

**The High Court of Madhya Pradesh**  
**WP 6542/2010(s)**  
**Mahesh Singh Yadav vs. The State of MP**  
**Gwalior, dtd. 16/11/2018**

Shri MPS Raghuvanshi, counsel for the petitioner.

Shri Yogesh Chaturvedi, Government Advocate for the respondents/ State.

This petition under Article 226 of the Constitution of India has been filed challenging the orders dated 20/09/2010 and 11/05/2010 passed by the Commissioner, Gwalior Division, Gwalior and the Collector, District Gwalior respectively, by which the penalty of stoppage of two annual increments without cumulative effect has been imposed.

The necessary facts for the disposal of the present petition in short, lies in a narrow compass. A show cause notice dated 06/02/2010 was issued to the petitioner who was working as Assistant Teacher in Government Primary School, Sanson, Bhitwar, District Gwalior on the allegation that the SDO, Bhitwar by its report dated 14/01/2010 had reported that on 02/12/2009 in between 11:15 to 11:30 am, an inspection of the School was done and it was found that no teacher was present in the School including the petitioner and it was found that the students were dusting and moping and thus, a show cause notice was issued to the petitioner as to why his two annual increments without cumulative effect be not stopped.

The petitioner filed his reply and submitted that on 02/12/2009, an instruction was given by In-charge, Jan Siksha Centre, the Government Excellence Higher Secondary School, Bhitwar, Gwalior that a training for the second phase of Panchayat election, is to be held on 03/12/2009 and, therefore, the petitioner should immediately come to Jan Siksha Centre and should note his duty. It was replied to the In-charge by the

petitioner that he would note his duty after the school hours but he was instructed by the In-charge, Centre that since he has to send the acknowledgment to the District Election Officer, therefore, the petitioner should immediately come to his Office otherwise action can be taken against him for negligence in the election process. Thus, it was mentioned in the reply that in compliance of telephonic instruction given by In-charge, Jan Siksha Centre, he went to Jan Siksha Centre to note his duty and, therefore, he could not reach the school in time.

The Collector by order dated 11<sup>th</sup> May, 2010 came to a conclusion that the reply filed by the petitioner is not satisfactory and accordingly, two increments were stopped without cumulative effect.

Being aggrieved by the order of the Collector, the petitioner filed an appeal, which too has been dismissed by the Commissioner, Gwalior Division, Gwalior by its order dated 20/09/2010 passed in Q/Vikas/Stapna/23- 4/78/2010.

Challenging the orders passed by the authorities, it is submitted by the counsel for the petitioner that where the delinquent officer has disputed the allegations levelled in the show cause notice, then it was incumbent upon the authorities to conduct a departmental enquiry and in absence of the departmental enquiry the authorities should not have imposed even a minor penalty. To buttress his contention, the counsel for the petitioner has relied upon the judgment passed by the Supreme Court in the case of **O.K. Bhardwaj vs. Union of India and Others**, reported in **(2001) 9 SCC 180** and in the case of **Ajay Kumar Singh vs. State of MP and Others**, reported in **2008 (2) MPLJ 541**.

*Per contra*, it is submitted by the counsel for the State that the petitioner had not disputed the allegations made in the show

cause notice but he had admitted that at the time of inspection he was not present in the school and under these circumstances, it was not incumbent upon the authorities to hold a departmental enquiry and for imposing the minor penalty, holding of departmental enquiry is not necessary.

Heard the learned counsel for the parties.

Rule 16 of the MP Civil Services (Classification, Control and Appeal) Rules, 1966 reads as under:-

**"16.Procedure for imposing minor penalties.-** (1) Subject to the provisions of sub-rule (3) of rule 15, no order imposing on a Government servant any of the penalties specified in clauses (i) to (iv) of rule 10 and rule 11 shall be made except after-

(a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal;

(b) holding an enquiry in the manner laid down in sub-rules(3) to (23) of rule 14, in every case in which the disciplinary authority is of the opinion that such enquiry is necessary;

(c) taking the representation, if any, submitted by the Government servant under clause (a) and the record of enquiry, if any, held under clause (b) into consideration;

(d) recording of finding on each imputation of misconduct or misbehaviour; and

(e) consulting the commission where such consultation is necessary.

From Rule 16(1)(b), it is clear that where the departmental proceedings are initiated, the authority is of the opinion that an enquiry in the manner laid down in sub-rule(3) of Rule 23 of the Rules 1966 is necessary, then imposing the minor penalty, a statutory enquiry shall be conducted.

[(1-a) Notwithstanding anything Contained in clause (b) of subrule(1), if in a case it is proposed after considering the representation, if any, made by the Government servant under clause(a) of that sub-rule to withhold increments of pay of Stagnation Allowance is

such withholding or increments of pay or Stagnation Allowance and such withholding or increments of pay or Stagnation Allowance is likely to effect adversely the amount of pension payable to the Government servant or to withhold increments of pay or Stagnation Allowance for a period exceeding three years or to withhold increments of pay or Stagnation allowance with cumulative effect for any period, an enquiry shall be held in the manner laid down in sub-rules (3) to (23) of rule 14, before making any order imposing on the Government Servant any such penalty.].

(2) The record of the proceedings in such cases shall include

(i) a copy of the intimation to the Government servant of the proposal to take action against him;

(ii) a copy of the statement of imputation of misconduct or misbehaviour delivered to him;

(iii) his representation, if any;

(iv) the evidence produced during the enquiry;

(v) the advise of the commission, if any;

(vi) the findings on each imputation of misconduct or misbehaviour, and

(vi) the orders on the case together with the reasons therefor. "

This Division Bench of this Court in the case of **Bholeram Soni vs. Union of India & Others**, reported in **2015 (11) MPJR 67** has held as under:-

"9.As analyzed above, in our view, the disciplinary authority, the appellate authority and Tribunal have missed the real point. Since factual allegations were denied and petitioner gave explanation on facts and merits, in the fitness of things, the disciplinary authority should have conducted an enquiry as per Rule 16 (1)(b) of CCA Rules. This would have been in consonance with the principles of natural justice. Apart from this, the discretion vested with the disciplinary authority to conduct an enquiry must be exercised in objective and judicious manner. The disciplinary authority in the present case has committed an error in not instituting the enquiry as per rules. Thus, we find flaw in the decision making process adopted by the department. Resultantly, the punishment order dated 19.11.2007 and the appellate order dated 07.05.2009 are set aside. The order of the Tribunal dated 02.05.2013 is also set aside. The matter is remitted back to the disciplinary authority to conduct the enquiry as per Rule

16(1)(b) of CCA Rules. It is open to the respondents to proceed against the petitioner from the said stage in accordance with law. It is made clear that this Court has not expressed any opinion on the merits.

10. Petition is allowed to the extent indicated above. No costs."

In the present case, it is true that the petitioner has accepted that at the time of inspection, he was not present in the school but he has given an explanation for the same. It is the stand of the petitioner that in the morning itself he received a telephonic call from In-charge, Jan Siksha Centre that he has to attend the training programme for conducting second phase of Panchayat election and since the Centre In-charge is required to send an acknowledgment to the District Election Officer, at the earliest, therefore, the petitioner must come to Jan Siksha Centre immediately for noting his duty otherwise he shall be proceeded against. The explanation given by the petitioner cannot be said to be completely irrelevant. If on one hand, the authorities had insisted the person, who has been deputed to conduct second phase of Panchayat election, that he must attend the Office so as to acknowledge his duty, then it cannot be said that the petitioner should have ignored the instructions given by the authorities for holding the Panchayat election.

Under these circumstances, this Court is of the considered opinion that the Collector before holding the petitioner guilty must have given a finding that the stand taken by the petitioner was incorrect and that can be done only after holding a departmental enquiry as required under Rule 14 of the CCA Rules, 1966.

This Court could have remanded the matter back to the Collector for holding a departmental enquiry. The petitioner has annexed the certificate issued by the Principal, Government Excellence Higher Secondary School, Bhitwar, District Gwalior

admitting that he had issued instructions to the petitioner on 3/12/2009 to immediately note his duty for attending the training programme for the second phase of Panchayat election and it is mentioned in the said certificate that telephonic instruction was given to the petitioner at 10:15 am. The respondents have filed the return and they have not disputed the certificate issued by the Principal, Government Excellence Higher Secondary School, Bhitwar, District Gwalior. It is the case of the respondents that the inspection was carried out on 2/12/2009 from 11:15 am to 11:30 pm i.e. 15 minutes and during this period, none of the school teachers were found in the school. Where the authorities of the State Government had already directed the school teachers including the petitioner to note their duties for attending the training on 03/12/2009 for holding second phase of Panchayat election, this Court is of the considered opinion that the respondents cannot play hot and cool as on one hand, they insist the school teachers to leave the school and give their acknowledgment to the authorities, otherwise face consequences and on the other hand, they cannot say that the school teachers should have not have left the school thereby challenging the orders of the Principal, Government Excellence Higher Secondary School, Bhitwar, District Gwalior. It is not the case of the respondents that the petitioner did not attend the school for the entire day. His absence is only for a period of 15 minutes i.e during the period of inspection of the school. Thus, in the light of the short period of absence as well as explanation given by the petitioner, coupled with the certificate issued by the Principal, Government Excellence Higher Secondary School, Bhitwar, District Gwalior, this Court is of the considered opinion that no useful purpose would be served by remanding the matter back to the Collector for holding a departmental enquiry.

Accordingly, the order dated 11<sup>th</sup> May, 2010 passed by the Collector, Gwalior and the order dated 20/09/2010 passed by the Commissioner, Gwalior Division, Gwalior are hereby set aside.

Resultantly, this petition succeeds and is hereby **allowed**.

**(G.S.Ahluwalia)**

**JUDGE**

MKB