

(2017) 02 MP CK 0145
In the Madhya Pradesh High Court
Case No : 10755 of 2016

Sumitrabai & another

APPELLANT

Vs

State of Madhya Pradesh and another

RESPONDENT

Date of Decision : 21-02-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs
Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam,
1993, Section 86(2)

Citation : (2017) 02 MP CK 0145

Hon'ble Judges : Sujoy Paul

Bench : Single Bench

Advocate : L.N. Sakle, Sonali Shrivastava

Judgement

1. This writ petition filed under Article 226 of the Constitution of India, challenges the orders dated 04.12.2014 (Annexure-P/1) and 15.03.2016 (Annexure-P/2).

2. Briefly stated, the facts are that the petitioner who was working as Panchayat Karmi and was also having charge of Panchayat Secretary, Gram Panchayat is removed under Section 86 (2) of the Panchayat Raj Gram Swaraj Adhiniyam. Thereafter, he preferred appeal which was dismissed on 15.03.2016 on the ground that the petitioner was found guilty in Criminal Case No.102/2011.

3. The petitioner contends that the impugned orders are passed without affording opportunity to him. The sentence of the petitioner has already been suspended by this Court in Criminal Appeal No.1905/2013. Hence, termination is bad in law.

4. Prayer is opposed by the other side by contending that mere suspension of sentence will not absolve the petitioner. The petitioner is rightly terminated under Section 86 (2) of the Said Act.

5. No other point has been pressed by the learned counsel for the parties.

6. I have heard the parties at length and perused the record.

7. On the basis of aforesaid contentions, two issues emerge for consideration- (i) whether the petitioner could have been terminated without affording opportunity; (ii) the effect of suspension of sentence. These points are no more re- integra. A full bench of this Court in 2016(1) MPLJ 685 [Chandrapal Yadav vs. State of M.P.] opined as under:

"27. We further hold that the powers of a Panchayat Secretary appointed prior to coming into force of the Rules of 2011, could be suspended temporarily or withdrawn (de-notified)- without serving a show cause notice or by giving an opportunity of hearing in the event of registration of a criminal case against him."

8. Thus, when it is admitted that the petitioner was convicted and only sentence is suspended, even if opportunity would have been granted to the petitioner, the petitioner would not have been in a position to improve his case. So far the second issue is concerned, this is settled in law that even if sentence is suspended, conviction remains intact and in that case, on the basis of conviction, order of removal can be passed or appropriate punishment can be inflicted (See: 1995 (3) SCC 377 [Deputy Director of collegiate Education (Administration), Madras vs. S. Nagoor Meera] and 1997 (9) SCC 523 [S. Vasundara vs. Canara Bank & others]).

9. In view of aforesaid, it is clear that impugned orders are neither without authority of law nor suffer from any procedural impropriety or perversity. Thus, interference is declined, petition is dismissed.