IN THE HIGH COURT OF MADHYA PRADESH, BENCH GWALIOR

Writ Petition No.4696/2010 (S)

Om Prakash Dixit

Versus

State of M.P. & Ors.

Shri Alok Katare, learned counsel for the petitioner.
Shri Praveen Newaskar, learned Govt. Advocate for respondents No.1 to 3/State.
None for respondent No.4.

Present : Hon. Mr. Justice Vivek Agarwal

O R D E R
(14.06.2016)

Petitioner has filed this petition claiming the benefit of Krammonati on completion of 12 years period of service on the post of Lecturer. He has also assailed the order Annexure P/8 vide which minor punishment of stoppage of one increment without cumulative effect was inflicted on him under the provisions of Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966.

2. Respondents have filed a return. They have expressed that petitioner was granted benefit of Kramonati vide order dated 26.3.11 with effect from 7.3.2004. In view of this fact which is not disputed by the learned counsel for the petitioner, first relief seeking benefit of Kramonati has become infructuous.

3. As far as petitioner's second claim for quashing of minor punishment is concerned, learned counsel for the petitioner has submitted that in terms of the provisions contained in Rule 16(1)(d), no order imposing any penalty specified in clause (i) to (iv) of Rule 10 could have been made without recording a finding

on each imputation of misconduct or misbehaviour. He has also relied on the judgments in the cases of **State of M.P.and others Vs. Sanjay Nagayach and others, (2013) 7 SCC 25**; **Rajasthan State Electricity Board Vs. Union of India and others, (2008) 5 SCC 632** and **UP SRTC Ltd. Vs. Sarada Prasad Misra and Anr., (2006) 4 SCC 733**.

4. Per contra, learned Govt. Advocate for the State submits that there is a statutory remedy of appeal provided in Rule 23 of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966, and therefore, this writ petition is not maintainable in view of the availability of alternative remedy. It is also submitted that there is misjoinder of causes inasmuch as petitioner has mixed two different causes, namely grant of Kramonati and challenge to the order of minor penalty in one writ petition, whereas two different cause of actions being distinct, different writ petitions should have been filed. Learned counsel for the State has also submitted that this writ petition has been filed much after the expiry of limitation for filing an appeal against the order of punishment, therefore, the writ petition suffers from delay and laches also.

5. This Court has perused the record. The ratio of law laid down by the Supreme Court in **Rajasthan State Electricity Board (supra)** is not applicable to the facts and circumstances of the case inasmuch as in that case the respondent/Railway had admitted their liability, and therefore, the Supreme Court deprecated the order of the High Court dismissing the writ petition with a direction to the appellant to approach the Railway Claims Tribunal for availing alternative remedy provided under Section 13 of the Railway Claims Tribunal Act, 1987. In the present case, there is no admission or concession on the part of the respondent/State.

6. The case of **UP SRTC Ltd. (supra)** is a case under labour law wherein delay in filing the claim for reinstatement and backwages was entertained by the Court overlooking the delay

on the part of the workman. The position of the workman under the industrial law/labour law is different from a civil servant and the labour law being a beneficial legislation is more lenient in the matter of technicalities because labour is considered to be illiterate and underprivileged, but same is not the position of a Lecturer who is also a civil servant, therefore, not availing the remedy of appeal will not entitle the petitioner to claim relief under the writ jurisdiction. Similarly the judgment in the case of **Sanjay Nagayach (supra)** has been pressed into service to demonstrate that mandatory requirement of Section 16(1)(d) was not fulfilled and therefore order of punishment is not sustainable. The fact of the matter is that Rule 16(1) requires that before passing any order of minor punishment, the concerned employee should be served with a show-cause notice and after giving opportunity of furnishing reply order of minor penalty can be passed. Annexure P/6 is the show-cause notice dated 5.12.2008 stating therein that petitioner has violated the provisions of *Bhandar Krya Niyam* Rules and made amendments in the vouchers besides filing forged vouchers. It was also alleged that he has without competent sanction used amounts sanctioned as travel advance on other heads and has not presented the vouchers in time. Thus, he has violated the provisions of Rule 3 of the Madhya Pradesh Civil Services (Conduct) Rules 1965. Petitioner filed his reply in which he has admitted his guilt that he had overspent the amounts against the instructions of Rajya Shiksha Kendra. He has also admitted utilization of the amounts drawn on certain heads on certain other head without the competent sanction. In view of these admissions, it cannot be said that the petitioner has been harassed unnecessarily. At this distance of time, no useful purpose would be served in relegating the petitioner to the appellate authority and this Court should not sit as an appellate authority over the decision of disciplinary authority which has inflicted minor penalty of stoppage of one increment without

cumulative effect. As far as the provisions of Rule 16(1)(d) are concerned, there is a clear finding that the petitioner was found guilty of violating the instructions of Rajya Shiksha Kendra during I.E.D. training. This finding is sufficient to make the requirement of Rule 16(1)(d), and therefore, argument of the petitioner that punishment order is not sustainable in the light of the provisions contained in Rule 16(1)(d) is not satisfactory. Thus, this petition being devoid of merits deserves to be and is hereby dismissed.

(Vivek Agarwal)
Judge.

ms/-