
(2010) 09 MP CK 0078

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1095 of 2008

Sarpanch, Gram Panchayat, Bharjuna Khurd

APPELLANT

Vs

Santosh Singh and others

RESPONDENT

Date of Decision : 28-09-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 — Section 69(1)

Citation : (2010) 4 MPLJ 417

Hon'ble Judges : J.K. Maheshwari, J

Bench : Single Bench

Advocate : Ashish Pathak, for the Appellant; R.B. Patel for respondent No. 1 and Punit Shrati, Panel Lawyer for State, for the Respondent

Judgement

J.K. Maheshwari, J.

This petition has been filed under Article 226/227 of the Constitution of India challenging the orders dated 5-11-2007 (Annexure-P/8) passed by respondent No. 3 in Case No. F.5-65/22/Panchayat-2/07, whereby the order passed by the Collector dated 5-2-2007 (Annexure-P/1) denotifying respondent No. 1 as Panchayat Secreary affirmed by the Commissioner vide order dated 5-6-2007 (Annexure-P/2) has been set aside.

It is not in dispute that respondent No. 1 was appointed as Panchayat Karmi and declared as Panchayat Secretary by the competent authority i.e. Collector u/s 69(1) of the M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as "the Panchayat Act"). Thereafter a complaint was made by the Sarpanch against him to CEO, Zila Panchayat, whereupon the fact finding enquiry was conducted by the CEO, Zila Panchayat. The report thereof is available on record produced before this Court. After such enquiry, a show cause notice was issued on 28-9-2006 specifying the findings of the Chief Executive Officer and to explain why he should not be removed from the post of Panchayat Karmi. On fding reply the authority competent i.e. Collector has passed an order dated

5-2-2007 (Annexure-P/1) denotifying the petitioner as Panchayat Secretary of Gram Panchayat, Bharjuna Khurd. Against the said order an appeal before the Commissioner was filed who affirmed the order passed by the Collector and the findings as recorded by him. Against the said order second revision was preferred before the State Minister which was allowed by the Order dated 5-11-2007 (Annexure-P/8) and the orders passed by the Collector and Commissioner has been set aside.

It is submitted by Shri Pathak, Learned Counsel for the petitioner, that the orders passed by the Collector and the Commissioner have been set aside by respondent No. 3 on the pretext that the procedure prescribed for denotification of a Panchayat Secretary has not been followed and a show cause notice has not been issued to impose the penalty as specified under M.P. Panchayat Service (Discipline and Appeal) Rules, 1999. It is contended by him that such finding is contrary to the record. The notice to show cause has already been issued by the competent authority i.e. Collector on 28-9-2006 and reply thereof was submitted by the petitioner. In view of the aforesaid, the findings recorded by the Minister concerned, while passing the impugned order in second revision is unsustainable in law. It is further contended by him that the second revision against the order of first revision passed by the Commissioner is not maintainable, therefore, the order dated 5-11-2007 (Annexure-P/8) passed by respondent No. 3 is illegal and without jurisdiction. In view of the said submissions, prayer is made to quash the order dated 5-11-2007 (Annexure-P/8) passed by respondent No. 3 and to uphold the order dated 5-2-2007 (Annexure-P/1) of the Collector and order dated 5-6-2007 (Annexure-P/2) of the Commissioner.

Shri R. B. Patel, Learned Counsel for respondent No. 1, submits that the respondent No. 1 was declared as a Panchayat Secretary, however, his services falls within the Panchayat service as defined under Rule 2(i) of the M.P. Panchayat Service (Discipline and Appeal) Rules, 1999. If some allegations have been imputed against respondent No. 1, to remove him from any post including denotification from the post of Panchayat Secretary, then the procedure as specified under Rule 7 has to be followed. In violation of the said procedure, order of denotification, if any, is illegal and respondent No. 3 has not committed any error in passing the order dated 5-11-2007 (Annexure-P/8). My attention has been drawn to the procedure as specified under Rule 7 of the said rules and the decision of the Division Bench of this Court in the case of Lalla Prasad Burman Vs. State of M.P. and Others, and the subsequent decision in the case of Uttam Singh vs. State of M.P., ILR 2010 M.P. 891 . Learned Counsel for respondent No. 1 has led much emphasis on the maintainability of the petition as it has not been filed by the Gram Panchayat after due resolution of authorization inform to the petitioner who is a Sarpanch of the Gram Panchayat. Reliance has been placed on the decision of this Court in the case of Gram Panchayat Vs. Jagdish Singh Rawat and Others, . In view of the said submission, it is urged that the impugned order Annexure-P/8 has rightly been passed by respondent No. 3, and is liable to be upheld by dismissing the petition filed by the petitioner.

Shri Punit Shrotri, Learned Counsel for respondent No. 3, submits that the order dated 5-11-2007 (Annexure-P/8) has rightly been passed because the procedure as prescribed under the Rules of 1999 for imposition of the major penalty has not been followed, therefore, the petition filed by the petitioner may be dismissed.

After having heard Learned Counsel appearing for the parties and on perusal of the record, first of all the issue of filing of second revision against the order of the Commissioner passed in first revision requires to be dealt with. The said issue has already been considered by this Court in the case of Abdul Hasan Qureshi vs. State of M P. and others, 2008(4) MPU 546, wherein it is held that the second revision before the State Government against the revisional order of the officers mentioned in Rule 5 of M.P. Panchayats (Appeal and Revision) Rules, 1995 would lie after final disposal of the first revision by such officers, in view of clause (ii) of Rule 5(2) of the said rules. In view of the aforesaid, the argument as advanced by the Learned Counsel for the petitioner that the second revision is not maintainable is hereby rejected.

Now the question as raised by Learned Counsel for respondent No. 1 with respect to non-maintainability of the petition filed by the Sarpanch is being considered, it is seen from the record that initially when the order dated 5-2-2007 (Annexure-P/1) was passed by the Collector, Gram Panchayat was not a party in the said case, but when it was challenged before the Commissioner by respondent No. 1, Sarpanch of Gram Panchayat was made a party. Thus, if a petition filed by the Sarpanch who was a party before the revisional Court, it may be maintained by him when Gram Panchayat was not made party to issue writ of certiorari. In such circumstances, respondent No. 1 cannot derive any benefit of the case of Gram Panchayat, Bamrol vs. Jagdish Singh Rawat and others (supra).

Now coming to the point whether the order passed by the revisional authority i.e. respondent No. 3 is bad in law or not. It is seen from the record that the orders passed by the Collector and Commissioner have been quashed because the procedure to denotify a Panchayat Secretary of the Gram Panchayat has not been followed. In the light of the decisions of this Court in the cases of Lalla Prasad Burman vs. State of M. P. and others (supra) and Uttam Singh vs. State of M.P. (supra), it is apparent that the services of a Panchayat Secretary of a Gram Panchayat are governed by the rules which known as M.P. Panchayat Service (Discipline and Appeal) Rules, 1999. The denotification of the Panchayat Secretary is amounting to removal as specified under Rule 5(b) of the said rules. For the purpose of imposing major penalty on the basis of imputation of allegations, a procedure has been prescribed under Rule 7 of the said rules whereby it is apparent that on a fact finding enquiry, the charges must be framed on the basis of the imputation of the allegations and thereafter the enquiry ought to have been conducted on the manner in which it is prescribed. On perusal of the record of the department, it is apparent that after a fact finding enquiry, only a show cause notice was issued by the Collector without holding any enquiry, furnish the opportunity of hearing to prove or disprove the charges. Thus, the

procedure as prescribed under Rule 7 of the said Rules have not been followed. If respondent No. 3 has passed an order observing the same, it is in conformity with the law, however, no interference is called for by this Court.

In view of foregoing, the order dated 5-11-2007 (Annexure-P/8) passed by respondent No. 3 is hereby upheld, accordingly, respondent No. 1 shall be entitled to get all consequential benefits.

In the result, the petition filed by the petitioner has no merit and is, accordingly, dismissed.