
(2012) 11 MP CK 0073
In the Madhya Pradesh High Court
Case No : W.A. No. 671 of 2012

Gram Panchayat, Jhadel

APPELLANT

Vs

State of MP and Others

RESPONDENT

Date of Decision : 01-11-2012

Acts Referred:

Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 — Section 47, 47(1)(a)(3), 69, 95

Citation : (2012) 11 MP CK 0073

Hon'ble Judges : S.K. Gangele, J;G.D. Saxena, J

Bench : Division Bench

Advocate : Vivek Jain, for the Appellant; M.P.S. Raghuvanshi, Additional Advocate General for the Respondent No. 1-State and Shri Sunil Jain, Advocate for the Respondent No. 2, for the Respondent

Judgement

1. The appellant has filed this writ appeal against the order dated 08-10-2012 passed by learned Single Judge of this Court in Writ Petition No. 5394 of 2012 (S). The writ petition filed by the appellant has been dismissed by learned Single Judge on the ground that transfer policy in regard to transfer of Panchayat Secretary is in accordance with law.

2. Learned counsel for the appellant has submitted that the appellant challenged the order of transfer on the ground that it was not passed by a competent authority and there is no adjudication on this point by the learned Single Judge.

3. The appellant is a Gram Panchayat. The respondent No. 3 has been posted as Panchayat Secretary in the appellant- Gram Panchayat. The grievance of the appellant-Gram Panchayat is that proper procedure has not been followed in regard to posting and transfer of the respondent No. 3 in the Gram Panchayat.

4. The Department of Panchayat and Rural Welfare issued a circular dated 31st March 2012 and transfer policy in regard to transfer of Panchayat Secretary. As per Clause 5 of the aforesaid circular, after approval from General Administration

Committee of District Panchayat the Chief Executive Officer can transfer a Panchayat Secretary.

5. The record in regard to transfer of the respondent No. 3 in the appellant-Gram Panchayat has been produced by learned Additional Advocate General on the instructions of this Court. A resolution was passed on 16-06-2012 by Zila Panchayat. By the aforesaid resolution, the Zila Panchayat has authorized President District Panchayat to transfer the Panchayat Secretary. Thereafter, the proposal of transfer was produced before the President, Zila Panchayat and he approved the transfer. The transfer proposal was not put up before the General Administration Committee of District Panchayat.

6. Section 47 of the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as the "Act of 1993") prescribes constitution of General Administration Committee. The relevant proviso is as under:-

(1) Every Janpad Panchayat and every Zila Panchayat shall from amongst its [elected members] constitute the following standing committees, namely:-

(a) General Administration Committee:- for all matters connected with establishment and service of Janpad or Zila Panchayat Administration, Integrated Rural Development Programme Planning, Budget, Accounts, Taxation and other financial matters and subject not covered by the functions allotted to any other committee;

xxx

xxx

xxx

(3)The General Administration Committee shall consist of Chairman of all the Standing Committees specified in sub-section (1) and constituted under sub-section (2).

7. From the proviso to Section 47(1)(a)(3), it is clear that the General Administration Committee shall consist of Chairman of all the Standing Committees prescribes in sub-section (1) and sub-section (2).

8. As per the circular and policy of the Government, it was obligatory to obtain approval of transfer of Panchayat Secretary from General Administration Committee of District Panchayat in the event of transfer within District Panchayat. This provision has been introduced by the Department to put a check on the arbitrariness in the transfer of Panchayat Secretary. The rules have also been framed in exercise of powers conferred by sub-section (1) of Section 95 read with sub-section (1) of Section 69 of the Act of 1993, named as "Madhya Pradesh Panchayat Service (Gram Panchayat Secretary Recruitment and Conditions of Service) Rules, 2011" [hereinafter referred to as "the Rules of 2011"].

9. Rule 6 (7) of the Rules of 2011 prescribes transfer of Gram Panchayat Secretary within the District. The aforesaid rule is as under:-

(7) The Gram Panchayat Secretary may be transferred on administrative ground or on the basis of his application within the district in accordance with the transfer policy issued by the Commissioner Panchayat Raj. The Gram Panchayat Secretary may be transferred, if necessary, after proper enquiry of the complaints on the recommendation of the Chief Executive Officer, Janpad Panchayat.

10. From the aforesaid rule, it is clear that the Gram Panchayat Secretary can be transferred within the District in accordance with transfer policy issued by the Commissioner, Panchayat Raj. As per the transfer policy it is mandatory to receive approval from the General Administration Committee of District Panchayat in the event of transfer of Panchayat Secretary. There is no provision that General Administration Committee can delegate this power to any other person.

11. Hence, in our opinion, the order of transfer passed by respondent No. 2 in regard to posting of respondent No. 3 in the appellant- Gram Panchayat is contrary to law. The aforesaid point was raised by the appellant in the writ petition. We have perused the writ petition. However, this point has not been considered. It is not necessary to remand the matter back to learned Single Judge because there is violation of rule.

12. Consequently, the appeal filed by the appellant is allowed. The impugned order of transfer of the respondent No. 3 in the appellant- Gram Panchayat is hereby quashed. The order passed by learned Single Judge is modified to the above extent. It is hereby clarified that the District Panchayat is at liberty to take appropriate action in accordance with transfer policy of the Government.

13. The writ appeal is disposed of accordingly. No order as to costs.