
(2007) 09 MP CK 0067
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 232 of 2006

Meera Koli

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 03-09-2007

Acts Referred:

Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 —
Section 2(1)

Citation : (2008) 1 MPJR 107 : (2008) 2 MPLJ 76

Hon'ble Judges : Sheela Khanna, J; A.K. Gohil, J

Bench : Division Bench

Advocate : Shivendra Singh, for the Appellant; Vivek Khedkar, Government
Advocate for Respondents No. 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

Abhay Gohil, J.

The appellant, who is working on the post of Aanganwadi Worker and whose services were dismissed, has filed this Writ Appeal u/s 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005, being aggrieved by the order of dismissal of writ petition passed by learned Single Judge in Writ Petition(S) No. 1595/2004 on 7-4-2006.

The brief facts of the case are that the appellant is permanent resident of village Chhirwaha and she was duly appointed on the post of Aanganwadi Worker in the year 2000 after following due procedure. It was the case of the appellant that she successfully completed the training period and after the appointment she was duly discharging her duties to the satisfaction of the higher authorities and there was no complaint against her. By order dated 12-7-2004 passed by respondent No. 2-Project Officer, Integrated Child Development Scheme, the services of the appellant were terminated from the post of Aanganwadi Worker on the basis of recommendations of the Gram Panchayat.

It was the case of the appellant that the procedure for removal has been prescribed by the State Government. Earlier the policy instructions were issued on 29-10-1996 (Annexure P/3) and now by another order dated 2-3-2002, the new policy instruction has been issued, which is Annexure-R/1. It was also the case of the appellant that before terminating her services, no opportunity of hearing was granted to her. The resolution was passed by the Gram Panchayat on 16-4-2007 and it was approved by the Gram Sabha by another resolution dated 1-7-2004. It was also disputed that the resolution dated 1-7-2004 was passed by Sarpanch as in the resolution it has not been mentioned that who were the members present in the meeting while passing the resolution. It was further argued that the Project Officer was not authorised under the Panchayat Act and since the resolution passed by Gram Sabha was not appealable under the Panchayat Act, directly writ petition was filed by the petitioner challenging her termination order dated 12-7-2004.

The stand of the respondents No. 1 and 2/State Government in their return was that the State Government has issued fresh circular dated 2-3-2002 regarding appointment and removal of the Aanganwadi Worker. It was further submitted that Gram Panchayat Chhirwaha passed the resolution dated 16-4-2004 indicating that the appellant is not discharging duty properly and the centre remained closed since last so many months and the Aanganwadi helper had already expired, therefore, as the centre is not running properly, petitioner be removed from the post of Aanganwadi Worker. On receiving the resolution, Project Officer directed to make an inquiry and thereafter Supervisor conducted an inquiry and submitted its report and found that the Aanganwadi centre of the Village Chhirwaha is not running regularly and therefore Aanganwadi Worker be removed. The report is dated 29-6-2004, which has been placed at Annexure-R/2. It was also submitted that later on the resolution of the Gram Panchayat was approved by the Gram Sabha and it was submitted that the Project Officer is the authority to remove the Aanganwadi Worker and it was the objection of the State Government that the order passed by the Project Officer is appealable and directly this petition is not maintainable. It was also the stand of the State Government that the decision in the case of Maya Chouhan vs. State of M.P. and others (Writ Petition No. 988/2000) decided on 6-11-2001 is distinguishable as the aforesaid judgment is based on circular of 1996. Before the writ Court, the return was not filed either by the Project Officer or by the Gram Panchayat, Chhirwaha.

After considering the submissions, Writ Court found that the order passed by Gram Sabha is appealable and the order was passed following the provisions of new circular dated 2-3-2002 and the case is not covered by the decision in the case of Maya Chouhan (supra) as the facts of the case are distinguishable and after considering the fact that the procedure has been followed, dismissed the writ petition, against which the appellant has filed this writ appeal.

There is no dispute that the State Government has superseded the earlier policy

instruction dated 29-10-1996 and the Department of Women and Child Development, Govt. of M.P. has issued another circular dated 2-3-2002 regarding the appointment of the Aanganwadi Workers and helpers and has also prescribed the procedure regarding the removal of their services.

Admittedly, in this case because the services were terminated vide order 12-7-2004, the provisions of new circular dated 2-3-2002 would be applicable. The following is the criteria which has been prescribed in the new circular for removal of Aanganwadi Worker.

There is also no dispute that the services are governed by the policy document which are executive instructions and binding on the parties. The salary is not payable to the Aanganwadi Worker but Aanganwadi Worker is entitled for honorarium. According to the aforesaid procedure prescribed under the modified instructions dated 2-3-2002 (Annexure-R/1), the powers have been given to Gram Sabha if Gram Sabha wants to remove any Aanganwadi worker, the Gram Sabha has to pass the resolution showing reasons for removal and has to consult the Standing Committee and the beneficiary group and after consultation has to refer the aforesaid resolution to the Supervisor. The Supervisor in the light of the resolution will enquire about the reasons for removal and thereafter submit its inquiry report along with its recommendation to Child Development Project Officer (Bal Vikas Pariyojana Adhikari). Thereafter Project Officer shall examine the report of Supervisor and submit the report within seven days to the Gram Sabha and Gram Sabha will approve the resolution and refer the matter to Bal Vikas Pariyojana Adhikari for issuing orders and the decision of the Gram Sabha shall also be communicated to the Standing Committee as well as to the worker concerned.

Clause IV of the modified instructions dated 2-3-2002 provides that if there shall be any dispute between the Standing Committee and the Supervisor, then the decision of the Project Officer (Bal Vikas Pariyojana Adhikari) shall be final. Clause V provides that if any serious complaint comes to the notice of Supervisor directly, then he will seek the opinion from the Standing Committee as well as from the Gram Sabha and after inquiry and following the prescribed procedure and after providing opportunity of hearing, action will be taken regarding the removal of the concerned worker.

As it is clear from the facts on record in this case the resolution was passed by the Gram Panchayat on 16-4-2004 and the aforesaid resolution was approved by the Gram Sabha on 1-7-2004 and order was passed by Project Officer terminating the services of the appellant, but certainly the procedure as laid down under the aforesaid rule was not followed. As per the procedure, the Gram Sabha has to pass the resolution twice and the inquiry should be conducted by the Supervisor. Gram Sabha has to take the opinion of the Standing Committee as well as the group of beneficiaries before the inquiry by Supervisor, then after the inquiry conducted by the Supervisor the same shall be placed before the Bal Vikas Pariyojana Adhikari (Project Officer) along with its recommendation for the

proposed action. Thereafter the Project Officer will examine the inquiry report and again refer it to the Gram within seven days along with its opinion and again the Gram Sabha will pass a resolution and if Gram Sabha wants to remove the worker, it will intimate to the Project Officer, who will communicate the order to the concerned worker. From the aforesaid provision, it is clear that the inquiry has to be conducted by the Supervisor and opportunity of hearing has also to be provided to the worker, as under the principle of natural justice, opportunity of hearing is inbuilt in the provisions.

As has been held by learned Single Judge that the facts of the case of Maya Chouhan (supra) are distinguishable and order is appealable but in case of Maya Chouhan (supra) also the writ Court has found that under the Scheme of 1996 there was no provision for filing appeal, as the Project Officer is not holding the post in the Panchayat Act and is not officer subordinate under the Panchayat Act, therefore, the provision of appeal are not applicable. In that case the Court has also considered this aspect of the matter that the procedure for removal of Aanganwadi Worker was not followed and no inquiry was conducted, as contemplated in para 2 of Annexure-P/5. In the absence of such an enquiry, order of termination was quashed.

From the perusal of the aforesaid provisions of the Scheme as well as the documents on record, it is clear that under the Scheme, there is no provision for filing appeal. The Project Officer is also not a specified officer and against the resolution passed by the Gram Sabha there is no provision for filing of appeal or revision under the M.P. Panchayat Raj Adhiniyam. Therefore, this finding of the learned Single Judge that order is appealable under the Scheme is contrary to the scheme as well as the provision of the Adhiniyam itself. Since in this case the procedure laid down under the law has not been followed before passing the order of termination and no opportunity of hearing was granted to the appellant, therefore, we are of the view that the termination order dated 12-7-2004 is contrary to the Scheme framed by the State Government and, therefore, the same is quashed.

In view of the aforesaid discussion, this appeal is allowed and the order of termination dated 12-7-2004 is set aside. The order of the learned Single Judge dated 7-4-2006 is also set aside. However, it will be open for the respondents to hold an inquiry into the allegations against the appellant as per the Circular, Scheme and the law after following the due procedure laid down therein and after providing opportunity of hearing to the appellant, the respondent shall be free to pass appropriate orders in the matter. Parties are directed to bear their own costs.