

**(2013) 03 MP CK 0007**  
**Madhya Pradesh High Court**  
**Case No:** W.A. No. 154/2013

Yadhuvansh Prasad Mishra

APPELLANT

Vs

The State of Madhya Pradesh  
and Others

RESPONDENT

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**Date of Decision:** March 6, 2013

**Citation:** (2013) 3 MPJR 94

**Hon'ble Judges:** S.A. Bobde, C.J; Rajendra Menon, J

**Bench:** Division Bench

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**Judgement**

1. Challenge in the writ appeal u/s 2(1)(A) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaya Peeth Ko Appeal) Adhiniyam, 2005 is made to an order dated 17.1.2013 passed by learned Single Judge of this Court in W.P. No. 228/2013. Appellant is working as a Head Clerk cum Accountant in Municipal Council, Mauganj, District Rewa. Vide resolution dated 12/12/2012, Annexure P-16, available in the record of the writ petition, Municipal Council has directed for recovery of "1,94,950/- from the appellant, it has further recommended for holding a detailed departmental enquiry against the appellant. The resolution also says that the Municipal Council passes a resolution of censure with regard to activities of appellant. Challenging the resolution and order Annexure P-14 dated 05/07/2012 passed by the Commissioner in the directorate of Urban Administration, Bhopal, the writ petition was filed by the appellant. The writ court found that the petitioner is an employee appointed in the Municipal Council in furtherance to provisions contained in Section 94(4) of the Madhya Pradesh Municipalities Act, 1961, his service conditions are governed by the Madhya Pradesh Employees (Recruitment & Conditions of Service) Rules, 1968 and as a remedy of appeal under the statutory rule is available, the writ petition was disposed of granting liberty to the petitioner to take recourse of statutory remedy of appeal. Challenge to this order is made mainly on two counts; the first ground canvassed is that the order dated 05.07.2012 is passed by the Commissioner, Urban Administration and Development, Madhya Pradesh and against the order passed by the Commissioner, Urban Administration it is stated that right to appeal is not

available. The second ground canvassed is that an appeal under Rule 56 is subject to provisions of Rule 55 and as the punishment of censure is executed, the remedy to challenge the order of censure is not available.

2. Having heard learned counsel for the appellant, We find that the contentions of the appellant to the effect that the order is passed by the Commissioner, Urban Administration vide Annexure P-14 on 05/07/2012 is wholly unsustainable, this question is considered by learned Single Judge and it is found that infact recovery is ordered vide resolution dated 12/12/2012 Annexure P-16 passed by the Council and, therefore, against this resolution the appeal is maintainable. There is no error in this order passed by learned Single Judge, the order Annexure P-14 dated 05/07/2012 is only the findings of the Commissioner with regard to a report submitted to him, based on certain enquiry conducted by the Lokayukta and after taking note of findings recorded by the Lokayukta it is found by the Commissioner, Urban Administration that appellant Shri Yaduvansh Prasad Mishra, Accountant and one Shri Umesh Kumar Tripathi, Sub Engineer are employees of Municipal Council and, therefore, action against them is to be taken by Municipal Council and, therefore, the matter has been referred to the Municipal Council for taking action. However, in the case of one Shri Kanti Lal Dixit, who is retired Chief Municipal Officer certain orders are passed by the Commissioner himself vide Annexure P-14. It is, therefore, clear that in the case of appellant the Commissioner, Urban Administration has not passed any order on 05/07/2012, he has only taken note of irregularity established in the enquiry conducted and has directed for placing the matter before the Council and it is Council, which has directed for recovery of sum of "1,94,950/- from the appellant vide resolution dated 12/12/2012. Against this resolution of recovery, the remedy of appeal as directed by learned Single Judge is available to the appellant and, therefore, on the first ground canvassed no interference is called for.

3. So far as second ground with regard to censure being a matter beyond the purview of appeal is concerned, it is seen that the Municipal Council has recommended for initiating departmental enquiry against the appellant and after taking note of the circumstances, the Municipal Council has passed the resolution of censure and has recommended for conducting a departmental enquiry. This resolution is not a punishment after conducting the departmental enquiry. It is an independent resolution of the Municipal Council and, therefore, against such a resolution appellant has remedy of filing an appeal to the Collector under the general powers of appeal available to the Collector, as it is not by a measure of punishment after conducting departmental enquiry. The resolution of the Municipal Council, general in nature, is subject to statutory appeal to the Collector under the M.P. Municipalities Act and, therefore, on this count also no interference is called for. Accordingly, considering the totality of circumstances, We see no reason to interfere into the matter, for the present, the appeal is, therefore, dismissed with liberty to the appellant to take recourse of remedy of appeal available, as directed by the learned Single Judge. With the aforesaid the writ appeal is disposed of.