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IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE
HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA

ON THE 6th OF JULY, 2023

WRIT PETITION No. 12396 of 2019

BETWEEN:-

JAGANNATH SINGH SOLANKI S/O SHRI NATHULAL
SOLANKI, AGED ABOUT 44 YEARS, H. NO. 80, WARD NO.
2, NARESH WALI GALI, PALIWAL COLONY, SIRONJ,
DISTT. VIDISHA (MADHYA PRADESH)

.....PETITIONER

(SHRI JAGDISH BAHETI, LEARNED COUNSEL FOR THE PETITIONER)

AND

1. REVENUE DEPARTMENT PRINCIPAL SECRETARY
VALLABH BHAWAN, BHOPAL (MADHYA
PRADESH)
2. COMMISSIONER BHOPAL DIVISION BHOPAL
(MADHYA PRADESH)
3. COLLECTOR / DISTRICT MAGISTRATE (MADHYA
PRADESH)
4. IN CHARGE OFFICER DEPARTMENTAL ENQUIRY
B R A N C H COLLECTOR OFFICE RAJGARH
(MADHYA PRADESH)

.....RESPONDENTS

(SHRI TARUN PAGARE, LEARNED G.A. FOR THE RESPONDENTS/STATE)

.....
*This petition coming on for hearing this day, the court passed the
following:*

ORDER

The present petition is filed under Article 226 of the Constitution of India
seeking quashment of the order dated 28.03.2019 passed by Commissioner,

Division Bhopal and order dated 10.08.2018 passed by Collector, District Rajgarh and the enquiry report dated 09.07.2018 prepared by the Departmental Enquiry Officer, Rajgarh. He has further sought relief for reinstatement in service with back-wages and all consequential benefits.

2. The facts of the case are that initially the petitioner was appointed on the post of Patwari on 24.05.1997 at Tehsil Siroj District-Vidisha (M.P.) Thereafter, the petitioner was promoted on the post of Revenue Inspector vide order dated 30.01.2016 and by order dated 23.04.2016 was transferred to District- Rajgarh. He was appointed by way of promotion on the post of Revenue Inspector by Commissioner, Land Record and Settlement, Madhya Pradesh. By order dated 03.03.2018, the respondent No. 3 has suspended the petitioner from services on the ground of corrupt practices for causing demarcation on the maps of Village-Titori, Motipura, Sondiya and Titori without the order of the competent authority and further enquiry was caused against the petitioner whereby the Tehsildar Rajgarh was appointed as Presenting Officer and the In-charge officer, departmental enquiry, Branch Collector Office, Rajgarh was appointed as enquiry officer. The charge-sheet was issued on 20.03.2018 whereby the following charges were levelled against him:-

a) The petitioner has caused proposed demarcation by pencil on the already existed red-inked Survey No. 58 of Patwari Halka No. 47 on the map of village-Saredi without any authority.

b) The petitioner has caused demarcation at various survey numbers by red ink on map of Patwari Halka No. 49 Village-Motipura without any order of the competent authority and the demarcation of land bearing survey No. 65/3 of village-Titodi changed to 1.075 hectare to 2.020 hectare.

c) The petitioner has further prepared a new map of village-Gagorni despite the fact that the old map was still with the Patwari and further in the new map the signatures of the Patwari were not endorsed.

d) The petitioner by causing the demarcation in the map of village-Saredi, Motipura, Titodi and Gagorni has taken illegal gratification from the farmers.

e) The petitioner has acted beyond his jurisdiction and has caused demarcation.

3. The petitioner filed reply to the charge sheet and after examination of the witnesses, an enquiry report was submitted wherein the charges No.1 to 3 and 5 were found proved. The charge No. 4 (d) was not found proved. On the basis of enquiry report, the respondent No. 3 Collector Rajgarh passed the impugned order dated 10.08.2018 imposing major penalty of dismissal from services under (IX) of Rule 10 of M.P. Civil Services (Classification, Control & Appeal) Rules, 1966 (hereinafter referred as **Rules, 1966**). Against the said order, the petitioner preferred an appeal before the respondent No. 2. The said appeal has also been dismissed by order dated 28.03.2019. The said order was further challenged in Second Appeal before the Revenue Board which was dismissed by order dated 19.06.2019. The impugned order of dismissal from service is mainly challenged on the ground that the impugned order of dismissal from service passed by the Collector, Rajgarh is without jurisdiction and competence. It is argued that the Collector, Dist. Rajgarh is not the appointing authority of the petitioner. As per order dated 30.01.2016, the petitioner was appointed on the post of Revenue Inspector by way of promotion by Commissioner, Land Record and Settlement, Madhya Pradesh. The

Respondent No. 3 Collector, Rajgarh is an authority subordinate to the appointing authority and, therefore, the order is contrary to the provisions of Rule 12 of Rules 1966 wherein it is provided that the penalty of Clauses (V) to (IX) of Rule 10 of Rules 1966 may be imposed by the appointing authority. Sub-Rule (A) of Rule 3 of Rule 12 of the Rules 1966 provides that no penalty is specified in Clauses (V) to (IX) of Rule 10 of Rules 1966 shall be imposed by any authority subordinate to the appointing authority. Thus, the impugned order is patently without jurisdiction and contrary to the provisions of Sub-Rule (A) of Rule 3 of Rule 12 of Rules 1966.

4 . It is further argued that the aforesaid point was specifically raised before the Appellate Authority, but the same has not been considered. The order being without jurisdiction is liable to be quashed.

5 . Per contra, counsel for the respondents supported the orders impugned and in the first reply, it is stated that Collector being head of the District is competent to pass the order of dismissal in respect of Revenue Inspector and there is no jurisdictional error in passing the said order. Thereafter the respondents filed additional reply and submitted that as per M.P. Bhu-Abhilekh Niyamawali, the Collector is the appointing authority of the post of Revenue Inspector. It is also submitted that as per provisions of Section 106 of M.P. Land Revenue Code, 1959, the appointment of Revenue Inspector in non-urban area is made by the Collector. Section 106 provides for appointment of Revenue Inspectors in non-urban areas stating that the Collector may appoint in each Revenue Inspector Circle, Revenue Inspector to supervise the preparation and maintenance of land records and to perform such other duties as may be prescribed. Thus, the Collector being appointing authority as per the aforesaid provisions is competent to terminate the services of Revenue

Inspector.

6. I have heard learned counsel for the parties and no other point was argued before this Court.

7. The core question arises for consideration is that whether Collector is competent to pass an order of penalty under Clauses (V) to (IX) of Rule 10 of Rules 1966 which provides that the services of the employee can be terminated by appointing authority and further Sub-Rule (A) of Rule 3 of Rule 12 of Rules 1966 provides that penalty under Clauses (V) to (IX) of Rule 10 of Rules 1966 cannot be imposed by an authority subordinate to the appointing authority. Upon perusal of Annexure P/1 and P/2, it is crystal clear that the petitioner was promoted on the post of Revenue Inspector by way of promotion and was posted at present place of posting by Commissioner, Land Record and Settlement, Madhya Pradesh. It is not in dispute that Commissioner, Land Record and Settlement, Madhya Pradesh is higher authority than the Collector of the District. The Rules of 1966 has been framed by the State Government in exercise of the powers conferred under Proviso to Article 309 of the Constitution of India. The aforesaid Rules are statutory in nature.

8. Counsel for the State could not show that under what provision of law Bhu-Abhilekh Niyamawali has been framed.

9. Upon perusal of the aforesaid Bhu-Abhilekh Niyamawali, it is evident that the aforesaid instructions are executive instructions and are not statutory rules framed under any institute or in exercise of the power under Article 309 of the Constitution of India. Even otherwise the Clause - 18 and 19 of Bhu-Abhilekh Niyamawali provides that for the purpose of punishment, the services of government employee shall be governed by the CCA Rules 1966 and the

amendments carried out by them in respect of punishment suspension and dismissal of services of a Revenue Inspector. The relevant Clause 18 & 19 reads as under :-

18. राजस्व निरीक्षक, राज्य शासन द्वारा बनाए गए शासकीय कर्मचारियों के आचरण को नियमित करने वाले सामान्य नियमों के अधीन होंगे।

राजस्व निरीक्षकों के लिये राज्य शासन द्वारा शासकीय कर्मचारियों के लिये बनाये गये नियमों से शासित होंगे।

19. (1) मध्यप्रदेश में अधीनस्थ सेवाओं के शासकीय कर्मचारियों के दण्ड को विनियमित करने वाले, शासकीय सेवा वर्गीकरण, नियंत्रण तथा अपील नियम समय ≤ पर इनमें किये गए संशोधनों के साथ राजस्व निरीक्षकों के दण्ड, निलम्बन तथा सेवाच्युति को विनियमित करेंगे।

(2) ऐसे नियमों पर अंतिम निर्णय विचाराधीन होने की स्थिति में, संबंधित इकाइयों के नियम, ऐसे इकाइयों से संबंध रखने वाले राजस्व निरीक्षकों पर लागू होंगे।

10. Counsel for the petitioner also produced a Circular dated 28.01.2016 issued by General Administration Department to the effect that whenever a penalty is to be imposed under Clauses (V) to (IX), the same shall be passed only by the appointing authority. The aforesaid Circular is not disputed by the counsel for the State.

11. A Coordinate Bench of this Court in the case of ***Chetanlal Thakur vs. State of M.P. & Ors. 2008(2) MPLJ 468*** after considering the provisions of Rules 1966 and M.P. Land Revenue Code held that the services of the Revenue Inspector cannot be reverted by way of penalty by the Settlement Officer because the Settlement Officer is not the appointing authority and he is an authority subordinate to the appointing authority.

12. In view of the aforesaid discussion, it is held that the provisions of Rules 1966 being statutory in nature would prevail over the provisions of Bhu-

Abhilekh Niyamawali. Vide Annexure P/1 & P/2, it is crystal clear that the petitioner was appointed by way of promotion on the post of Revenue Inspector by Commissioner, Land Record and Settlement, Madhya Pradesh who is admittedly a higher authority than the Collector of the District and, therefore, the impugned order of dismissal of service by the District Collector is without jurisdiction. The Clause 18 & 19 of Bhu-Abhilekh Niyamawali also provides that services of Revenue Inspector shall be governed by Rules of 1966. The respondents have not brought on record any order of appointment of the petitioner on the post of Revenue Inspector by the Collector. The impugned order of dismissal from service being without jurisdiction is dated 10.08.2019 (Annexure P/12) is quashed and the subsequent orders passed by the Appellate Authorities are also quashed. The petitioner shall be reinstated in service. Since the order of dismissal is being quashed on the ground of competence, therefore, the liberty is granted to the Competent Authority to proceed against the petitioner in accordance with the law. Since the liberty is granted to the Competent Authority to proceed in accordance with the law, therefore, this Court is not passing any order regarding back-wages.

12. The petition is allowed and disposed off to the extent indicated herein-above.

(VIJAY KUMAR SHUKLA)
JUDGE