

(1975) 07 RAJ CK 0026

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 082 and 1080 of 1971

Smt. Prem Kumari

APPELLANT

Vs

Panchayat Samiti

RESPONDENT

Date of Decision : 08-07-1975

Acts Referred:

Rajasthan Panchayat Samitis and Zila Parishad Act, 1959 — Section 89(4)
Rajasthan Panchayat Samitis and Zila Parishads Services (Punishment and Appeal)
Rules, 1961 — Rule 5

Citation : (1975) WLN 241

Hon'ble Judges : D.P. Gupta, J

Bench : Single Bench

Judgement

D.P. Gupta, J.—Those two writ petitions arise in similar circumstances and raise common questions and are, therefore, disposed of by a common order.

2. The petitioners in both these writ petitions were selected for the posts of Teachers in the Panchayat Samiti, Osian by the Rajasthan Panchayat Samitis and Zila Parishads Service Selection Commission (hereinafter called "the Commission"). In consequence of their aforesaid selection, both the petitioners were temporarily appointed as Teachers in the Panchayat Samiti, Osian for a period of two years by the order dated April 1, 1964. It appears that the temporary appointments of the petitioners in the aforesaid Panchayat Samiti were extended from time to time. However, by an order issued by the Vikas Adhikari of the Panchayat Samiti, Osian dated March 13, 1969, petitioner Prem Kumari was placed under suspension on the ground that disciplinary proceedings were being undertaken against her. A similar order of suspension was issued by the Vikas Adhikari in respect of the petitioner Smt. Kamla Mathur on May 30, 1969. The orders for suspension in cases of both the petitioners were accompanied by charge sheets and statements of allegations. Some proceedings appear to have been taken, in the matter of these disciplinary enquiries against the two petitioners, by the Finance, Taxation and Administration Standing Committee of the Panchayat Samiti, Osian and it also appears that the Standing

Committee of the Panchayat Samiti ultimately decided to pass an order of removal of the two petitioners from service. The relevant papers, however, were sent by the aforesaid Standing Committee of the Panchayat Samiti to the District Establishment Committee for its approval, as Sub-section (4) of Section 89 of the Rajasthan Panchayat Samitis and Zila Parishads Act, 1959 (hereinafter referred to as "the Act") provides that punishments except that of censure and withholding of one increment could be inflicted on an employee of a Panchayat Samiti by a Standing Committee of that Panchayat Samiti "subject to the prior approval" of the District Establishment Committee (hereinafter referred to as "the Committee") Rule 9 of the Rajasthan Panchayat Samitis and Zila Parishads Services (Punishment and Appeal) Rules, 1961 (hereinafter called "the Rules") also provides that no punishment under the Rules could be inflicted without the approval of the Committee, where such approval was necessary under the provisions of Sub-section (4) of Section 89 of the Act. The Committee, at its meeting held on June 26, 1970 refused to give its approval to the punishment proposed to be inflicted upon the two petitioners by the Standing Committee of the Panchayat Samiti and it was pointed out by the Committee that several irregularities were committed in the manner in which the disciplinary proceedings against the two petitioners were conducted by the Standing Committee. The Committee directed that enquiries against the two petitioners may be made afresh and the result of such enquiries may be communicated to the Committee. The Secretary of the Zila Parishad, Jodhpur conveyed the decision of the Committee to the Vikas Adhikari of the Panchayat Samiti, Osiyan by his letter dated February 9, 1971. The petitioner's grievance is that the matter has been allowed to rest at that stage and that neither any fresh enquiries have been made by the Panchayat Samiti or its Standing Committee against the two petitioners so far nor the orders of suspension of the two petitioners have been revoked as yet.

3. The main grievance of the petitioners in these writ petitions is that the orders of their suspension were passed by the Vikas Adhikari, who was not at all competent to pass such orders, and their learned counsel has urged that the suspension orders passed by the Vikas Adhikari are absolutely without jurisdiction, Mr. Ram Gopal Purohit, appearing for the Panchayat Samiti, Osiyan, has not been able to controvert the aforesaid submission made by the learned counsel for the petitioners. Sub-section (4) of Section 31 of the Act provides that appointments to posts under the Panchayat Samiti except the posts in Class IV service shall be made by the Panchayat Samiti in the prescribed manner from out of persons selected by the Commission. Thus the Panchayat Samiti is the appointing authority so far as the petitioners are concerned, who were appointed as temporary Teachers after selection by the Commission. Section 89 of the Act provides that the conduct of disciplinary proceedings that may be started against and the punishment that may be inflicted in such proceedings, on all officers and servants of the Panchayat Samiti shall be governed and regulated by the Rules made by the State Government in the behalf. In exercise of the powers conferred

by Sub-section (1) of Section 79 read with Section 88 (2) and 89 of the Act, the State Government made the rules. Sub-rule (c) of Rule 2 of the Rules defines the "Appointing Authority" as the authority empowered to make appointments of any officer or servant of a Panchayat Samiti u/s 31 of the Act. Rule 5 (as it stood at the relevant time) Appointing Authority could place under suspension any officer or servant of the Panchayat Samiti where disciplinary proceedings against him were contemplated or pending. Thus it is absolutely clear from a bars perusal of the provisions of Rule 5 read with Sub-section (4) of Section 31 of the Act that the Panchayat Samiti was the only competent authority which could have placed the two petitioners under suspension. Mr. Purohit pointed out that the powers of the Panchayat Samiti were exercised by the Finance, Taxation and Administration Standing Committee of the Panchayat Samiti. That may be so, but in the cases before me the orders of suspension of the two petitioners have neither been passed by the Panchayat Samiti itself nor by the aforesaid Standing Committee thereof, but the said orders appear to have been passed by the Vikas Adhikari of Panchayat Samiti, Osiyan. The petitioners have clearly made a grievance in the writ petitions that the Panchayat Samiti had not ordered their suspension. The respondents have not filed any reply and, therefore, the contention of the petitioners must be accepted that the orders of suspension in cases of the two petitioners had been passed by the Vikas Adhikari of his own.

4. In view of the Act and the Rules, referred to above, the Vikas Adhikari was incompetent to pass any order of suspension of the two petitioners and, therefore, the orders of suspension of the petitioners, which were passed by the Vikas Adhikari, are absolutely without jurisdiction and deserve to be set aside.

5. In view of the aforesaid discussion, the orders of suspension of the two petitioners passed by the Vikas Adhikari of the Panchayat Samiti, Osiyan (Ex. 1 in each case) are quashed. The respondents are directed to reinstate the petitioners on their respective posts. The petitioners shall also be entitled to the emolument for the period they remain under suspension on account of the aforesaid illegal orders and to all other reliefs in consequence of the setting aside of the orders of their suspension. As the respondents have not seriously contested the writ petitions, the parties are left to bear their own costs.