
(2015) 04 MP CK 0110
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2439 of 2015

Sarpanch Gram Panchayat	Vs	APPELLANT
State of M.P. and Others		RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2015) 04 MP CK 0110

Hon'ble Judges : Rohit Arya, J

Bench : Single Bench

Advocate : Arun Dudawat, for the Appellant

Final Decision : Dismissed

Judgement

Rohit Arya, J.

1. Heard on admission.

2. This petition under Article 226/227 of the Constitution of India is filed challenging the order dated 23/2/2015 passed by Additional Collector, District Morena in Appeal No. 12/2013-14, filed at the instance of respondent No. 4, in exercise of its appellate jurisdiction setting aside the order dated 10/2/2014 passed by petitioner/Sarpanch Gram Panchayat, Damejar, Janpad Panchayat, Kailaras District Morena.

3. Facts relevant and on record are to the effect that respondent No. 4, resident of Ballu Ka Pura, Gram Panchayat Damejar consequent upon his selection by District Level Committee vide order dated 26/1/2013, is performing his duties of Gram Rojgar Sahayak. Therefore, in exercise of powers under Section 69(1) of M.P. Panchayat Raj and Gram Swaraj Adhiniyam, 1993 (for short "Adhiniyam, 1993"), the Collector, Morena vide its order dated 14/9/2013 appointed the respondents No. 4 as Assistant Secretary of the Gram Panchayat. However, services of respondent No. 4 were terminated by the Gram Panchayat pursuant to Gram Panchayat resolution No. 2 dated 24/1/2014 and resolution No. 7 dated

26/1/2014 vide order dated 10/2/2014.

4. Challenge was made to the aforesaid termination order dated 10/2/2014 before the appellate authority, Collector on following grounds:

(i) the impugned termination order is contrary to the provisions contained in Clause 15 and 16 of guidelines issued for appointment of Rojgar Sahayak by M.P. Raj Rojgar Guarantee Parishad, inasmuch as under Clause 15 which deals with administration and control, and sub-clause (2) of Clause 15 provides that the Collector shall be competent to terminate the services of Gram Rojgar Sahayak for sufficient reasons.

(ii) petitioner serving as Gram Rojgar Sahayak was appointed by the Collector as Panchayat Secretary of Gram Panchayat in exercise of powers under Section 69(1) of Adhinyam, 1993, as such respondent No. 4's employment could not be ordered to be have come to an end in terms of sub-clause (2) of Clause 15.

(iii) The order dated 10/2/2014 passed by Gram Panchayat in the purported exercise of Clause 16 cannot be said to be in exercise of powers of Clause 16 which provides for termination of contract employment prior to expiry of contract period of Rojgar Sahayak if he does not fulfill the requirements as stipulated under Clause 16 which provides for termination of Gram Rojgar Sahayak before expiry of contract period;

(iv) the respondent No. 4 has been made victim of typical hostility shown by the Sarpanch and Secretary, Panchayat and has been subjected to colourable exercise of powers of the Gram Panchayat;

(v) termination order dated 10/2/2014 was issued without notice to the respondent No. 4 and without affording him an opportunity of hearing.

5. The appellate authority, on appeal, has issued notices.

6. The appellate authority has found that there was no meeting convened of the Gram Panchayat for passing of resolution dated 24/1/2014 leading to issuance of impugned termination order dated 10/2/2014. No circumstance exists as stipulated in Clause 16 to justify termination order.

7. It has been found that plaintiff has been discharging his duties to the best of his ability and in obedience to order of superior authorities.

8. Looking to his performance, respondent No. 4 was sent for computer training vide order dated 15/1/2014. On perusal of affidavit of Panchas of Gram Panchayat, Damejar namely Tula, Sahabsingh, Smt. Narmada; wherein, it has been stated that no meeting was convened of Gram Panchayat by Sarpanch or Secretary on 26/1/2014, in fact the resolution was prepared in the house of Sarpanch with ill intentions to cause damage to the respondent No. 4.

9. Considering the aforesaid facts and circumstances of the case, appellate Court found that respondent No. 4 has been made victim of highly biased and

vindictive action of Sarpanch and Secretary who are real brothers. With reference to the documents on record viz. various certificates issued by respondent No. 4 in connection with SSSM, BPL, MANREGA, Measurement book and cleanliness, it was found that the respondent No. 4 has been discharging his duties with utmost sincerity and to the best of his duties. Accordingly, it has been found that impugned order of termination was without any authority and jurisdiction and the same was set aside by impugned order with further direction respondent No. 4's work and performance be evaluated in front of Panchas of Gram Panchayat for consideration of his further continuance of the employment as Gram Rojgar Sahayak/Panchayat Secretary.

10. Challenging the aforesaid order passed by the authority in its appellate jurisdiction learned counsel submits that respondent No. 3 while deciding the appeal failed to appreciate that respondent No. 4 did not perform his duties diligently and regularly. He has been negligent and had tendency to avoid working and, therefore, failed to discharge the official duties tantamounting to dereliction of duties. Under such circumstances, the Gram Panchayat had resolved on 24/1/2014 not to renew the appointment of respondent No. 4 w.e.f. 26/1/2014 and accordingly the order was issued for termination of his appointment as Rojgar Sahayak on 10/2/2014, Annexure P/7.

11. Heard.

12. Perused the documents brought on record. Vide order dated 26/1/2013, Annexure P/2, respondent No. 4 was appointed as Gram Rojgar Sahayak for Gram Panchayat Damejar, Janpad Panchayat Kailarash. Thereafter, vide order dated 14/9/2013 the Collector, Morena in exercise of powers under Section 69(1) of the Adhiniyam of 1993 appointed respondent No. 4 as Assistant Secretary of the Gram Panchayat, Damejar and accordingly the same was notified. Looking to the qualification and performance of respondent No. 4 he was sent for computer training by Janpad Panchayat Kailarash vide its order dated 15/1/2014. As apparent from the order impugned and not disputed at the Bar that the Sarpanch and Secretary Gram Panchayat Damejar were real brothers, there was a typical hostility shown to the petitioner with an element of bias in the day to day activities of the Gram Panchayat. By resolution No. 2 dated 24/1/2014 and resolution No. 7 dated 26/1/2014 it was resolved to terminate the services of respondent No. 4 imputing allegations of dereliction of duty, negligence of work and unsatisfactory performance etc. Based whereupon the order of termination dated 10/2/2014 was passed. Neither any notice was issued to respondent No. 4 nor opportunity of hearing was afforded to him. Therefore, on the face of it the order dated 10/2/2014 was passed in utter disregard to the principles of natural justice and fair play.

13. That apart, the appellate authority has even otherwise found that the order dated 10/2/2014 suffered from vice of jurisdiction and authority of Gram Panchayat as the same was found to be contrary to clause 15 and 16 of the guidelines issued in relation to appointment of Gram Rojgar Sahayak by M.P.

Rajya Rojgar Guarantee Parishad.

14. Upon perusal of clause 15 of the guidelines dealing with the administration and control, it appears that sub-clause (2) of the guidelines empowers the Collector to terminate the employment of Gram Rojgar Sahayak. Clause 15 of the guidelines reads as under:-

15. At the same time, it is also relevant to quote clause 16 of the guidelines, which reads as under:-

16. Upon perusal of clause 16, it is evident that the Gram Panchayat in the aforesaid circumstances may discontinue the employment of Gram Rojgar Sahayak before expiry of the period. Clause 17 of the guidelines provides for appeal before the District Programme Coordinator, i.e. the Collector. Admittedly, respondent No. 4's services have not been terminated by the Collector. Therefore, the termination of employment of respondent No. 4 by Gram Panchayat has rightly been found to be illegal for want of authority and jurisdiction.

17. Next question is "as to whether the order dated 10/2/2014 could be justified under clause 16 of the guidelines, if it is treated to be an order of discontinuance before expiry of tenure of respondent No. 4".

18. On careful perusal of the justification given in the impugned order, in the opinion of this Court, the appellate authority was justified having found that none of the clauses of clause 16 could be said to have been attracted for invoking the powers thereunder in the matter of discontinuance of tenure of respondent No. 4. Moreover, respondent No. 4 could not have been inducted or subjected to punitive action in the matter of termination/discontinuance of service as Gram Rojgar Sahayak without issuing any show-cause notice and opportunity of hearing, as no person can be condemned unheard; a basic tenet of principles of natural justice and fair play.

19. Apart from the fact that respondent No. 4 was appointed as Gram Rojgar Sahayak by order dated 26/1/2013, vide order of Collector dated 14/9/2013 he was appointed as Assistant Secretary and duly notified under Section 69(1) of the Adhiniyam of 1993 and, hence, while exercising the appellate jurisdiction, in the opinion of this Court, the appellate court was fully competent, as the Collector was the sole authority for termination of employment of the petitioner.

20. In view of the aforesaid facts and circumstances, in the opinion of this Court, the appellate court was justified having set aside the order dated 10/2/2014. Further direction given by the appellate authority for assessment of work and performance of respondent No. 4 in a meeting of Panchas for the purpose of further continuance as Rojgar Sahayak, in the opinion of this Court, is absolutely fair and fully justified and no exception can be taken thereupon, as only upon assessment of work of respondent No. 4 his continuance as Rojgar Sahayak can be decided. Accordingly, the writ petition sans merits and is hereby dismissed.