

(Amar Singh Lodhi vs. The State of M.P. & Others)

16.12.2016

Shri R.B.S.Tomar, learned counsel for the applicant.

Shri Praveen Newaskar, learned Govt. Advocate for the State.

This intra court appeal assails the final order dated 11.11.2016 passed in W.P.No.7922/2016 by which the following reliefs have been sought :-

7.1. That, the respondent No.2 may kindly directed to consider the representation annexure P/4 dated 14.10.2016 filed by the petitioner against the order of suspension and pass appropriate order.

7.2 That, other relief doing justice including cost be ordered.

The writ court has dismissed the petition on the ground that in absence of challenging the order of suspension dated 06.10.2016 the petitioner is not entitled to seek remedy before the same authority who suspended him for revocation of his suspension and therefore the representation made in this behalf vide Annexure P-4 is futile exercise.

Perusal of Madhya Pradesh Panchayat Service (Discipline and Appeal) Rules, 1999 especially Rules 4 and 15 which pertain to power of suspension and of remedy of appeal against any order of suspension and penalty, it is evident that Rule 4 vests the competent authority to pass an order of suspension on the existence of certain contingencies mentioned therein but also provides in Rule 4 (5) that the order of suspension shall remain in force until modified or revoked by the authority competent to do so or by a superior authority.

A bare perusal of the representation Annexure P-4 made by the petitioner indicates that he has assailed the order of suspension on merits by stating that the petitioner as Panchayat Secretary was not

involved in any misconduct and therefore ought not to have been suspended.

The power of modifying or revoking an order of suspension is conferred on the same authority which passed the order of suspension and so also on the superior authority under Rule 4(5). Whereas a similar power of confirming or revoking the order of suspension is conferred upon the Appellate Authority under Rule 16. The distinction between these two powers is though subtle but palpable. Under Rule 4(5) the power of modification and revocation can be exercised on all grounds except on merits. Justification of reasons behind the decision to place the employee under suspension cannot be gone into under Rule 4(5) by the same authority or even the superior authority. However Appellate Authority under Rule 16 has wide powers to look into all the aspects of challenge including merits and technical.

When the order of suspension has been assailed on merits the appropriate forum to approach for the petitioner is the appellate authority under Rule 16 instead of seeking judicial review of the said order.

In view of above, remedy available to the petitioner is to file an appeal u/R 15/16 which has not been availed yet.

No interference is thus warranted in the order of the writ court which has adopted the appropriate course of action.

Accordingly, the writ appeal stands dismissed.

Needless to emphasize that passing of this order will not come in the way of the petitioner to avail the remedy of appeal against the order of suspension, as per law.

(Sheel Nagu)
Judge

(S.K.Awasthi)
Judge

