

(2024) 02 CHH CK 0021

Chhattisgarh High Court

Case No: Writ Petition (S) No. 6431 Of 2017

Mohan Lal Vishwakarma

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision: Feb. 12, 2024

Acts Referred:

- Chattisgarh Municipal Employees Recruitment and Conditions of Services Rules, 1968 - Rule 49, 51, 53M.P Civil Services (Classification, Control and Appeal) Rules, 1966 - Rule 9, 9(1), 10, 51
- Chhattisgarh Municipalities Act, 1961 - Section 70, 94(4), 94(5), 95

Hon'ble Judges: Deepak Kumar Tiwari, J

Bench: Single Bench

Advocate: Vivek Agrawal, Sudeep Agrawal, Atanu Ghosh

Final Decision: Allowed

Judgement

1. With the consent of learned counsel for the parties, the matter is heard finally.
2. This Writ Petition has been filed by the petitioner invoking jurisdiction of this Court by challenging the order dated 14.11.2017 (Annexure P/1), by which the petitioner, who is Revenue Sub Inspector posted at Nagar Panchayat, Kirodimal Nagar, District Raigarh has been placed under suspension.
3. Brief facts of the case are that the petitioner was initially appointed as Panchayat Karmi of Gram Panchayat, Kirodimal Nagar, District Raigarh. After up gradation of Gram Panchayat, Nagar Panchayat was carved out and on 13.06.2011 (Annexure P/2), the service of the petitioner was absorbed in Nagar Panchayat, Kirodimal Nagar on the post of Assistant Revenue Inspector (Moharrir) and, thereafter, on 30.08.2013 (Annexure P/ 4), after completion of the probation period, he was confirmed on the said post. Thereafter, on 11.05.2017 (Annexure P/5), he was promoted as Revenue Sub Inspector. By the impugned order, respondent No.2/Collector without any authority of law, suspended the petitioner. Since the regular Chief Municipal Officer of Nagar Panchayat, Kirodimal Nagar was on leave, the petitioner was given the charge of In-charge Chief Municipal Officer from 02.09.2017 to 06.09.2017 and during the said period, the danger of dengue was on high alarm in Kirodimal Nagar and the incomplete work of drainage was to be completed on priority basis as directed by the regular CMO. Hence, this Petition.
4. Learned counsel for the petitioner would submit that the petitioner has been appointed by President-in-Council of Nagar Panchayat, Kirodimal Nagar, District Raigarh and he has governed under Chattisgarh Municipal Employees Recruitment and Conditions of Services Rules, 1968 (in short "the services Rules,1968"). The Collector is neither the appointing authority nor the disciplinary authority of the petitioner, therefore, the impugned order is void ab initio. For the above submission, he would placed reliance on the matter of Jagdish Chandra Vs. Collector, District Dewas and another, 2007 (2) JLJ 154.
5. Per contra, learned counsel for the State would submit that vide order dated 23.05.1996 (Annexure R/1), the powers under Rule 9 of M.P Civil Services (Classification, Control and Appeal) Rules, 1966 (in short "the Rules,1966") have been delegated to the Collector concerned with regard to Class III and IV employees of the Government. Thus, by virtue of the said circular, the Collector of District Raigrah has rightly passed the suspension order of the petitioner. However, he fairly submits that the Collector is neither the appointing

authority nor the disciplinary authority under the Service Rules, 1968 which is applicable to the petitioner. He would further submit that the law laid down in the matter of Jagdish Chandra (supra) still holds the field.

6. Heard the rival submissions of learned counsel for the parties and also perused the record with utmost circumspection.

7. In the matter of Jagdish Chandra (supra), it has been categorically held that the power to suspend the Municipal Employee is vested to the Municipal Council or President-in-Council, i.e., the disciplinary authority for such employees and the State has not delegated any powers of Section 94 (4) (5) of the Municipalities Act, 1961. Thus, by virtue of the powers of Rules 9 and 10 of the Rules, 1966, the Collector cannot acquire the power to suspend Municipal Employees and the relevant para 7 to 9 read thus:-

“7. It is seen from the record that vide Annexure P- 2 the post on which petitioner was appointed, has been notified under Sub -section (4) of Section 94 of the Act. As per Section 95 of the Act, the State Government is empowered to frame the rules to regulate the Service Conditions of the employees of the Municipalities. In exercise of those powers, the Government of M.P. has framed the rules, which are known as M.P. Municipal Employees Recruitment and Conditions of Service Rules, 1968. Rule 51 specifies the Disciplinary Authority and Rule 53 deals with suspension, pending disciplinary inquiry, however aforesaid rules are being quoted hereinbelow:

“51. Disciplinary authorities- Subject to the provisions of the Act and these rules the Municipal Council shall have the powers to impose any of the penalties specified in Rule 49 on any municipal employee holding post specified in Sub-section (4) of the Section 94 of the Act and in the case of other municipal employees the Standing Committee shall have the power to impose any of the said penalties on him.

53.Suspension pending disciplinary proceeding-

(1) If having regard to the nature of the charges and the circumstances in any case, the Disciplinary Authority which initiates any disciplinary proceeding is satisfied that it is necessary or desirable to place under suspension a municipal employee against whom such proceedings are stated, it may pass an order place him under suspension.”

8. Bare perusal of the said Rules indicates that Municipal Council shall have the power to impose any of the penalty under Rule 49 on any Municipal Employee holding the post specified under Sub-section (4) of the Section 94 of the Act, and in other cases Standing Committee shall have the same power. As per Rule 53, the Disciplinary Authority is competent to initiate the disciplinary proceedings, having regard to the nature of the charges and the circumstances of the case, if any, such authority may also place the employee of the Municipal Council under suspension against whom, the disciplinary proceedings have been initiated. In view of the aforesaid provisions, it is apparent that the employees of the Municipal Council, who were appointed u/s 94 Sub-section (4) of the Act, are governed by the aforesaid Rules.

9. On going through the order of suspension Annexure P-5, it is apparent that the Collector has exercised its power conferred to him under Rule 9(1) of M.P. Civil Services (Classification, Control and Appeal) Rules, 1966. This circular dated 23-5-1996 Annexure R -5 indicates the delegation of power of Rules 9 and 10 of M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 made by the Government to the Collector of the district to suspend Class III and IV Government employees. But in the present case, undisputedly petitioner is the Municipal employee and his service is governed by the provisions of Municipalities Act, and by the Recruitment Rules, whereby the power to suspend the municipal employee is vested to the Municipal Council or President-in-Council, i.e., the Disciplinary Authority for such employees. The respondents have not filed any document indicating the delegation of powers of Section 94(4) and (5) of the Act, and of Rules 51 or 53 of the Recruitment Rules. Thus, by virtue of delegation of power, made to the Collector vide Annexure R-5, dated 23-5-1996, of Rules 9 and 10 of M.P. Civil Services (Classification, Control and Appeal) Rules, 1966, the Collector ipso facto cannot acquires the power to suspend municipal employees, whose services are governed by the provisions of the Municipalities Act, 1961 and the Rules made thereunder. In view of the foregoing, the power as exercised by the Collector, Dewas (respondent No. 1) to place the petitioner under suspension is without any authority under the law and the order of suspension passed by him is without jurisdiction.”

8. In view of the aforesaid discussion, it is apparent that the employees of Municipal Council can be placed under suspension by the disciplinary authority, if such authority is satisfied with regard to nature of charges and circumstances of the case. However, the Government of Chhattisgarh has not delegated the power of disciplinary authority to the Collector Raigarh under the Acts and Recruitment Rules for Municipal Employees and the power to place the petitioner under suspension is vested with the Municipal Council or the Standing Committee as per Rule 51 of the Rules, 1966. The word “Standing Committee” has now been substituted as “President-in-Council” in Section 70 of the Municipalities Act. Thus, the power to place the petitioner under suspension may be exercised by the Municipal Council or by the President-in-Council and not by the Collector, i.e., respondent No.2. In the present case, power to suspend the petitioner has been exercised by respondent

No.2, which is without any authority under the law, therefore, the suspension order of the petitioner passed by respondent No.2 is void and without jurisdiction.

9. Consequently, this Petition succeeds and is hereby allowed. The order of suspension of petitioner (Annexure P/1) dated 14.11.2017 is quashed, and the respondents are directed to pass the order of revocation of suspension of petitioner forthwith and pay him all consequential and monetary benefits of the period of the suspension. In the facts and circumstances of the case, parties are directed to bear their own costs.