

(2020) 02 MP CK 0203

In the Madhya Pradesh High Court

Case No : Writ Appeal No. 1125 Of 2017, Review Petition No. 579 Of 2017

Jmfc Jaura, District Morena And Anr

APPELLANT

Vs

Shyam Singh And Others

RESPONDENT

Date of Decision : 19-02-2020

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 70, 94, 94(3), 94(4), 94(v)
Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2(1)
Madhya Pradesh Municipal Employees (Recruitment And Conditions Of Service) Rules, 1968 — Rule 2(e), 49, 51
Madhya Pradesh State Municipal Service (Executive) Rules, 1973 — Rule 31, 32(1), 33, 34
Madhya Pradesh Civil Services (Classification, Control And Appeal) Rules, 1966 — Rule 13
Constitution Of India, 1950 — Article 226, 311

Citation : (2020) 02 MP CK 0203

Hon'ble Judges : Sheel Nagu, J;Rajeev Kumar Shrivastava, J

Bench : Division Bench

Advocate : Ankur Mody, Prashant Sharma, S.S. Bhadoriya

Final Decision : Dismissed

Judgement

Sheel Nagu, J

1. The instant intra-court appeal preferred u/S.2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005

assails the final order dated 23.02.2018 passed by learned Single Judge exercising writ jurisdiction under Article 226 of Constitution of India allowing

W.P. No.5699/2017 preferred by the respondent/employee by quashing the charge-sheet dated 16.06.2017 (Annexure P/1) on the ground of having

been issued by an incompetent authority i.e. Additional Director, Urban Administration and Development, Bhopal (M.P.), by holding that in terms of

Rule 51 of Madhya Pradesh Municipal Employees (Recruitment and Conditions of Service) Rules, 1968 (for brevity â??1968 Rulesâ??), the Municipal

Council/Standing Committee of Municipal Council alone is competent to initiate disciplinary proceedings.

2. Learned counsel for the rival parties are heard on the question of admission.

3. Undisputed facts are that for the period when the respondent/employee who substantively holds the post of Revenue Sub-Inspector of Municipality,

was officiated as Chief Municipal Officer, Municipal Council Vijaypur, District Sheopur, was proceeded again on disciplinary side by issuance of

impugned charge-sheet dated 16.06.2017 (Annexure P/1) by Additional Director/Additional Commissioner, Urban Administration and Development,

Bhopal under Rules 31, 33 and 34 of Madhya Pradesh State Municipal Service (Executive) Rules, 1973 (for brevity â??1973 Rulesâ??).

4. Challenge in W.P. No.5699/2017 was to the charge-sheet, Annexure P/1 alone, at the stage when disciplinary proceedings were pending

5. Learned Single Judge quashed the charge-sheet on the following two grounds:-

(i) 1973 Rules are not applicable to the petitioner and thus reference of Rules 31, 33 and 34 of 1973 Rules in the impugned charge-sheet is uncalled

for.

(ii) 1968 Rules alone govern the disciplinary proceedings taken against the petitioner since petitioner substantively holds the post of Revenue Sub-

Inspector and thus is municipal employee and not the employee of the State.

(iii) Appointment of petitioner as Revenue Sub-Inspector which is the post specified u/S.94 of M.P. Municipalities Act, 1961 (for brevity â??1961

Actâ?) and such appointment is made with concurrence of State Government and since the Additional Director/Additional Commissioner, Urban

Administration and Development, Bhopal, is not the Government as defined in Rule 2(e) of 1968 Rules, the charge-sheet issued by Additional

Director/Additional Commissioner is untenable.

(iv) Additional Director/Additional Commissioner, Urban Administration and Development, Bhopal, is not the disciplinary authority as contemplated by

Rule 51 of Rules, 1968.

6. In the backdrop of aforesaid factual scenario the question that falls for consideration is as follows:-

Whether for deciding the competence of the authority to initiate disciplinary proceedings, can Rule 51 of 1968 Rules or Rule 31, 33 and

34 of 1973 Rules be invoked?

7. For ready reference and convenience Rules, 31, 33 and 34 of Rules, 1973 and Rule 51 of Rules, 1968 are reproduced below:-

Rules of 1973

31. Penalties.- The following penalties may, for good and sufficient reasons and as hereinafter provided be imposed on a member of the

service, viz :-

(i) censure;

(ii) withholding of increments or promotion;

(iii) recovery from pay of the whole or part of any pecuniary' loss caused to the Council by negligence or breach of orders;

(iv) reduction in rank including reduction to a lower grade or post or to a lower time scale or to a lower stage in a time scale;

(v) removal from service which shall not be a disqualification for future employment;

(vi) dismissal from service which shall be disqualification for future employment.

Explanation.- (i) The discharge-

(a) of a probationer during or at the end of the period of probation on grounds arising out of the specific conditions laid down by the

appointing authority e.g., want of vacancy, failure to acquire prescribed special qualifications to pass prescribed test; or

(b) of a person appointed otherwise in or under contract to hold a temporary appointment, on the expiration of the period of the

appointment; or

(c) of a person engaged under contract in accordance with the terms of his contract, does not amount to removal or dismissal within the

meaning of this rule.

(ii) The discharge of a probationer, whether during, or at the end the period of probation for some specific fault or on account of his

unsuitability for the service does not amount to removal or dismissal within the meaning of this rule.

(iii) The stoppage of a member of the service at the efficiency bar in the time

scale of his pay on the ground of his unfitness to cross the bar

does not amount to withholding of increments or promotion within the meaning of this rule.

(iv) A refusal to promote a member of the service after due consideration of his case to a post or grade to which promotions are made by

selection, does not amount to withholding of a promotion within the meaning of this rule.

(v) The reversion to a lower post of a member of the service who is officiating in a higher post, after a trial in the higher post or for

administrative reasons (such as the return of the permanent incumbent from leave or deputation, availability of a more suitable officer and

the like) does not amount to reduction in rank within the meaning of this rule.

33. Procedure for imposing certain penalties.- (1) Without prejudice to the provisions of the Public Servants Enquiry Act, 1850. no order

shall be passed imposing any of the penalties specified in clauses (iv) to (vi) of Rule 31 on a member of the service unless he has been

informed in writing of the grounds on which it is proposed to take action and has been afforded an adequate opportunity of defending

himself.

(2) The grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges which shall be

communicated to the member of the service charged together with a statement of allegations on which each charge is based and on any

other circumstances which it is proposed to take into consideration in passing orders on the case.

(3) The member of the service shall be required within such time, as may be specified by the appointing authority, to submit a written

statement of his defence and to state whether he desires to be heard in person and produce witness.

(4) The member of the service charged may request for an access to municipal record for the purpose of preparing his written statement

provided that the appointing authority may, for reasons, to be recorded in writing, refuse him such access, if in its opinion such records are

not strictly relevant to the case or it is not desirable in the public or municipal interest to allow him access thereto.

(5) After the written statement is received from the member of the service in accordance with sub-rule (3) or if no such statement is received

within the time specified, the appointing authority may, if it considers it necessary, appoint an Enquiry Officer to inquire into the charges

framed against the member of the service and shall have the charges inquired into as provided in sub-rule (6).

(6) If the member of the service desires to be heard in person, he shall be so heard. If he desires that an oral inquiry be held or if the

appointing authority so directs, an inquiry shall be held by the Enquiry Officer. At such enquiry, evidence shall be heard as to such of the

allegations as are not admitted and the member of the service charged shall be entitled to cross-examine the witness who gives evidence in

person and to have such witness called as he may wish ;

Provided that the Enquiry Officer may, for reasons to be recorded in writing refuse to call a witness whose evidence is, in the opinion of the

Enquiry Officer, not relevant or material.

(7) At the conclusion of the enquiry, the authority inquiring into the charges shall prepare a report of the inquiry, recording its findings on

each of the charges together with the reasons therefor. If in the opinion of such authority the proceeding of the inquiry establishes charges

different from those originally framed, it may record its findings on such charges :

Provided that findings on such charges shall not be recorded unless the member of the service, charge has admitted the facts constituting

them or has had an opportunity of defending himself against them.

(8) The record of the inquiry shall include :-

(i) the charges framed against the member of the service and the statement of allegations furnished to him under sub-rule (2);

(ii) his written statement of defence, if any;

(iii) the evidence recorded in the course of inquiry;

(iv) the orders, if any, made by the State Government and the report of the authority making the inquiry, in regard to the inquiry; and

(v) a report setting out the findings on each charge and the reasons therefor.

(9) The appointing authority shall consider the record of the enquiry and determine which of the findings of the Enquiry Officer, it accepts.

(10) If the appointing authority having regard of the findings recorded or accepted, has arrived at any provisional conclusion in regard to

one of the penalties specified in clauses (iv) to (vi) of Rule 31 to be imposed, it shall-

(a) furnish to the member of the service concerned, a copy of the report of the enquiry' together with a statement of such findings; and

(b) give him a show-cause notice stating the action proposed to be taken in regard to him and calling upon him to submit within a specified

time, such representation as he may wish to make against the proposed action.

(11) The appointing authority shall determine having regard to the findings recorded or accepted by it, and the representation, if any, made

by the member of the service under sub-rule (10), what penalty, if any, should be imposed on the member of the service and subject to Rule

32 pass appropriate orders on the case and the orders so passed shall be communicated to the member of the service.

Â 34. Procedure for imposing certain penalties. - (1) No order shall be passed imposing any of the penalties specified in clauses (i) to (iii) of

Rule 31 on a member of the service except after :-

(a) the member of the service is informed in writing of the proposal to take action against him and of the allegations on which such action is

proposed to be taken and he is given an opportunity to make a representation which he may wish to make; and

(b) such representation, if any, is taken into consideration by the appointing authority or officer authorised under Rule 32 (1) and the order

so passed shall be communicated to the member of the service.

(2) The record of the proceedings in such a case shall include-

(i) a copy of the intimation to the member of the service of the proposed punishment against him;

(ii) a copy of the statement of allegations communicated to him;

(iii) his representation, if any;

(iv) the order of the case together with the reasons therefor.

Rules of 1968

51. Disciplinary authorities.-Subject to the provisions of the Act and these rules the Municipal Council shall have the powers to impose

any of the penalties specified in rule 49 on any municipal employee holding post specified in sub-section (4) of section 94 of the Act and in

the case of other municipal employees the Standing Committee shall have the power to impose any of the said penalties on him.â??

7.1 Taking up 1973 Rules first, it is seen that these rules are applicable alone to the members of M.P. State Urban Administrative Services comprising

of the following posts:- (a) Additional Director, Urban Administration, (b) Joint Director, Urban Administration, (c) Chief Municipal Officer, Class-A,

(d) Chief Municipal Officer, Class-B, and (e) Chief Municipal Officer, Class-C. Thus, 1973 Rules do not apply to a substantively appointed Revenue

Sub-Inspector (petitioner) even if he holds the officiating charge of higher post of CMO. Pertinently, the petitioner at the time when the alleged

misconduct as per the charge-sheet was committed was holding the officiating charge of the post of CMO. The said rules thereafter are not attracted

since they do not govern the service condition of a Revenue Sub-Inspector. Findings of learned Single Judge in this regard are thus upheld.

7.2 Now coming to 1968 Rules, it is seen that Rule 51 of 1968 Rules which has been heavily relied upon by learned Single Judge deals with

disciplinary authority. Providing that any penalty specified in Rule 49 of 1968 Rules can be imposed by Municipal Council on a municipal employee

holding the post specified u/S.94 (3/4) of 1961 Act and in case of other municipal employee by the Standing Committee of the Council.

7.3 Thus, Rule 51 deals with competence of disciplinary authority to inflict minor or major penalty but does not relate to the competence to initiate

disciplinary proceedings.

7.4 Neither the 1961 Act nor 1973 Rules nor 1968 Rules provide or prescribe any particular authority to be competent to initiate disciplinary

proceedings against a municipal employee.

7.5 The provision akin to Rule 13 of M.P. Civil Services (CCA) Rules, 1966 which exclusively deals with authority competent to initiate disciplinary

proceedings, does not exist either in the 1961 Act or 1968 Rules or 1973 Rules.

8. In the absence of any provision in 1961 Act, 1968 Rules or 1973 Rules, vesting any particular authority with the power to initiate disciplinary

proceedings in specific terms, the trite principle of service jurisprudence would come into play i.e. any authority senior to or having some

administrative control over the employee concerned is competent to initiate disciplinary proceedings or issue charge-sheet. In this regard the view of

this Court is bolstered by the decision of Apex Court in State of M.P. Vs. Shardul Singh, (1970) 1 SCC 108 ,P.V. Srinivasa Sastry & Others Vs.

Comptroller and Auditor General & Others: (1993) 1 SCC 419, Transport Commissioner, Madras-5 Vs. A. Radhakrishna Moorthy, (1995) 1 SSC 332,

Inspector General of Police and another Vs. Thavasiappan, (1996) 2 SCC 14,5 the relevant portion of which is reproduced below for ready reference

and convenience.

P.V. Srinivasa Sastry & Others (supra)

4. Article 311 (1) says that no person who is a member of a civil service of the Union or an all- India service or a civil service of a State or

holds civil post under the Union or a State 'shall be dismissed or removed by an authority subordinate to that by which he was appointed'.

Whether this guarantee includes within itself the guarantee that even the disciplinary proceeding should be initiated only by the appointing

authority? It is well known that departmental proceeding consists of several stages: the initiation of the proceeding, the inquiry in respect of

the charges levelled against that delinquent officer and the final order which is passed after the conclusion of the inquiry. Article 311 (1)

guarantees that no person who is a member of a civil service of the Union or a State shall be dismissed or removed by an authority

subordinate to that by which he was appointed. But Article 311 (1) does not say that even the departmental proceeding must be initiated

only by the appointing authority. However, it is open to Union of India or a State Government to make any rule prescribing that even the

proceeding against any delinquent officer shall be initiated by an officer not subordinate to the appointing authority. Any such rule shall

not be inconsistent with Article 311 of the Constitution because it will amount to providing an additional safeguard or protection to the

holder of a civil post. But in absence of any such rule, this right or guarantee does not flow from Article 311 of the Constitution. It need not

be pointed out that initiation of a departmental proceeding per se does not visit the officer concerned with any evil consequences, and the

framers of the Constitution did not consider it necessary to guarantee even that

to holders of civil posts under the Union of India or under the State Government. At the same time, this will not give right to authorities having the same rank as that of the officer against whom proceeding is to be initiated to take a decision whether any such proceeding should be initiated. In absence of a rule, any superior authority who can be held to be the controlling authority, can initiate such proceeding.

Transport Commissioner, Madras-5

8. Insofar as initiation or enquiry by an officer subordinate to the appointing authority is concerned, it is well settled now that it is unobjectionable. The initiation can be by an officer subordinate to the appointing authority. Only the dismissal/removal shall not be by an authority subordinate to the appointing authority. Accordingly it is held that this was not a permissible ground for quashing the charges by the Tribunal

Inspector General of Police (supra)

8. The learned counsel also drew our attention to *P.V. Srinivasa Sastry v. Comptroller and Auditor General* : (1993) 1 SCC 419 wherein this Court in the context of Article 311 (1) has held that in absence of a rule any superior authority who can be held to be the controlling

authority can initiate a departmental proceeding and that initiation of a departmental proceeding per se does not visit the officer concerned

with any evil consequences. *Transport Commr. v. A. Radha Krishan Moorthy* : (1995) 1 SCC 332 was next relied upon. Therein also this

Court has held that initiation of disciplinary enquiry can be by an officer subordinate to the appointing authority. These decisions fully

support the contention of the learned counsel for the appellants that initiation of a departmental proceeding and conducting an enquiry can

be by an authority other than the authority competent to impose the proposed penalty.

8.1 The Division Bench of this Court in *Arun Prakash Yadav Vs. State of M.P. & Ors.* [2013 (III) MPJR 131] also had an occasion to deal

with the issue of competence of authority to initiate disciplinary proceedings in context of M.P. Police Regulations, relevant portion of which is

reproduced below for ready reference and convenience:-

25. The Apex Court in the case of P.V. Srinivasa Sastry and Others Vs. Comptroller and Auditor General and Others:(1993) 1 SCC 419 has

further held thus:

4. Article 311 (1) says that no person who is a member of a civil service of the Union or an all-India service or a civil service of a State or

holds civil post under the Union or a State 'shall be dismissed or removed by an authority subordinate to that by which he was appointed'.

Whether this guarantee includes within itself the guarantee that even the disciplinary proceeding should be initiated only by the appointing

authority? It is well known that departmental proceeding consists of several stages: the initiation of the proceeding, the inquiry in respect of

the charges levelled against that delinquent officer and the final order which is passed after the conclusion of the inquiry. Article 311 (1)

guarantees that no person who is a member of a civil service of the Union or a State shall be dismissed or removed by an authority

subordinate to that by which he was appointed. But Article 311 (1) does not say that even the departmental proceeding must be initiated

only by the appointing authority. However, it is open to Union of India or a State Government to make any rule prescribing that even the

proceeding against any delinquent officer shall be initiated by an officer not subordinate to the appointing authority. Any such rule shall

not be inconsistent with Article 311 of the Constitution because it will amount to providing an additional safeguard or protection to the

holder of a civil post. But in absence of any such rule, this right or guarantee does not flow from Article 311 of the Constitution. It need not

be pointed out that initiation of a departmental proceeding per se does not visit the officer concerned with any evil consequences, and the

framers of the Constitution did not consider it necessary to guarantee even that to holders of civil posts under the Union of India or under

the State Government. At the same time, this will not give right to authorities having the same rank as that of the officer against whom

proceeding is to be initiated to take a decision whether any such proceeding should be initiated. In absence of a rule, any superior

authority who can be held to be the controlling authority, can initiate such proceeding.

26. The Apex Court in the case of Inspector General of Police & Another Vs. Thavasiappan reported in (1996) 2 SCC 145 has held thus:

8. The learned counsel also drew our attention to P.V. Srinivasa Sastry v. Comptroller and Auditor General: (1993) 1 SCC 419 wherein this

Court in the context of Article 311 (1) has held that in absence of a rule any superior authority who can be held to be the controlling

authority can initiate a departmental proceeding and that initiation of a departmental proceeding per se does not visit the officer concerned

with any evil consequences. Transport Commr. v. A. Radha Krishan Moorthy : (1995) 1 SCC 332 was next relied upon. Therein also this

Court has held that initiation of disciplinary enquiry can be by an officer subordinate to the appointing authority. These decisions fully

support the contention of the learned counsel for the appellants that initiation of a departmental proceeding and conducting an enquiry can

be by an authority other than the authority competent to impose the proposed penalty.

27. From the abovesaid decisions of the Apex Court, it is clear that unless Rules provide and empower any particular authority to institute

disciplinary proceedings/issue chargesheet, the delinquent officer cannot insist that such a power can be exercised only by the

appointing/disciplinary authority.

9. Thus, the issue before the writ Court was the competence of a particular authority to issue charge-sheet/initiate disciplinary proceedings but the

provision (Rule 51 of 1968 Rules) relied upon by learned Single Judge relate only to disciplinary authority competent to impose penalty. The concept of

initiating disciplinary proceedings and imposing penalty at the end of disciplinary proceedings, are distinct especially from the point of view of

competence of the authority to initiate and punish. The reason is not far to see. The protection giving to an employee at the time of punishment is

much stricter than at the time of initiation of disciplinary proceedings. Since issuance of charge-sheet/initiation of disciplinary proceedings is not a

punishment. Thus, the safeguards and protection available under law to delinquent employee at the time of initiation of disciplinary proceedings are

comparatively diluted when compared to the safeguards and protection available at the time of imposing of penalty.

10. From the above discussion what comes out loud and clear is that learned Single Judge misdirected himself by relying upon Rule 51 of 1968 Rules

(which exclusively provides competence of disciplinary authority to punish), for the purpose of adjudicating the issue of competence of authority to

initiate disciplinary proceedings.

11. Testing the impugned charge-sheet (Annexure P/1) on the anvil of discussion above, it is now to be seen whether the Additional Director/

Additional Commissioner, Urban Administration and Development, Bhopal was competent enough to issue charge-sheet to a municipal employee i.e.

petitioner.

12. Going by the said trite principle of service jurisprudence in the absence of specifying provision as explained above, it is to be now decided as to

whether Additional Director/Additional Commissioner, Urban Administration and Development, Bhopal, can be treated to be an authority superior to

or in control of services of petitioner.

12.1 The petitioner substantively holds the post of Revenue Sub-Inspector, and therefore is a municipal employee as defined in Rule 2(e) of 1968

Rules and thus renders him a member of municipal service as defined in 2(e) of 1968 Rules. 1961 Rules or 1968 Rules though do not define the

expression "appointing authority" but Sec.94 (v) of 1961 Act provides that for municipal officers/servants other than those mentioned in sub-

section 3 of Sec.94 of 1961 Act, the power of appointment is vested in the President-in-Council. The post of Revenue Sub-Inspector is not mentioned

in Sec.94(3) of 1961 Act and therefore, it follows that President-in-Council as defined in Sec.70 of 1961 Act is the appointing authority of the

petitioner/respondent herein who substantively holds the post of Revenue Sub-Inspector.

12.2 Now, in the face of the aforesaid findings that Mayor-in-Council of the Municipality is the appointing authority of the petitioner/respondent herein,

can Additional Director/Additional Commissioner, Urban Administration, be treated as a superior/controlling authority of the petitioner/respondent

herein or not is the question which begs for an answer.

12.3 Additional Director/Additional Commissioner, Urban Administration, is not vested with any power under the 1961 Act or 1968 Rules. It is trite

law that the municipal council is creature of a statute i.e.1961 Act and is a local

body of urban administration which has received constitutional sanction by the Constitution (74 amendment) Act, 1992 which introduce part IX-A in the Constitution. The statutory autonomy enjoyed by a municipality which has now received constitutional flavour would stand diluted if the Additional Director/Additional Commissioner, Urban Administration is allowed to meddle with the affairs of municipality especially in the absence of any statutory or constitutional enabling provision. Thus, this Court has no hesitation to hold that the Additional Director/Additional Commissioner, Urban Administration is not a superior/controlling authority for the post of Revenue Sub-Inspector for enabling it to initiate disciplinary proceedings against Revenue Sub-Inspector who is a municipal employee.

13. From the above discussion what comes out loud and clear is that the order impugned dated 16.06.2017 (Annexure P/1) issuing charge-sheet to the petitioner/respondent herein is bereft of jurisdiction inasmuch as having been issued by an authority incompetent to do so.

14. Accordingly, findings of learned Single Judge rendered in this regard while quashing the charge-sheet are upheld, for reasons aforesaid.

15. Consequently, present appeal preferred by the State against the order of learned Single Judge passed on 23.02.2018 in W.P. No.5699/2017 is dismissed with the same liberty as extended by the learned Single Judge.