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WP-24004-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 11th OF DECEMBER, 2024WRIT PETITION No. 24004 of 2024*MADHAV SINGH TOMAR**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Shri R.B. Tiwari - Advocate for the petitioner.

*Shri Amit Seth - Additional Advocate General and Shri Girish Kekre -
Government Advocate for the respondents/State*

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ORDER

Counsel for the petitioner by the instant petition is challenging the orders dated 20.10.2022 (Annexure P/1) and 26.07.2024 (Annexure P/5) passed by the Sub Divisional Officer and Collector, District Chhattarpur respectively.

2. It is alleged that the petitioner while working as Patwari committed certain irregularities and as such, a show cause notice was issued to him on 10.10.2022 by the-then Sub Divisional Officer apprising him about the irregularities committed by him and granted 24 hours time to file reply mentioning therein that if reply is not filed within the given time, ex parte proceeding shall be initiated against him. The petitioner submitted reply to the said show cause notice on 17.10.2022 and thereafter the Sub Divisional Officer passed the impugned order dated 20.10.2022 inflicting punishment upon the petitioner under the provisions of Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 (hereinafter referred to as



the 'Rules of 1966') under Rule 10(4) of withholding of one increment with cumulative effect mentioning that the same is a minor penalty.

3. The petitioner challenged the said order dated 20.10.2022 before the Collector by filing an appeal and the Collector vide order dated 26.07.2024 has dismissed the appeal, affirming the order passed by the Sub Divisional Officer which is also impugned in this petition.

4. Learned counsel for the petitioner during the course of arguments has submitted that the impugned orders are apparently illegal, arbitrary and passed in violation of statutory provisions. He has further submitted that the show cause notice was issued to the petitioner pointing out alleged irregularities asking reply within 24 hours. He has submitted that at the first instance, the show cause issued to the petitioner is illegal and arbitrary because only 24 hours was granted to him to file reply and the same does not contain that the same is being issued under the provisions of Rules of 1966. He has submitted that it is something surprising that the order (Annexure P/1) has been passed inflicting punishment under the provisions of Rules of 1966 and the Collector without considering that aspect had passed the order dated 26.07.2024, dismissing the appeal.

5. Counsel appearing for the respondents have also been asked as to under what law this type of order can be passed. They have submitted that there is some confusion in respect of the penalty inflicted whether it comes within the ambit of minor punishment or major one and that can be rectified because as per the settled principle of law, punishment of withholding of increment with cumulative effect is a major penalty and that cannot be inflicted without



conducting a regular departmental enquiry.

6. But I am not on that aspect because the order inflicting penalty is absolutely illegal but the shocking thing which is available in this petition is the manner in which the authority has acted upon i.e. the then Sub Divisional Officer, granting 24 hours time to the petitioner to file reply to the show cause notice and finally inflicted the punishment under the Rules of 1966 whereas the show cause notice does reveal or contain any provision that the action is being taken against the petitioner under the provisions of Rules of 1966. The show cause does not indicate that any disciplinary proceeding can be initiated against the petitioner even though the punishment inflicted under the provisions of Rules of 1966, that too of a major punishment and it is very surprising that Collector without considering that aspect has also been affirmed the order passed by the Sub Divisional Officer. Both the impugned orders, in my opinion, are not sustainable. It is also not proper on the part of the authority to not take cognizance of the proceeding and the manner in which the authority has acted upon. The Collector being the head of the District and also the authority dealing with the quasi judicial proceeding in number of statutes and being a quasi judicial authority must be aware of the fact that punishment of withholding of increment with cumulative effect is a major one and procedure which has been followed by his sub-ordinate was not proper and not prescribed under any of the statutes.

7. Shri Amit Seth, counsel for the respondents is directed to apprise this position to the competent authority so that appropriate direction can be issued and action can be taken against the authorities not acting in



accordance with law and showing their arbitrary and illegal attitude towards an employee.

8. Petition is accordingly **allowed**. The impugned orders dated 20.10.2022 (Annexure P/1) and 26.07.2024 (Annexure P/5) are accordingly set aside. However, liberty is granted to the respondents/authorities to take appropriate action if so required against the petitioner for the alleged irregularities in accordance with law.

(SANJAY DWIVEDI)
JUDGE

Rao