



AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP(S) No. 474 of 2005

Order Reserved on : 08/01/2024

Order Delivered on : 21/03/2024

- Shiva Govind, S/o Late Sevakram Bhargava, aged around 52 years, Ex-Patwari, P.C. No. 56, R.I. Circle Arang, Tahsil and District Raipur, R/o village Maraud, Tahsil Dhamtari, District Raipur (C.G.)

---- **Petitioner**

Versus

1. Government of Madhya Pradesh Through Secretary, Land Records and Settlement Department, Bhopal (Now C.G.)
2. The Madhya Pradesh Board of Revenue, Gwalior, Through Its Registrar. (Now C.G.)
3. The Commissioner, Raipur Division, Raipur. District Ripur (C.G.)
4. The Additional Collector, Raipur, District (C.G.)
5. The Sub Divisional Collector, Raipur, District (C.G.)
6. The Tahsildar and Enquiry Officer, Raipur, District Raipur (C.G.)

---- **Respondents**

For Petitioner	:	Mr. Satya Prakash Verma, Advocate
For Respondents/State	:	Mr. Anshuman Shrivastava, P.L.

Hon'ble Smt Justice Rajani Dubey

(C A V Order)

1. Challenge in this petition is to the order dated 22.12.1990 (Annexure A/1) passed by the Respondent No.2 in Revenue Revision Case No. 242-1/87, whereby the Respondent No.2 quashed the orders of appellate Courts and maintained the termination order dated 18.04.1983 (Annexure A-4) of the



petitioner passed by Sub Divisional Officer, Raipur.

2. The petitioner was a Patwari in Tahsil Raipur when he was put under suspension in the year 1982. The allegation against the Patwari was of misbehaviour, illegal recovery and misplacing the records & and after having proved the alleged charges, he was dismissed from the service by order dated 18.04.1983 passed by Sub Divisional Officer, Raipur. The order of dismissal was subjected to appeal before the Collector, Raipur which was dismissed by order dated 15.09.1983. Thereafter, the petitioner challenged the order dated 15.09.1983 before the Commissioner, Raipur by way of second appeal, which was vide order dated 29.04.1987 partly allowed and order of dismissal was turned down into order of compulsory retirement. The petitioner further challenged the order dated 29.04.1987 before the Board of Revenue, Gwalior by way of revision and the learned Board of Revenue setting aside the order dated 29.04.1987 of compulsory retirement maintained the order dated 18.04.1983 of dismissal from service. Hence, the present petition seeking following relief(s) :-

“1 (a) That the impugned order dismissing the applicant from service passed by the Sub-Divisional Officer, Raipur in Departmental Enquiry Case No.1 of 1982 on 18.04.1983 (Annexure A-4) and all other orders passed by





Additional Collector Raipur in Revenue Appeal No.132-A/121 of 82-83 on 15-09-83, by Commissioner, Raipur Division, Raipur in Revenue Appeal No.33-B/121 of 83-84 on 29-4-87 and by M.P. Board of Revenue, Gwalior in Revenue Revision No.242-I/87 passed on 22-12-90 may be quashed and the respondents may be directed to reinstate the applicant with all benefits of service.

(b) That the period of absence from the date of dismissal to the date of reinstatement including the period spent under suspension may be directed to be treated as period spent on duty for all purposes; and

(c) Consequent upon reliefs granted in para (a) (b), the Respondents may be directed to pay to the applicant all arrears of salary and allowances as may become payable to him within such period as may be fixed by the Hon'ble Tribunal with a direction to pay such portion of arrears by way of immediate relief pending final payment of claims; and

(d) Such other relief by a writ or order or direction in the nature of writ as may be deemed fit and proper in the circumstances of the case may also be given even though not specifically prayed for;

(e) That the Rules framed by the Commissioner of Settlement and Director of Land Records in exercise of executive powers to amend, or repeal the statutory rules relating to the appointment, punishment and prescribing





other conditions of service be declared ultravires and inoperative against the statutory rules with such further directions as may be deemed fit and proper.”

3. Learned counsel for the petitioner submits that the impugned order passed by the competent authority was without application of mind. The learned Commissioner partly allowed the appeal in so far as punishment was concerned and modified the punishment by converting the punishment of dismissal from service into one of the compulsory retirement vide order dated 29.04.1987 (Annexure A/2) but the learned Appellate Court did not consider all grounds of appeal and set aside the order of learned Commissioner holding that the appeal was not maintainable. It was further submitted that according to the enquiry report, no Presenting Officer was appointed and the enquiry was conducted against the principle of natural justice. The enquiry report clearly indicated that as many as 09 charges were framed against the petitioner out of which only charge Nos.6, 7 and 8 were found to be proved. It has been contended by learned counsel that Disciplinary Authority and Revenue Board did not consider all grounds of the petitioner in its true perspective, as such the impugned order and disciplinary enquiry are liable to be quashed on the ground of principle of natural justice. The





learned Revenue Court in its order dated 22.12.1990 gave wrong finding that the order is not appealable. Placing reliance on the decisions of Hon'ble High Court of Madhya Pradesh in the matter of *Ramkishan Vs. State M.P.* reported in *1977 RN 109, Shrigopal Vs. State of M.P. and others* reported in *1979 RN 312* and decisions of this Hon'ble Court in *W.P.(S) No.6670/2021* [Amrit Kumar Medhe Vs. The State of Chhattisgarh & Ors] & *W.P.(S) No.588/2016* [Rajesh Bhagat Vs. State of Chhattisgarh & Ors.], it was submitted that the appeal is not barred under Section 64 (E) of the Land Revenue Code, thus, impugned orders are liable to be set aside with all consequential benefits.

4. Mr. Anshuman Shrivastava, learned Panel Lawyer for the State strongly opposed the prayer of the petitioner and submits that the Sub-Divisional Officer, Raipur, after a detailed enquiry into the matter, had passed an order of termination of service of the petitioner and charge Nos. 6, 7 & 8 were duly proved against the petitioner. The charges were serious in nature as he misbehaved with his superior and also threatened authorities under the garb of the the Presidentship of the Union of Patwaris and was also indulged in illegal recovery of money & was also guilty of misplacing of the official records which were in possession





of his colleague Patwari. In this view of the matter, the Sub Divisional Officer conducted detailed enquiry and thereafter passed detailed order dated 18.4.1983 in Departmental Enquiry Case No.1/1982. The petitioner challenged the order passed by Sub Divisional Officer, Raipur dated 18.4.1983 by filing an appeal before the Addl. Collector, Raipur. The appeal of the petitioner was dismissed by the Collector vide order dated 15.9.1983 and against the order of the Collector, the petitioner preferred a Second Appeal before the Commissioner, Raipur which was partly allowed by converting the order of termination into compulsorily retirement. Against the order of compulsorily retirement, the petitioner preferred revision petition before the Board of Revenue, Gwalior, and the Board of Revenue, Gwalior passed the impugned order taking taking into consideration the statutory provision incorporated in the M.P. Land Revenue Code 1959 arrived at a conclusion that no appeal or second appeal was maintainable and therefore, set aside the orders passed by the Collector as well as Commissioner and restored the order passed by the Sub Divisional Officer, Raipur meaning thereby as a result of order of the Board of Revenue dated 22.1.1990, the order of termination was revived. Thus, the instant petition has no merit.

Learned counsel further submits that the enquiry

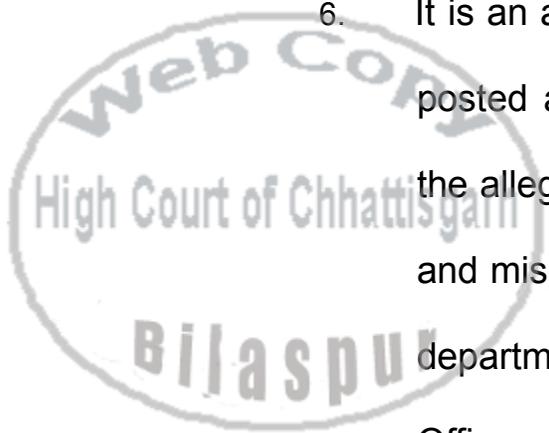




officer after detailed enquiry gave finding against the petitioner which ultimately has been made basis for issuance of the order of termination. The Commissioner modified the order of termination but the petitioner himself filed revision against this order and the learned Revenue Board passed the impugned order. Therefore, this petition is not maintainable and the same is liable to be dismissed.

5. I have heard learned counsel for the parties and perused the material available on record.

6. It is an admitted position in this case that the petitioner was posted as Patwari when he was put under suspension for the alleged charges. On account of charges of misbehavior and misplacing of record, the Sub-Divisional Officer initiated departmental enquiry and after enquiry, the Sub-Divisional Officer passed the order dated 18.04.1983 terminating the services of the petitioner, against which the petitioner filed appeal before the Additional Collector, Raipur, which was stood dismissed by order dated 15.09.1983. Thereafter, the petitioner filed second appeal before the Commissioner, Raipur, and the Commissioner, Raipur by order dated 29.04.1987 modified the order of Sub-Divisional Officer and converted the punishment of termination into compulsory retirement. The petitioner again filed revision against this order and the Revenue Board, Gwalior passed the





impugned order dated 22.12.1990 and held that no appeal under Section 104 (2) was maintainable against the original order after amendment of Section 46 (E) of M.P.L.R. Code and set aside the orders passed by the Additional Collector and Commissioner restoring the order of Sub-Divisional Officer dated 18.04.1983.

7. While dealing with the issue of maintainability of the appeal under the relevant clause of Land Revenue Code, the Hon'ble High Court of Madhya Pradesh in ***Shrigopal*** (*supra*) held in para 1 as under :-

"1. The petitioner, who was a Patwari was compulsorily retired from 11th May, 1976. The petitioner was compulsorily retired as a matter of punishment. The petitioner filed an appeal which was dismissed by the Collector. The petitioner then preferred a second appeal which was dismissed by the Commissioner by order dated 30th December, 1976, on the ground that the same was not maintainable. The Commissioner in holding that the appeal was not maintainable referred to M.P. Civil Service (Classification, Control and Appeals) Rules 1966. In our opinion, the Commissioner was wrong in holding so. It has been held by a Division Bench of this Court in Ramkishna v. State of M.P., (1977 RN 109) that an order dismissing a Patwari is appealable under the provisions of the M.P. Land Revenue Code, 1959. The second appeal preferred before the Commissioner was maintainable under Section 44





(2) of the M.P. Land Revenue Code.”

8. Further, Hon'ble High Court of Madhya Pradesh in ***Ramkishan*** (*supra*) held in para 4 as under :-

“4. It can now be seen that S. 46 does not bar an appeal from an order of dismissal of a Patwari, which order has been held as within the powers conferred under S. 104 (2) of the Code read with S. 16 of the General Clauses Act. The reasoning and the basis of the decisions of the Board of Revenue (supra) is that since the power to appoint includes the power to dismiss, the bar of appeal from an order relating to appointment includes the bar of appeal from an order of dismissal. The reasoning is fallacious. The right of appeal is a statutory right. It can be conferred only by a statute, it can be taken away only by a statute. Under S. 46 (e), the right of appeal has been taken away only in respect of an order 'relating to appointment' under S. 104 (2). Section 46 has nothing to do with the power to appoint or dismiss. Therefore, S. 16 of the General Clauses Act is not attracted at all to S. 46. A right of appeal cannot be taken away by assumption or by analogy. It cannot be said that since the power to appoint includes the power to dismiss, appeal is also barred from an order dismissing Patwari because of the bar contained in S. 46 (e) of the Code. That decision of the Board of Revenue does not lay down correct law.”

9. Further, while dealing with the issue, this Court in the matter





of **Amrit Kumar Medhe** (*supra*) held in para 17 as under :-

“17. Following the principle of law laid down in the aforesaid case, it is held that Section 46 (e) of the Land Revenue Code, 1959 would not bar the appeal against the order suspending a Patwari and that order of suspension would not fall within “relating to appointment” within the meaning of clause (e) of Section 46 of the Code. Accordingly, the order of suspension passed under Rule 9(1) of the Rules of 1966 would be appealable in accordance with Rule 23 of the Rules of 1966.”

10. Thus, it is clear from the aforesaid proposition of law that the order passed by the Sub-Divisional Officer, Raipur was appealable and the learned Commissioner passed the order in an appeal preferred by the petitioner. The learned Commissioner while modifying the order of termination considered all the grounds of appeal and passed the order dated 29.04.1987 and the same cannot be termed to be illegal or perverse.

11. In this case, the petitioner raised objection with regard to finding of enquiry officer. It is well settled principle of law that in writ appeal the finding of the enquiry officer cannot be interfered with unless the same is found to be perverse or contrary and has to deal with the punishment part thereof only. The matter is pending since 1991 and since this Court held that the appeal was maintainable thus, the impugned





order (Annexure A-1) of learned Revenue Board is not sustainable.

12. Thus, in view of the aforesaid discussion and looking to the facts and circumstances of the case, the impugned order dated 22.12.1990 (Annexure A-1) is set aside and order passed by the learned Commissioner dated 29.04.1987 (Annexure A-2) is restored. As the order of compulsory retirement is restored, the petitioner is held entitled for retiral dues as per service record from the date when punishment order was passed.

13. The petition is thus allowed with no order as to costs.

Sd/-
(Rajani Dubey)
Judge

