

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

1	Case No.	WA No.727/2020, WA No.729/2020 & WA No.741/2020
2	Parties Name	State of M.P & Ors. Vs. Ramesh Gir State of M.P & Ors. Vs. Satish Joshi State of M.P & Ors. Vs. Mahesh Joshi
3	Date of Judgment	21/9/2020
4	Bench constituted of	Hon'ble Shri Justice Prakash Shrivastava & Hon.Mr.Justice Vivek Rusia
5	Judgment delivered by	Hon'ble Shri Justice Prakash Shrivastava
6	Whether approved for reporting	Yes
7	Name of counsels for parties.	Shri.Pushyamitra Bhargava, learned Addl. Advocate General for the appellants. Shri Manoj Manav, learned counsel for respondent in WA No.741/2020. None for respondent in other Writ Appeals.
8	Law laid down	When the Rules are silent about power of suspension, then the general principle of suspension will apply. The general principle is that under the ordinary law of master and servant the authority which has power to appoint an employee has the implicit power to place him under interim suspension. Such interim suspension can be on account of contemplated or pending departmental enquiry or due to registration of the criminal case or for any other justifiable reason. Such suspended employee is entitled for subsistence allowance as per rules during the suspension period and if there is no rule governing suspension allowance, then full remuneration is payable. [Para 10, 17] Under the M.P. Panchayat Service (Gram Panchayat Recruitment and Conditions of Service) Rules 2011 since CEO, Jilla Panchayat is the appointing authority of Gram Panchayat Secretary, therefore, he is competent to suspend the Panchayat Secretary during the pendency of departmental enquiry or registration of criminal case or for any other justifiable reason. [Para 18 to 20]
9	Significant paragraph numbers	Paragraphs 10, 17 to 20

(PRAKASH SHRIVASTAVA)
J u d g e

(VIVEK RUSIA)
J u d g e

HIGH COURT OF MADHYA PRADESH BENCH AT INDORE
(D.B.: HON. SHRI JUSTICE PRAKASH SHRIVASTAVA & HON.
SHRI JUSTICE VIVEK RUSIA)

WRIT APPEAL NO.727/2020

State of M.P & Ors. Vs. Ramesh Gir

WRIT APPEAL NO.729/2020

State of M.P & Ors. Vs. Satish Joshi

WRIT APPEAL NO.741/2020

State of M.P & Ors. Vs. Mahesh Joshi

Shri.Pushyamitra Bhargava, learned Addl. Advocate
General for the appellants.

Shri Manoj Manav, learned counsel for respondent in WA
No.741/2020.

None for respondent in other Writ Appeals.

Whether approved for reporting :

ORDER

(Passed on 21st September, 2020)

As per Prakash Shrivastava, J:-

This order will govern the disposal of WA No.727/2020, WA
No.729/2020 and WA No.741/2020 since it is jointly submitted by
learned counsel for parties that all these appeals involve common
questions in identical fact situation.

[2] These appeals have been filed by the State against the
order of the learned Single Judge dated 13/2/2020 passed in WP
No.18128/2019(s), WP No.15511/2019(s) and WP
No.27982/2019(s).

[3] For convenience, facts are taken from WA No.727/2020.

[4] Respondent had filed the WP No.18128/2019(s) with the plea that he was appointed as Panchayat Karmi in the year 2006 and was later notified as Panchayat Secretary of the gram panchayat in 2006 and was regularized in 2008. The Chief Executive Officer of Jilla Panchayat had passed the order dated 29/7/2019 suspending the respondent on the ground of committing serious financial irregularities and aggrieved with this order of suspension he had filed the writ petition raising the plea that the order of suspension was wrongly passed. The appellants had filed their reply and supported the order of suspension.

[5] Learned Single Judge after hearing both the parties, by the order under appeal has quashed the order of suspension on the ground that the order was without jurisdiction as no provision exists in the rules to suspend a Panchayat Secretary. Learned Single Judge has opined that M.P. Panchayat Service (Discipline and Appeal Rules) 1999 which contain the general power to suspend were made applicable by unamended Rule 7 of the M.P. Panchayat Service (Gram Panchayat Recruitment and Conditions of Service) Rules 2011, but subsequently Rule 7 has been amended on 9/8/2017 and under the amended rule no such power of suspension exists, therefore, a Gram Panchayat Secretary cannot be suspended.

[6] Learned counsel for appellants submits that the CEO of Jilla

Panchayat being the appointing authority is competent to suspend the Panchayat Secretary. He further submits that by the notification dated 23/1/2020 it has been clarified that the CEO of the Jilla Panchayat is competent to suspend a Panchayat Secretary. He has also submitted that since the clarificatory circular has been issued to fill up the gap in the rule, therefore, it will have the binding force.

[7] Learned counsel for respondent supporting the order of the learned Single Judge has submitted that though prior to the amendment in the Rules of 2011 there was a provision for suspending the Panchayat Secretary, but after the amendment of 2017 in Rule 7 no such provision for suspending a Panchayat Secretary exists, therefore, there is no power vested with the authorities to suspend a gram Panchayat Secretary. He has further submitted that the notification/circular dated 23/1/2020 has no binding effect and even otherwise no such circular was in existence when the impugned order of suspension was passed.

[8] We have heard the learned counsel for parties and perused the record.

[9] Undisputedly the services of the Gram Panchayat Secretary are governed by the M.P. Panchayat Service (Gram Panchayat Secretary Recruitment and Conditions of Service) Rules 2011 (for short "Rules of 2011"). Schedule I of the Rules of 2011 clearly

provides that the CEO of Jilla Panchayat is the appointing authority of Gram Panchayat Secretary. There is also no dispute that Rule 7 of Rules of 2011 prior to its amendment in 2017 contained the provision relating to the applicability of M.P. Panchayat Service (Discipline and Appeal Rules) 1999 (for short "Rules of 1999") and Rule 4 of Rules of 1999 contains the provision for suspension of a member of panchayat service. By the amendment dated 9/8/2017, Rule 7 of Rules of 2011 has been substituted and the newly incorporated Rule 7 is silent about suspension or applicability of Rules of 1999.

[10] In the aforesaid backdrop the issue arises for consideration before this court as to whether a Panchayat Secretary can be suspended by the appointing authority in the absence and any expressed power of suspension conferred under the Rules of 2011 ?.

[11] When the Rules are silent about power of suspension, then the general principle of suspension will apply. The general principle is that under the ordinary law of master and servant the authority which has power to appoint an employee has the implicit power to place him under interim suspension. Such interim suspension can be on account of contemplated or pending departmental enquiry or due to registration of the criminal case or for any other justifiable reason. Such suspended

employee is entitled for subsistence allowance as per rules during the suspension period and if there is no rule governing suspension allowance, then full remuneration is payable.

[12] The Constitution Bench of the Supreme Court in a case in the matter of **R.P. Kapur Vs. Union of India & another AIR 1964 SC 787** while considering somewhat similar issue relating to suspension has drawn the distinction between permanent suspension by way of punishment and interim suspension pending the enquiry or a criminal case. It has been held that interim suspension order can be passed even though there is no specific provision to that effect in the terms of appointment or in the Rules. While approving the above general principle, the Supreme Court has held that:-

“10- Before we investigate what rights a member of the former Secretary of State's Services had with respect to suspension, whether as a punishment or pending a departmental enquiry or pending criminal proceedings, we must consider what rights the Government has in the matter of suspension of one kind or the other. The general law on the subject of suspension has been laid down by this Court in two cases, namely, [Management of Hotel Imperial New Delhi v. Hotel Workers' Union](#)(1960) 1 SCR 476: (AIR 1959 SC 1342) and [T. Cajee v. U. Jormanik Siem](#), (1961) A SCR 750: (AIR 1961 SC 276) These two cases lay down that it is well settled that under the ordinary law of master and servant the power to suspend the servant without pay could not be implied as a term in an ordinary contract of service between the master and the servant but must arise either from an express term in the contract itself or a statutory provision governing such contract. It was further held that an

order of interim suspension could be passed against an employee while inquiry was pending into his conduct even though there was no specific provision to that effect in his terms of appointment or in the rules. But in such a case he would be entitled to his remuneration for the period of his interim suspension if there is no statute or rule existing under which it could be withheld.

“11- The general principle therefore is that an employer can suspend an employee pending an enquiry into his conduct and the only question that can arise on such suspension will relate to the payment during the period of such suspension. If there is no express term in the contract relating to suspension and payment during such suspension or if there is no statutory provision in any law or rule, the employee is entitled to his full remuneration for the period of his interim suspension; on the other hand if there is a term in this respect in the contract or there is a provision in the statute or the rules framed thereunder providing for the scale of payment during suspension, the payment would be in accordance therewith. These general principles in our opinion apply with equal force in a case where the government is the employer and a public servant is the employee with this modification that in view of the peculiar structural hierarchy of government, the employer in the case of government, must be held to be the authority which has the power to appoint a public servant. On general principles therefore the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him. This general principle is illustrated by the provision in [s. 16](#) of the General Clauses Act, No. X of 1897, which lays down that where any [Central Act](#) or Regulation gives power of appointment that includes the power to suspend or dismiss unless a different intention appears. Though this provision does not directly apply in the present case, it is in consonance with the general law of master and servant. But what amount should be paid to the public servant during such suspension will depend upon the provisions of the statute or rule in that connection. If there is such a provision the

payment during suspension will be in accordance therewith. But if there is no such provision, the public servant will be entitled to his full emoluments during the period of suspension. This suspension must be distinguished from suspension as a punishment which is a different matter altogether depending upon the rules in that behalf. On general principles therefore the government, like any other employer, would have a right to suspend a public servant in one of two ways. It may suspend any public servant pending departmental enquiry or pending criminal proceedings; this may be called interim suspension. Or the Government may proceed to hold a departmental enquiry and after his being found guilty order suspension as a punishment if the rules so permit. This will be suspension as a penalty. These general principles will apply to all public servants but they will naturally be subject to the provisions of [Art. 314](#) and this brings us to an investigation of what was the right of a member of the former Secretary of State's Services in the matter of suspension, whether as a penalty or otherwise.”

[13] The above general principle that the authority empowered to appoint an employee also has the power to suspend him has been recognized u/S.16 of the M.P. General Clauses Act which is para materia with Sec.16 of the Central General Clauses Act. Sec.16 of the M.P. General Clauses Act reads as under:-

“16-Power to appoint to include power to suspend or dismiss. - Where, by any enactment, a power to make any appointment is conferred, then unless a different intention appears, the authority for the time being having power to make the appointment shall also have power to suspend or dismiss any person appointed by it in exercise of that power.”

[14] Before the Constitution Bench of the Supreme Court in the matter of **Pradyat Kumar Bose Vs. The Hon'ble The Chief**

Justice of Calcutta High Court AIR 1956 SC 285 the issue was in respect of the power of Chief Justice of Calcutta High Court to dismiss the Registrar and Accountant General of the High Court in the absence of the expressed provision though the Chief Justice was the appointing authority. The Supreme Court considering Sec.16 of the General Clauses Act has held that the power of “appointment” includes the power “to suspend or dismiss”.

[15] The Federal Court in the matter of **Kutoor Vengayil Rayarappan Nayanar V. Kutoor Vengayil Valia Madhavi Amma** reported in **AIR 1950 FC 140** where the issue was in respect of power to remove a Receiver appointed u/O.40 Rule 1 of the CPC by considering Sec.16 of the General Clauses Act has held that:-

“The statute has codified the well understood rule of general law as stated by *Woodroffe on Receivers*, Fourth Edition, that the power to terminate flows naturally and as a necessary sequence from the power to create. In other words, it is a necessary adjunct of the power of appointment and is exercised as an incident to, or consequence of, that power; the authority to call such officer into being necessarily implies the authority to terminate his functions when their exercise is no longer necessary, or to remove the incumbent for an abuse of those functions or for other causes shown. It seems that it was because of this statutory rule based on the principles above mentioned that in O. XL, r. 1, of the Code of Civil Procedure no express mention was made of the power of the court in respect of the removal or suspension of a receiver. The General Clauses Act has been enacted so as to avoid super-

fluity of language in statutes wherever it is possible to do so. The legislature instead of saying in O. XL, r. 1, that the court will have power to appoint, suspend or remove a receiver, simply enacted that wherever convenient the court may appoint a receiver and it was implied within that language that it may also remove or suspend him. If O. XL, r. 1, of the Code of Civil Procedure is read along with the provisions above mentioned, then it follows by necessary implication that the order of removal falls within the ambit of that rule and once that decision is reached, it becomes expressly appealable under the provisions of O. XLIII, r. 1(s).”

[16] The similar issue had also earlier come up before the division bench of this court in the matter of **Umashankar Shukla, Principal, Arts and Commerce College, Harda Vs. B.R. Anand, Chairman, Governing Body, Arts and Commerce College, Harda & Ors 1968 MPLJ 604** in respect of suspension of Principal of a College in the absence of the provision to suspend in terms of service contract or statutory provision. Hon'ble Justice G.P.Singh taking note of the general law and also Sec.16 of the General Clauses Act has held that the authority entitled to appoint a servant is also competent to suspend and dismiss him. In this regard the division bench has held that:-

“3. The law regarding the right of the master to suspend his servant and to deprive him of his remuneration is well-settled. A master can refuse to take work from his servant and in that sense can suspend him during the pendency of an enquiry against him even though there is no specific provision in the contract of service. But the servant remains entitled to his full remuneration in spite of suspension unless there is some contractual term or statutory provision which enables the master to suspend the servant without payment of salary. Management of [Hotel Imperial, New Delhi v. Hotel](#)

[Workers' Union; T Cajee v. Jormanik Siem and R.P.Kapur v. Union of India.](#)

4. We now turn to the argument that the college code read along with Section 16 of the Madhya Pradesh General Clauses Act, 1957, confers power of suspension along with power to withhold pay in whole or in part during the period of suspension. The college, with which we are concerned, is affiliated to the Saugar University and is governed by the college code which is an Ordinance made by the Saugar University under the University of Saugar Act, 1946. The code having-been made under statutory powers has the force of law [P.R.Godh v. A.L. Pandey] 1965 J.L.J. 513 (S.C.). The only provision in the code to which our attention is drawn is Clause 9 (iv) which reads as follows ;

“No disciplinary action of any kind shall be taken against the principal of a college by its governing body without previous approval of the Vice-Chancellor.”

The aforesaid provision neither expressly nor impliedly provides for suspension without; pay. The effect of the provision is that the governing body of a college can with previous approval of the Vice-Chancellor take disciplinary action against a principal. It is also implicit on general principles that the governing body will have power to suspend the principal during an enquiry against him. But there is nothing in the language of the clause from which a power to withhold pay either wholly or partly during the period of suspension may be spelt out. Section 1.1 of the Madhya Pradesh General Clauses Act, 1957, to which reference is made, is also of no assistance and is altogether inapplicable. The Madhya Pradesh General Clauses Act, 1058, applies for construing [Madhya Pradesh Acts](#), Ordinances and Regulations made under the Constitution after the appointed day, i.e., after 1 November 1955, The definitions of the expressions" [Madhya Pradesh Act](#)," " Ordinance," " Regulation," " enactment" and " appointed day"- as contained in [Section 2](#) read along with [Section 31](#) make that position clear. By force of [Section 31\(6\)](#) the Act also applies for construction of rules, regulations, bylaws, orders, notifications, schemes or forms made or issued under a [Madhya Pradesh Act](#). But a [Madhya Pradesh Act](#) here referred to is again an Act which, according to the definition contained in [Section 2\(21\)](#), is made after 1 November 1956. In our opinion, the

Madhya Pradesh. [General Clauses Act](#), 1957, in general or [Section 16](#) thereof in particular, cannot be resorted to for construing the University of Saugar Act, 1946, or an Ordinance made by the university under that Act. For construction of the University of Saugar Act, 1946, one has to take the assistance of the Central Provinces and [Berar General Clauses Act](#), 1914. [Section 15](#) thereof, which corresponds to [Section 16](#) of the General Clauses Act, 1958, when read along with the definition contained in [Section 2\(30\)](#) applies to construction of a Madhya Pradesh Act enacted before 1 November 1956 ; but there is nothing in the Act to make [Section 15](#) applicable for construing an Ordinance made by the university under the University of Saugar Act, 1946. Further neither [Section 15](#) of the Central Provinces and [Berar General Clauses Act](#), 1914, nor 8. 16 of the Madhya Pradesh General Clauses Act, 1957, confer any power to suspend without pay. The language used in them corresponds to [Section 16](#) of the Central Act (The [General Clauses Act](#), 1897) which was considered by their Lordships in R.P. Kapur's case. It was there observed:

“On general principles, therefore, the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him. This general principle is illustrated by the provision in [Section 16](#) of the General Clauses Act, 10 of 1897 which lays down that where any [Central Act](#) or Regulation gives power of appointment, that includes the power to suspend or dismiss unless a different intention appears, Though this provision does not directly apply in the present case, it is in consonance with the general law of master and servant. But what amount should be paid to the public servant during such suspension will depend upon the provisions of the statute or rule in that connection. If there is such a provision, the payment during suspension will be in accordance therewith. But if there is no such provision, the public servant will be entitled to his full emoluments during the period of suspension.”

The aforesaid observations go to show that [Section 16](#) of the General Clauses Act statutorily enacts the rule of general law that the authority entitled to appoint a servant is also competent to suspend and dismiss him but the section has not the effect of providing that the servant who has been suspended will not be entitled to his pay. In the absence of any other provision depriving the servant of his pay, he will be entitled to his full emoluments during the period of suspension.”

[17] Having regard to the aforesaid, we are of the opinion that applying the general principle of master servant relationship, the authority who has the power to appoint an employee has the implicit power to place the employee under interim suspension or to dismiss him. In this view of the matter even if there is no expressed provision in the Rules of 2011 or even if these Rules are silent about power of the appointing authority to suspend the CEO, then also attracting the general principle, the appointing authority has the power to place a Panchayat Secretary under interim suspension.

[18] In the present case, as already mentioned above the appointing authority of Gram Panchayat Secretary under Rules of 2011 is the CEO of Jilla Panchayat, therefore, the said appointing authority also has the power to suspend or dismiss the Gram Panchayat Secretary. In the present case, the impugned order of interim suspension has been passed by the appointing authority which also provides for payment of suspension allowance during the suspension period, therefore, it does not suffer from the vice

of lack of jurisdiction.

[19] It is also worth noting that the State Government has published the notification dated 20/1/2020 in the M.P. Gazettee to the following effect:-

“No.F.10-1-2020-XXII-P.1—The State Government hereby makes the clarification that if it is necessary for maintaining discipline and control under rule 7 of the Madhya Pradesh Panchayat Service (Gram Panchayat Secretary Recruitment and Conditions of Service) Rules, 2011. The Action of suspension under the Madhya Pradesh Panchayat Service (Discipline and Appeal) Rules 1999 may be taken and Chief Executive Officer of Zilla Panchayat is competent to suspend the Secretary of the Gram Panchayat.

This explanation shall be applicable from the date of enforcement of the Madhya Pradesh Panchayat Service (Gram Panchayat Secretary Recruitment and Conditions of Service) Rules, 2011.”

[20] The aforesaid clarificatory notification issued by the State government is in consonance with the general principle of implicit power to suspend, which the appointing authority is conferred with in the master servant relationship.

[21] Having regard to the aforesaid, we are of the opinion that CEO, Jilla Panchayat, Ujjain was competent to suspend the appellant and the order of suspension dated 29/7/2019 does not suffer from the vice of lack of jurisdiction.

[22] In view of the above analysis, we set aside the order of the learned Single Judge and dismiss the writ petitions. The Writ Appeals are accordingly **allowed**.

[23] The signed order be placed in the record WA No.727/2020 & a copy whereof be placed in the record of connected WA No.729/2020 & WA No.741/2020.

(Prakash Shrivastava)
Judge

(Vivek Rusia)
Judge

vm