

(1959) 09 MP CK 0010

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition Case No. 283 of 1958

Municipal Committee

APPELLANT

Vs

Ambika Prasad Gupta and Another

RESPONDENT

Date of Decision : 14-09-1959

Acts Referred:

Central Provinces and Berar Municipalities Act, 1922 — Section 25(6)
Central Provinces and Berar Municipalities Rules — Rule 2
Constitution of India, 1950 — Article 226

Citation : AIR 1962 MP 6

Hon'ble Judges : T.C. Shrivastava, J;P.R. Sharma, J

Bench : Division Bench

Advocate : M.L. Shrivastava, for the Appellant; Rama Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Sharma, J.—This is a petition under Article 226 of the Constitution of India for the issue of a writ of Certiorari and Mandamus.

2. The case for the petitioner is that the respondent Ambikaprasad was temporarily appointed by it on the post of a teacher in the year 1955. His services were dispensed with with effect from the 30th of April, 1958 by a notice dated 27-3-1958. Ambikaprasad appealed against the order whereby his services were terminated to the Sub-Divisional Officer Kawardha under Rule 2 of the Rules framed u/s 25 (6) of the C. P. and Berar Municipalities Act, 1922 (hereinafter referred to as the Act). This appeal was allowed and Ambikaprasad was ordered to be re-instated. The contention of the petitioner is that the order passed by the Sub-Divisional Officer Kawardha is on the face of it illegal and without jurisdiction. The validity of the impugned order is challenged on the following grounds:

(i) that the appeal was filed after the prescribed period of limitation, that is to say 30 days from the date of the communication of the order appealed against, and was as such liable to be rejected on this ground alone,

(ii) that the appellate authority acted illegally in holding that Ambikaprasad could be treated as working on a permanent post and

(iii) that it further erred in holding that the termination of his services was by way of penalty and, therefore, could not be effected without a notice to show cause against the same. It was contended in this connection that the lower appellate Court failed to take into account the fact that Ambikaprasad's services were terminated because he did not possess the requisite qualification for appointment as a teacher in a primary or middle school.

3. On behalf of the respondent No. 1 it was contended that the appointment was not temporary in nature, that he was working in a clear vacancy and that his appointment could not be terminated without giving him an opportunity to show cause against his removal.

4. A preliminary objection was raised by the learned counsel for the respondents to the effect that the Municipal Committee had u/s 25(6) of the Act a right to file a Second appeal against the order of the Sub-Divisional Officer concerned. Since this remedy had not been availed of it was contended that the present application under Article 226 of the Constitution of India was not maintainable. We shall first take up this preliminary objection.

5. In paragraph 5 of the petition the petitioner has accepted the position that the respondent No. 1 was drawing more than Rs. 50/- per month including the dearness allowance which is paid to him. It is on the basis of this assumption that the petitioner contends that the Sub-Divisional Officer had no jurisdiction to entertain an appeal, as, according to the petitioner, the power of the Sub-Divisional Officer under Rule 2 framed u/s 25 (6) of the Act is confined to cases where the employee draws less than Rs. 50/- per month. This contention is obviously wrong. That rule provides for an appeal to the Sub-Divisional Officer in the case of all employees drawing Rs. 20/- per mensem or more. The decision of the Sub-Divisional Officer is final in the case of employees drawing less than Rs. 50/- per mensem but Sub-rule (i) of Rule 2 only provides that in the case of employees drawing less than Rs. 50/- per mensem there shall be no second appeal or revision but an appeal would lie against the order of the Sub-Divisional Officer to the Deputy Commissioner in the case of an employee drawing Rs. 50/- per mensem or over.

6. It was conceded on behalf of the petitioner that the expression "drawing Rs. 50/- per mensem or over" is not limited in scope to a case where the substantive salary satisfies that condition, but it also includes cases where the salary together with dearness allowance equals Rs. 50/- or more. This interpretation of Rule 2 seems to be prima facie correct. The words "substantive pay" has been used in Clause (b) of Rule 1, but it has not been repeated in Rule 2, where the words used are only "drawing Rs. 20/- per mensem or above" or "drawing Rs. 50/- per mensem or over". It appears that the total emoluments drawn by the officer are intended to be the criterion for the maintainability of the appeal. On

this interpretation, it must be held that a second appeal could have been preferred by the petitioner against the order of the Sub-Divisional Officer.

7. It was held by the Supreme Court in the case of Union of India (UOI) Vs. T.R. Varma, , that existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs, and where such remedy exists, it will be a sound exercise of discretion to refuse to interfere in a petition under Article 226, unless there are good grounds therefor.

8. The only ground given in the present petition for not pursuing the remedy provided for under the rules aforesaid is that no second appeal lay against the order of the Sub-Divisional Officer. We are clearly of the opinion that the words "drawing less than Rs. 50/- per mensem" used in Sub-rule (i) of Rule 2 and "drawing Rs. 50/- per mensem or over" used in Sub-rule (ii) of Rule 2 mean the nett amount drawn by the employee and not merely his substantive salary.

9. In this view of the matter we must hold that a Second appeal lay against the order of the Sub-Divisional Officer concerned and that the same having not been Preferred the present petition cannot be maintained.

10. The petition is, therefore, dismissed. In the circumstances we shall make no order as to costs.