) of the Constitution of India. A noting or

even a decision recorded in the file can always be reviewed/reversed/overruled or overturned and the Court cannot take cognizance of the earlier

noting or decision for exercise of the power of judicial review.

9. The Apex Court relying on the aforesaid decision of Shanti Sports Club (supra), Sethi Auto Service Station vs. DDA reported in 2009 (1) SCC 180

and Jasbir Singh Chhabra vs. State of Punjab reported in 2010 (4) SCC 192 came to the conclusion that noting in the files could not be relied upon by

the Tribunal and Court. Relying on the decision in the case of Pancham & others vs. State of Himachal Pradesh & others reported in 2008 (7) SCC

117 has submitted that all the Governmental orders must comply with the requirements of a statute as also the constitutional provisions and in view of

the law laid down in the case of Union of India & another (supra), when the notings in the file can be relied upon is no more res-integra. On merits, in

respect of statutory remedy of appeal, she has submitted that when the competency of the authority has been challenged and the Additional Director

(Administration) was not competent to pass the impugned order, writ petition was maintainable. She has also drawn our attention in the case of Dr. R.

P. Shrivastava (supra) and submitted that in the aforesaid matter, Additional Director (Administration) has only issued the order of suspension, which

has been conveyed by the Commissioner of Health, Government of MP and as per the gazette notification dated 21.03.2006 and the circular dated

22.04.2006, Commissioner, Health Services has been delegated with the power of imposing minor penalty and is also designated as a Disciplinary

authority in the case of Class-I officers and, therefore, the same is distinguishable on facts and the same will not be applicable in the present facts and

circumstances of the case.

10. In reply, Shri Umesh Gajankush, learned Dy. AG has drawn our attention to the note sheet dated 27.06.2018. As per the aforesaid note sheet, a

proposal was made for taking disciplinary action against the present appellant and other officers and the same was duly approved by the

Commissioner, Health Services and, thereafter, matter was referred to the Principal Secretary (Health). On the same day, the Principal Secretary

(Health) and concerned Minister approved the noting and granted permission for taking action against the appellant. After obtaining approval from the

concerned Minister, the same was signed by the Principal Secretary (Health) and Commissioner (Health) and these facts are not in dispute. After

grant of aforesaid approval on the recommendations made by the Department, Deputy Director (Health) prepared the order in a format and the same

was again referred to the Commissioner (Health). The Commissioner (Health) accepted the proposal and granted approval on 29.06.2018. After grant

of approval, the order of suspension was issued on 18.07.2018. As per noting dated 18.07.2018, the Commissioner (Health) has very categorically

stated that the suspension order was issued from the Government of MP. From these notings, it is clear that the order of suspension, which has been

impugned in the writ petition was duly approved before issuance of the order and, therefore, on the same day, the order of suspension by the State

Government was communicated to the appellant. He has submitted that necessary compliance of Rule 7 and 12 of the CCA Rules, 1966 has been

made. Learned Writ Court has not committed any legal error in passing the impugned order and prayed for its dismissal.

11. In the case of Dr. R. P. Shrivastava (supra), the order of suspension dated 08.04.2015 is identical and similar to the order passed in the present

case. The contention of learned counsel for the appellant that in the aforesaid matter, order was passed by the Commissioner (Health) and the same

was communicated by the Additional Director (Administration) and, therefore, the Division Bench judgement is distinguishable on facts.

12. We have gone through the order of suspension passed in the case of Dr. R. P. Shrivastava (supra) and reproduce the relevant part of the order as

under :-

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dh vogsyuk djus] vkfFkZd vfu;ferk,sa djus] inh; nkf;Roksa dh mis{kk djus rFkk ykijokgh iwoZd dk;Z djus ds vkjksi esa e;/izns'k flfoy lsok

Â¼oxhZdj.k] fu;a=.k rFkk vihyÂ½ fu;e] 1966 ds fu;e 9 Â¼1Â½ ds varxZr rRdky izHkko ls fuyafcr fd;k tkdj budk eq[;ky; laHkkxh; la;qDr LokLF;

lsok;sa jhok fu;r fd;k tkrk gSA

MkW- JhokLro dks fuyacu dky esa fu;ekuqlkj thou fuokZg HkRrs dh ik=rk gksxhA

LokLF; vk;qDr e-iz- }kjk vknsf'kr]

13. Considering the aforesaid, we are of the view that the judgement of the Division Bench in the case of Dr. R. P. Shrivastava (supra) shall squarely

apply in the present case also and, therefore, we cannot accept the contention of the learned counsel for the appellant.

14. For the above mentioned reasons, the writ appeal filed by the appellant has no merit and is accordingly, dismissed.