
(2009) 10 RAJ CK 0090
In the Rajasthan High Court

Ghanshyam Purohit

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 20-10-2009

Acts Referred:

Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 — Rule 13
Rajasthan Municipalities Act, 1959 — Section 310

Citation : (2010) 1 WLN 26

Hon'ble Judges : P.C. Tatia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prakash Tatia, J.—Learned Addl. Advocate General Sh. Anand Purohit has put in appearance on behalf of the respondents Nos. 1 and 2 and has filed reply to the writ petition. Learned Counsel Sh. Mehta is also putting appearance on behalf of the respondent-Municipality, hence, service is complete.

2. At the request of learned Counsel for the parties, heard finally.

3. The petitioners have challenged the orders of suspension issued by the State Government suspending the petitioners who are employees of the Municipal Board, Mount Abu. The petitioners' contention is that the orders of suspension have been passed by an authority who had no jurisdiction to pass suspension orders for municipal employees. It is also submitted that since the orders have been passed by the State Government, therefore, the orders cannot be challenged before the Service Appellate Tribunal as the orders have not been passed by the appointing authority.

4. The respondent-State has filed reply to the writ petition and without admitting specifically mentioned in the reply that orders have been passed for the petitioners by "more than competent authority". The State Government is not the appointing authority is the admitted position and as per the Section 310 of the Rajasthan Municipalities Act, the appointing authority of the employees of the

Municipal Board, Council or corporation are the Board, Council or Corporation, as the case may be. The Rule 13 of the CCA Rules also provides that the power of suspending employees shall vest in the appointing authority. Here in this case, admittedly, the orders have been passed by the authority having no jurisdiction and, therefore, the orders under challenge are liable to be quashed.

5. Learned Counsel for the respondent submitted that the petitioners were holding the post in the Municipal Board, Mount Abu where in spite of the order passed by the Hon'ble Supreme Court they are indulging in the illegal activities of granting permission for construction etc. and are also guilty of not taking steps for stopping illegal construction etc.

6. If it is so, then it is for the State Government to take action against the guilty persons but only in accordance with law. This Court may observe that some times orders are passed only to show that actions are taken but orders are passed by those authorities who are not competent to pass order and those orders are passed just to get the order set aside from the Courts which may give protection to the guilty persons also. For this the State Government should take care and should act firmly against the guilty persons and on this count the order which has been passed by the authority, which is not competent authority cannot be justified.

7. Therefore, the writ petitions are allowed and the orders suspending the petitioners dt. 09.09.2009 are quashed and set aside.