
(1976) 12 MP CK 0013

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 46 of 1972

Ramkishan Gaurishankar

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 07-12-1976

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh General Clauses Act, 1957 — Section 16

Madhya Pradesh Land Revenue Code, 1959 — Section 104, 104(2), 106, 44, 44(1)

Citation : (1981) ILR (MP) 124 : (1977) JLJ 243

Hon'ble Judges : Shiv Dayal Shrivastava, C.J;C.M. Lodha, J

Bench : Division Bench

Advocate : Swamisharan, for the Appellant;

Final Decision : Dismissed

Judgement

Shiv Dayal, C.J.—The petitioner, Ramkishan was a Patwari. In pursuance of a charge framed against him, an order of dismissal was passed by the Sub-Divisional Officer. The petitioner appealed. his appeal Was dismissed by the Collector (Vide Annexure-6) saying that there was no case for interference with the order passed, by the Sub-divisional Officer. Aggrieved by the orders of the Sub-Divisional officer and the Collector, the petitioner has approached this Court under Article 226 of the Constitution of India.

2. The first question is whether the petitioner has any right to second appeal. First appeal is provided in section 44(1) of the M.P. Land Revenue Code, 1959, from an order passed by A Sub-Divisional Officer (under this Code), in that situation a second appeal is also provided under sub-section (2) of section 44 of the Code. Thus, what is to be seen is, whether the order of dismissal of the Patwari is passed under the Land, Revenue Code, 1959. The answer must be in the affirmative. The power to appoint a patwari is conferred on the collector u/s 104(2) of the Code. By virtue of section 16 of the M.P. General Clauses Act, the power to appoint includes the power to dismiss thus, the Collector (by virtue of

the delegation of power to the Sub-Divisional Officer) has the power to dismiss a Patwari.

3. Having reached that conclusion, the only question remains to be seen is whether the contrary view taken in *Vanmali Prasad v. State of M. P.* 1964 M P L J 520 is correct. In that case it has been held that section 46(e) bars an appeal. That section reads as follows:

S. 46.--No appeal against certain orders. No appeal shall lie under this Code from an order--

(a)

(b)

(c)

(d)

(e) relating to appointment under sub section (2) of section 104 or sub-section (1) of section 106.

4. It can now be seen that section 46 does not bar an appeal from an order of dismissal of a Patwari, which order has been held as within the powers conferred u/s 104(2) of the Code read with section 16 of the General Clauses Act. The reasoning and the basis of the decision of the *Vanmali Prasad State of M. P.* Board of Revenue (*supra*) is that since the power to appoint includes the power to dismiss, the bar of appeal from an order relating appointment includes the bar of appeal from an order of dismissal. The reasoning is fallacious. The right of appeal is a Statutory right, It can be conferred only by a statute, it can be taken away only by a statute. u/s 46(e), the right of appeal has been taken away only in respect of an order "relating to appointment" u/s 104(2). section 46 has nothing to do with the power to appoint or dismiss. Therefore, section 16 of the General Clauses Act is not attracted at all to section 46. A right of appeal cannot be taken away by assumption or by analogy. It cannot be said that since the power to appoint includes the power to dismiss, appeal is also barred from an order dismissing a Patwari because of the bar contained in section 46(e) of the Code. That decision of the Board of Revenue does not lay down correct law.

5. Since we are clearly of the view that the impugned order of the collector was appealable to the Commissioner u/s 44(2) of the Land Revenue Code, and since We see no extraordinary reason for interference under 11. Article 226 of the Constitution, where an alternative remedy is provided, which is more efficacious, this petition is dismissed. The security amount shall be refunded to the petitioner.