

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE**

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

WRIT PETITION No. 2696 of 2016

NARENDRA KUMAR SHARMA

Versus

THE STATE OF MADHYA PRADESH THR AND OTHERS

Appearance:

Shri Sourav Singh Tomar - Advocate for the petitioner.

Shri G.K. Agarwal – Govt. Advocate for the respondents/State.

Shri Pratip Visoriya – Advocate for the respondent No.6.

Shri Sanjay Kumar Mishra – Advocate for the respondent No.7.

Reserved on	:	30/04/2025
Delivered on	:	19/06/2025

*This petition having been heard and reserved for orders, coming on for pronouncement this day, the **Hon'ble Shri Justice Milind Ramesh Phadke** pronounced/passed the following:*

ORDER

1. The instant writ petition under Article 226 of the Constitution of India is directed against the order dated 29.02.2016 passed by respondent No.2 in revision No.8 /13-14, whereby the revision preferred against the order dated 22.01.2013 passed by Collector in

case No.103/2009-10/89-A-50 was dismissed and the order of Collector was affirmed, whereby the appointment of present respondent No.7 was held to be proper in wake of Resolution passed by Gram Panchayat dated 06.03.2006.

2. Short facts of the case are that in the year 1995 the petitioner was appointed on the post of Panchayatkarmi vide Resolution passed by Gram Panchayat after following due procedure and later on, the Collector invoking the powers under the provision of Section 69(1) of Panchayat Raj Adhiniyam conferred secretarial powers to the petitioner. In wake of certain complaints made against the petitioner the Collector vide order dated 01.09.2005 denotified the petitioner as Secretary of Gram Panchayat. Against which, the petitioner preferred an appeal, which was rejected vide order dated 31.05.2006 but when the said order was put to test before this Court in writ petition No.2577/2006, the said order was set aside by this Court vide order dated 20.01.2009.

3. During pendency of said petition, the Gram Panchayat terminated the services of the petitioner from the post of Panchayatkarmi vide Resolution/order dated 14.02.2006 holding that even though the petitioner was served with notice, he had not cared to file response

thereto and therefore, the allegations leveled against the petitioner being found proved his services are no more required.

4. Since there was an order of this Court in writ petition No.2577/2006 dated 20.01.2009, whereby the order de-notifying the petitioner from the post of Secretary was quashed, and the petitioner was not reinstated as Secretary, a contempt petition No.117/2009 was moved and in the said contempt petition Gram Panchayat disclosed the fact of removal of the petitioner from the post of Panchayatkarmi and also filed one review petition No.222/2009 for reviewing/recalling the order dated 20.01.2009 passed in writ petition No.2577/2006. Both the petitions were finally decided vide order dated 20.07.2009 and while dismissing the review petition in the contempt petition liberty was granted to the petitioner to assail the order, whereby he was removed from the post of Panchayatkarmi.

5. In the meanwhile, after termination of petitioner by way of Resolution dated 14.02.2006 Gram Panchayat on the very same day wrote a letter to Deputy Director Panchayat for obtaining permission for filling up the post in question and thereafter in the wake of permission granted on 16.06.2006 issued advertisement on the very same day for making appointment on the post of Panchayatkarmi and

in pursuance to the said advertisement, candidature of respondent No.7 was accepted without discussing the merits of the candidates and vide Resolution dated 07.03.2006 made his appointment and on 27.03.2006, he was accorded with the powers of Secretary of the Gram Panchayat as per Section 69(1) of Panchayat Act.

6. As the removal of the petitioner from the post of Panchayatkarmi and the appointment of respondent No.7 came in the knowledge of petitioner for the first time in the contempt proceedings, in which liberty was granted to the petitioner to assail the said orders before appropriate forum, the petitioner preferred an appeal before the Sub Divisional Officer but vide order dated 01.12.2009 said appeal was dismissed, against which the petitioner approached the Collector in revision and the Collector vide order dated 01.03.2011 while setting aside the Resolution of Gram Panchayat had passed the order of reinstatement of the petitioner.

7. The aforesaid order dated 01.03.2011 was challenged by respondent No.7 before this Court in writ petition No.2111/2011 and vide order dated 31.03.2011 the said petition was disposed of with a direction to implead respondent No.7 as a party respondent in the proceeding before the Collector and after impleading respondent No.7 as a party

the Collector again vide order dated 20.06.2011 allowed the appeal of the petitioner and set aside the removal of Resolution of the Gram Panchayat dated 14.02.2006 but instead of reinstating the petitioner directed the Gram Panchayat Bamra to conduct fresh proceedings for making appointment on the post of Panchayatkarmi.

8. The aforesaid order was, therefore, challenged by the petitioner, respondent No.7 and Gram Panchayat by way of three separate petitions, which were numbered as W.P. Nos.4747/2011, 4381/2011 and 4499/2011 respectively. All the three petitions were heard together and so far as petitions preferred by respondent No.7 and Gram Panchayat, they were allowed and the order passed by the Collector dated 20.06.2011 was set aside and the matter was again remitted back to the Collector to hear and decide the matter afresh and the petition preferred by the petitioner was held to have rendered infructuous.

9. After remand vide order dated 22.01.2013 the Collector rejected the claim of the petitioner and dismissed his appeal resulting in upholding the appointment of the respondent No.7 on the post of Panchayatkarmi and thereupon conferral of the secretarial rights upon him were held to be good. Against the said order the petitioner preferred a revision before the Additional Commissioner, Gwalior, which was also

dismissed vide order dated 29.02.2016. Aggrieved by the aforesaid, the present petition has been filed.

ARGUMENTS

10. Learned counsel for the petitioner had raised two fold arguments assailing the aforesaid orders. The first and foremost ground raised by the counsel for the petitioner is that the order of termination of service of petitioner as a Panchayatkarmi was in total derogation of provisions prescribed under M.P. Panchayat (Discipline & Appeal) Rules 1999, as the services of the petitioner as per the definition of Panchayat services provided under Section 2(J) of the Rules of 1999, fall within the ambit of the Panchayat service and as per Rule 7, no order imposing on a member of Panchayat service, any of the penalties specified in clause iv-vii(a) of Rule 5 could be imposed except after a formal enquiry is held and formal enquiry would mean that different charges would be framed on the basis of allegations and shall be communicated to the petitioner alongwith the statement of allegations and thereafter require him to submit within such time, as may be specified a written statement of defence and also to state whether he desires to be heard in person but herein case, only on the basis that the petitioner had not replied the show cause notice issued to him, which

were never served upon him, his services as Panchayatkarimi were terminated, therefore, the very procedure by which the petitioner was removed from the service as Panchayatkarimi was bad in law and as the aforesaid procedure prescribed under the Rules 1999 were not followed and were not considered by the Collector as well as Additional Commissioner, the orders deserves to be quashed. To bolster his submissions reliance was placed in the matter of ***Kailash Babu Rai Vs. State of M.P. & others*** reported in ***(2008)3 MPLJ 648***. The second limb of argument advanced by the counsel for the petitioner is that since the very termination of petitioner from the post of Panchayatkarimi was bad in law, the appointment of respondent No.7 on the post that allegedly fell vacant would not sanctify the appointment of respondent No.7, as it is a settled legal preposition that if initial action is not in consonance with the law; subsequent proceedings would not give any legal right to the persons so appointed and the selection of respondent No.7 would automatically fall to the ground. In support of this preposition, counsel for the petitioner has placed reliance in the matter of ***Bibhudatta Mohanty vs Union Of India & Ors*** reported in ***(2002) 4 SCC 16*** and in the matter of ***Chairman-Cum-M.D.,Coal India Ltd.& Ors vs Ananta Saha & Ors***

reported in *(2011) 5 SCC 142*.

11. On the other hand, learned counsel for the respondent/State had supported the impugned orders and had submitted that twice notices were issued to the petitioner on 05.01.2006 and 27.01.2006 but to both the show cause notices the petitioner did not care to reply and in absence of any reply the Gram Panchayat had resolved the termination of the petitioner, which was in accordance with law, thus, no fault can be attributed to the authorities in upholding the said Resolution and thereafter since the post of Panchayatkarmi of Gram Panchayat, Bamra fell vacant, respondent No.7 was rightly appointed and also now since in terms of Rule of 2011 the respondent No.7 has been absorbed into the Govt. cadre and he is working as on date and after a lapse of more than a decade, it would not be proper to set aside the order passed by the authorities below and to direct the petitioner to be reinstated.

12. Learned counsel for the respondent No.7 submitted that against the petitioner there were several complaints regarding irregularities; non implementation of the schemes run by the State Government like Indira Awas Yojna, Samajik Suraksha, Nirashrit Pension and also with regard to misappropriation of funds granted to the beneficiaries of

Awas Kutir and of withdrawing the amount by preparing forged signature of Sarpanch etc., therefore, the petitioner vide Resolution dated 14.02.2006 was removed from the post of Panchayatkarmi and thereafter respondent No.7 was appointed on the vacant post vide appointment letter dated 07.03.2006 and vide order dated 27.03.2006, and later he was conferred with the powers of Secretary as per provision of Section 69 of Panchayat Raj Adhiniyam and thereafter respondent No.7 is continuing till date and as the petitioner was removed from the post of Panchayatkarmi after following due procedure of law and the respondent No.7 was appointed thereafter, challenge to the very removal of the petitioner from the post of Panchayatkarmi at this late juncture is of no consequence and, therefore, present petition deserves to be dismissed.

13. Heard learned counsel for the parties and perused the record.

14. As per definition of Rule 2(J) as provided under M.P. Panchayat Service (Discipline & Appeal) Rules 1999, "Panchayat Service" means any Panchayat Service and since petitioner admittedly was appointed as a Panchayatkarmi and thereafter was notified as Panchayat Secretary, can very well said to be fell within the ambit of member of Panchayat service or can be said to be Panchayat Servant as defined

aforesaid, Rule 5 of Rules of 1999 provides for imposition of penalties on member of Panchayat. For reference extract of Rule 05 is quoted herein below:-

5. Penalties.

- The following penalties may, for good and sufficient reasons, and as hereinafter provided be imposed on a member of the Panchayat Service namely :-

(a) Minor Penalties-

(i) Censure;

(ii) Withholding of increments, stagnation allowances or promotions, with or without cumulative effect;

(iii) Recovery from pay of the whole or part of any pecuniary loss caused to the Panchayat or the State Government by negligence or breach of orders.

(b) Major Penalties-

(iv) Reduction in rank including reduction to a lower post or time-scale or to a lower stage in a time scale;

(v) Compulsory retirement;

(vi) Removal from service not disqualifying for future employment;

(vii) Dismissal from service which shall ordinarily be a disqualification for future employment :

Provided that in the case of member who have been allocated to the Panchayat Service and who according to the terms and conditions of their service which were immediately applicable to them before such allocation were not liable to the penalty or fine, no penalty or fine shall be indicated upon them.

15. Further Rule 7 provides for the procedure for imposing major penalties. For reference, provisions of Rule 7 are quoted herein below:-

7. Procedure for imposing major penalties.

(1) No order, imposing on a member of the Panchayat Service, any of the penalties specified in clauses (iv) to (vii) of Rule 5 shall be passed except after a formal inquiry is held as far as may be, in the manner hereinafter provided.

(2) When an order for formal inquiry has been made, the disciplinary authority shall frame Definite charges on the basis of allegations and

shall communicate such charges, alongwith the statement of the allegations, to the member of the Panchayat Service and also require him to submit, within such time as may be specified a written statement of defence and also to state whether he desires to be heard in person.

(3)The person against whom inquiry is to be held shall, for the purpose of preparing to defence, be permitted to inspect and take extracts from such records as he may specify :Provided that such permission may be refused if, for reasons to be recorded in writing, in the opinion of the Enquiry' Officer such records are not relevant for the purpose or it is against the public interest to allow his access thereto.

(4)On receipt of the written statement of defence or if any such statement is not received within the time specified, the disciplinary authority may himself enquire into such of the charges as are not admitted or appoint an Enquiry Officer to hold the inquiry and forward to him his report and, if advised, his recommendation alongwith all the inquiry papers.

(5)The disciplinary authority may nominate any person to present the case in support of the charges before the Enquiry Officer. The member of the Panchayat Service may present his case with the assistance of any other Panchayat Servant of State Government Servant approved by the Enquiry Officer but may not engage a legal practitioner for the purpose, unless the person nominated by the disciplinary authority as aforesaid is a legal practitioner or unless the disciplinary authority having regard to the circumstances of the case so permits.

(6)If the servant of the Panchayat Service desires to be heard in person, he shall be so heard. If he so desires or if the disciplinary authority so directs, an oral enquiry shall be held by the Enquiry Officer. At such inquiry, evidence shall be heard as to such of the allegations as are not admitted and the person charged shall be entitled to cross examine the witness, to give evidence in person, to produce documentary evidence, if any and to have such witness called as he may wish :Provided that the Enquiry Officer may, for reasons to be recorded in writing, refuse to call a witness.

(7)At the conclusion of the inquiry, the Enquiry Officer shall prepare a report of the inquiry, recording his findings on each of the charges together with reasons therefor.

(8)The proceedings conducted against the persons charged shall contain a sufficient record of :-

(i)the charges framed against such person and the statement of allegations;

(ii)the written statement of defence if any;

(iii)the oral evidence taken in the course of the inquiry;

(iv)the documentary evidence considered in the course of the inquiry;

(v)the orders, if any, made by the Enquiry Officer or the disciplinary

authority, as the case may be, with regard to the inquiry;

(vi) a report setting out the findings on each charge and the reasons therefor.

(9) The Enquiry Officer, if he is other than the disciplinary authority, shall submit the records of the proceedings mentioned in clause (8) above to the disciplinary authority without recommendation relating to the penalty to be imposed. The disciplinary authority shall consider the record of the enquiry and its findings on each charge, having regard to the findings on the charges and the record (if the proceedings) if he is of the opinion that any of the penalties specified in clauses (iv) to (vii) of Rule 5 should be imposed, it shall furnish to the person charged a copy of the report of the Enquiry Officer, and where the disciplinary authority is not the Enquiry Officer a statement of its findings together with brief reasons for disagreement, if any, with the findings of the Enquiry Officer.

(10) The disciplinary authority shall consider the representation, if any, made by the person charged in response to the notice and determine the penalty, if any, should be imposed and shall pass appropriate order on the case.

(11) The orders passed by the disciplinary authority shall be communicated to the member of the Panchayat Service, who shall also be supplied with a copy of the report of the Enquiry Officer and where disciplinary authority is not the Enquiry Officer, a statement of its findings together with the brief reasons for disagreement, if any, with the findings of the Enquiry Officer, unless they have already been supplied to the person charged.

16. As per Rule 5(d), a major penalties includes removal/dismissal from service which may be with stipulation not disqualifying for future employment or with a disqualification for the future employment. As per Rule 7, no order, imposing any of the penalties specified in clauses (iv) to (vii)(a) of Rule 5 shall be passed except after a enquiry and a formal enquiry as per Rule (2) to Rule (9) of Rule 7, which means to frame definite charges on the basis of allegations and communication of such charges, alongwith the statement of the

allegations, to the member of the Panchayat Service and also require him to submit written statement of defence and also to state whether he desires to be heard in person.

17. Nothing of the sort appears to have been followed in the present case. No charge sheet was issued. No statement of allegations were supplied to the petitioner. The petitioner was not given any opportunity to file written statement of defence nor was given a chance to be personally heard (though show cause notices were issued, which allegedly were not replied by the petitioner, which could not imply that the petitioner was given a chance to be heard), thus, the order of removal of petitioner from the post of Panchayatkarmi was in contravention of said Rules, therefore, cannot be held to be sustainable in the eyes of law.

18. Accordingly, the very order of termination of petitioner on the post of Panchayatkarmi dated 14.02.2006 is hereby quashed. Resultantly, to the aforesaid extent the order passed by the Collector dated 22.01.2013 upholding the said order is also quashed. So also the order of Additional Commissioner in revision dated 29.02.2016 is also quashed.

19. So far as the order of appointment of respondent No.7 vide Resolution dated 06.03.2006 and thereafter issuance of his appointment letter dated 07.03.2006 and the order dated 27.01.2006, by which he was notified as Panchayat Secretary being consequential orders after the termination of the petitioner vide order dated 14.02.2006, which has been set aside by this Court, in the light of judgments cited by the counsel for the petitioner in the matters of *Bibhudatta Mohanty vs Union Of India & Ors (supra)* and *Chairman-Cum-M.D., Coal India Ltd. & Ors vs Ananta Saha & Ors (Supra)* would fall to the ground automatically. Thus, the aforesaid orders are also hereby quashed and to the said extent the order passed by the Collector as well as Additional Commissioner are also hereby set aside.

20. Resultantly, the present petition is allowed and the respondents are directed to reinstate the petitioner without any back wages. However, they would be at liberty to initiate departmental proceedings against the petitioner as per the procedure prescribed under M.P. Panchayat (Discipline & Appeal) Rules 1999.

21. Though, this Court has set aside the very appointment of the respondent No.7 but looking to his tenure of service as a

Panchayatkarmi/Secretary deems it expedient to direct respondent No.7 to move appropriate representation before the State for his consideration of his continuance of service, in turn respondents/authorities are directed to sympathetically consider the representation, if filed by the respondent No.7.

(MILIND RAMESH PHADKE)
JUDGE

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