

**HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT
JABALPUR**

*(Full Bench: Hon'ble the Chief Justice Shri A.M. Khanwilkar,
Hon'ble Shri Justice S.K.Gangele &
Hon'ble Shri Justice Alok Aradhe)*

Writ Appeal No.651 of 2013

Chandrapal Yadav

Versus

State of Madhya Pradesh and others

For appellant : Shri Vivek Ranjan Pandey, Advocate
and Shri Alok Kumar, Advocate.

For respondents/State : Shri Samdarshi Tiwari, Dy. Advocate General.

Whether approved for reporting : **Yes.**

ORDER

(Reserved on : 05/10/2015)

(Pronounced on : 06/01/2016)

Per S. K. Gangele J.

A Division Bench of this Court vide order dated 05.08.2013 doubted the correctness of the ratio laid down by another Division Bench in the case of **Lalla Prasad Burman vs. State of M.P. and others, 2008 (3) MPLJ 394** and has referred the following question for consideration of the Full Bench:-

“In aforesaid circumstances, disagreeing to the judgment of Lalla Prasad Burman (supra), we refer it to the Larger Bench to examine the correctness of the aforesaid judgment in the light of circumstances that if a criminal case is registered against a Panchayat Karmi and he has been arrested in the said offence, whether he is still required to be served a show cause notice or an opportunity of hearing before withdrawing the powers of Secretary and whether Hariom still holds the field.”

2. Facts leading to passing an order of reference, briefly stated, are that the appellant was appointed as the 'Panchayat Karmi' by Gram Panchayat, Badaua, District Rewa. Thereafter, he was notified as Secretary of the Gram Panchayat. After notification of the appellant as Secretary of the Gram Panchayat, on 14.09.2012 a criminal case for offences under sections 409, 420, 467, 468, 471, 477, 477-A and 120-B of the Indian Penal Code was registered against him. The appellant was taken into custody and thereafter was sent to judicial custody for a period from 14.09.2012 to 02.12.2012. On account of registration of criminal case against the appellant as well as his detention, by order dated 06.10.2012 he was de-notified from the post of Secretary by the Chief Executive Officer, District Panchayat, Rewa. One Chindalal Saket was given the additional charge of Panchayat Secretary by way of an ad hoc arrangement. The aforesaid order was challenged by the appellant before the Collector in revision which was dismissed vide order dated 11.03.2013. The order passed by the Collector was the subject matter of challenge before the Additional Commissioner, who also affirmed the same. The appellant approached this Court by filing the writ petition, inter alia, on the ground that the order of de-notification of the appellant from the post of Panchayat Secretary was punitive in nature and it suffered from the procedural irregularity inasmuch as the same was passed de hors the procedure prescribed under the provisions of Madhya Pradesh Panchayat Service (Gram Panchayat Service Discipline & Appeal) Rules, 1999 [hereinafter after referred to as the "Rules of 1999"]. The learned Single Judge dismissed the writ petition and upheld the order of de-notification on the ground that the same was rightly passed on account of registration of the

criminal case as well as detention of the appellant in jail. Being aggrieved, the appellant filed the instant appeal.

3. As stated above, the Division Bench vide order dated 05.8.2013, took note of the decision of the learned Single Judge in the case of **Hariom Singh Rajput vs. State of Madhya Pradesh and others, 2002 (3) MPLJ 204** and decision rendered by the Division Bench in the case of **Lalla Prasad Burman** (supra), and doubted the correctness of the law laid down by Division Bench in the case of **Lalla Prasad Burman** (supra) and, *inter alia*, observed that when a criminal case is registered against the Panchayat Secretary and allegations of embezzlement of funds are made against him, de-notification of such a 'Panchayat Secretary' is in larger interest of Gram Panchayat and it would be inappropriate to continue such an employee as Panchayat Secretary. However, he may be permitted to continue as Panchayat Karmi and before passing an order of de-notification no opportunity of hearing is required to be given to such an employee. In the aforesaid factual background the order of reference was passed.

4. Learned counsel for the appellant submitted that Rules of 1999 are applicable to Panchayat Secretary and he could neither be de-notified nor be suspended from the post of Panchayat Secretary without following the procedure laid down in the Rules and without compliance of principles of natural justice, even if a criminal case is registered against him. It was further submitted that withdrawal of power of Panchayat Secretary amounts to reduction in rank from the post of Panchayat Secretary to Panchayat Karmi and, therefore, the same being punitive in nature, the procedure prescribed under Rule 7 of 1999 is required to be followed. In support of aforesaid submissions, learned counsel has placed reliance on the decisions in the cases of **Lalla Prasad Burman** (supra), **Kunjan Singh vs. State of**

M.P. and others, 2003 (3) MPHT 370, Rooplal Nayak vs. State of Chhattisgarh, 2006 (4) MPHT 99 (CG) and Mool Chand Soni vs. State of M.P. and others, 2007 (1) MPLJ 343.

5. On the other hand, learned Deputy Advocate General has contended that appointment of Panchayat Secretary is governed by Section 69 of Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as the “Act of 1993”). It was further submitted that under the aforesaid provision the State Government or the Prescribed Authority has the powers to appoint the Panchayat Secretary for a Gram Panchayat and Rules of 1999 are not applicable to the case of Panchayat Secretary. It was also pointed out that under Rule 6 of 1999 Rules the Disciplinary Authority or any Authority to whom such authority is subordinate can impose penalty specified in Rule 5 to the extent mentioned in the Appendix to the Rules. The Prescribed Authority mentioned in Section 69 of 1993 Act is different than the Disciplinary Authority mentioned in Schedule of the Rules of 1999. However, aforesaid aspect of the matter has not been considered by the Division Bench while deciding the case of **Lalla Prasad Burman** (supra). It was also urged that notification of Panchayat Karmi as Panchayat Secretary is neither promotion nor an upgradation of the post and if the Panchayat Secretary is de-notified as Panchayat Karmi or is restrained to work as such, the same does not amount to reduction in rank. Lastly, it was pointed out that the State Government has framed Madhya Pradesh Panchayat Service (Gram Panchayat Secretary Recruitment and Conditions of Service Rules), 2011 [hereinafter referred to as the “Rules of 2011”] which have come into force and the service conditions of the Secretary of Gram Panchayat are now governed in accordance with the Rules of 2011. In support of aforesaid submissions,

reliance has been placed on the decisions in the cases of **Gram Panchayat Bamrol vs. Jagdish Singh Rawat and others, 2008 (4) MPHT 132 (DB)**, **Neelesh Dubey vs. State of M.P. and others, 2007 (4) MPHT 431**, **Kamlesh Dubey vs. State of M.P. and others, 2009 (2) MPHT 372 (DB)**, **Debesh Chandra Das vs. Union of India and others, AIR 1970 SC and State of Uttar Pradesh and others vs. Sughar Singh, AIR 1974 SC 423**.

6. The principal question posed in the reference order is about the correctness of the view taken by the Division Bench in **Lalla Prasad Burman's** case (supra). In that case, the appellant was appointed as Panchayat Karmi on 13.11.1995 under the scheme – Panchayat Karmi Yojna, 1995. He was notified as Secretary of the Gram Panchayat by the Collector on 12.10.1999. That case dealt with the situation 'pre Rules of 2011'. Strictly speaking the principle expounded in the said decision may apply only to cases in which an incumbent is notified as Secretary 'pre Rules of 2011'. After the advent of Rules of 2011, the appointment and service conditions of the Secretary of the Gram Panchayat is governed by the Rules of 2011 read with Madhya Pradesh Panchayat Services (Conduct) Rules, 1998 and Madhya Pradesh Panchayat Service (Discipline and Appeal) Rules of 1999. It is possible to suggest that the observations made by the Division Bench in **Lalla Prasad's** case (supra) may have some relevance for dealing with cases 'post Rules of 2011'. For which, we may have to consider the correctness of those observations.

7. We propose to examine the question posed in the reference order broadly in two parts. Firstly, the dispensation that must be followed by the Authorities before de-notification of the incumbent from the post of Secretary of the Gram Panchayat, post-Rules of 2011. This issue will have to be answered in further two parts – namely, the dispensation to be followed

in respect of incumbent originally appointed as “Panchayat Karmi” and entrusted with the charge of Secretary of Gram Panchayat post-Rules of 2011. The second is about the incumbent having been appointed directly on the post of Secretary of Gram Panchayat post-Rules of 2011. The second broad category will be of cases where the appointment is made on the post of Panchayat Karmi pre-Rules of 2011 under the Panchayat Karmi Yojna, 1995 and that incumbent was notified as Secretary of Gram Panchayat and bestowed with the responsibilities of that office pre-Rules of 2011.

8. Reverting to the second broad category of appointments made on the post of Panchayat Karmi in terms of Panchayat Karmi Yojna, 1995; and thereafter invested with the additional charge of Secretary of Gram Panchayat by issuance of notification in that behalf pre Rules of 2011. The Panchayat and Rural Development Department by notification dated 12th September, 1995 in exercise of powers under Section 71 read with Section 69(1) of Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 formulated Panchayat Karmi Scheme named as Panchayat Karmi Yojna. In accordance with the aforesaid Scheme, the Gram Panchayat was competent to appoint a Panchayat Karmi either on contract basis or temporarily or permanently. The Panchayat Karmi would be eligible to receive honorarium, which was fixed by the Panchayat. In accordance with Clause 7 of the Scheme the Gram Panchayat is the disciplinary authority of the Panchayat Karmi, it is authorized to take disciplinary action against the Panchayat Karmi. The Panchayat Karmi could be removed from his post after issuance of show cause notice by the general body of the Gram Panchayat.

9. Chapter VIII of the Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 prescribes establishment, budget and accounts of Panchayats. Section

69 under that Chapter of the Act of 1993 prescribes appointment of Secretary of Gram Panchayat. Section 69 as applicable until 23.5.2012 reads thus :-

“69. Appointment of Secretary and Chief Executive Officer.- (1) *[The State Government or the prescribed authority may appoint a Secretary for a Gram Panchayat or group of two or more Gram Panchayats, who shall discharge such functions and perform such duties as may Secretary for a Gram Panchayat or group of two or more Gram Panchayats, who shall discharge such functions and perform such duties as may be assigned to them by the State Government or prescribed authority:]*

[Provided that the person holding the charge of a Secretary of Gram Panchayat immediately before the commencement of this Act shall continue to function as such till a Secretary is appointed in accordance with this section.]

Provided further that a person shall not hold charge of a [Secretary] of Gram Panchayat, if such a person happens to be relative of any office bearer of the concerned Gram Panchayat.

Explanation. – *for the purpose of this sub-section the expression “relative” shall mean father, mother, brother, sister, husband, wife, son, daughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law.]*

[(2) The State Government shall appoint for every Janpad Panchayat a Chief Executive Officer and may be also appoint one or more Additional Chief Executive Officer, who shall discharge such functions and perform such duties as may be assigned to them by the Chief Executive Officer].

[(3) The State Government shall appoint for every Zila Panchayat a Chief Executive Officer and may also appoint one or more Additional Chief Executive Officers, Deputy Chief Executive Officers and Executive Officers who shall discharge such functions and perform such duties as may be assigned to them by the Chief Executive Officer].

(4) During the absence of a Secretary of Gram Panchayat or [Chief Executive Officer of Janpad Panchayat or Zila Panchayat] due to leave, retirement, death, resignation or otherwise the prescribed authority shall, as soon as possible, make such arrangements as he deems fit, for carrying on the office of Secretary of Gram Panchayat or [Chief Executive Officer of Janpad Panchayat or Zila Panchayat] as the case may be. A person while carrying on such office shall exercise all powers conferred by this Act or rules made thereunder on the Secretary of Gram Panchayat or [Chief Executive Officer of Janpad Panchayat or Zila Panchayats] as the case may be.

(5) The Secretary of the Gram Panchayat, the [Chief Executive Officer of the Janpad Panchayat and Zila Panchayat] shall be responsible for keeping and maintaining the records of the Gram Panchayat, Janapad Panchayat or Zila Panchayat as the case may be.”

After amendment vide M.P. Act No.26 of 2012 [23-5-2012], the opening para of sub-Section (1) of Section 69 was substituted and in the second proviso thereunder, the word “Secretary” was substituted. The opening part of sub-Section (1) of Section 69 as applicable to the present case, now reads thus :-

“69. Appointment of Secretary and Chief Executive Officer.- (1) [The State Government or the prescribed authority may appoint a Secretary and one or more Assistant Secretaries for a Gram Panchayat, who shall discharge such functions and perform such duties as may Secretary and one or more Assistant Secretaries for a Gram Panchayat, who shall discharge such functions and perform such duties as may be assigned to them by the State Government or prescribed authority:]”

Rest of the Section has been retained as it is, except the substitution of word “Secretary” in the second proviso below sub-Section (1) of Section 69, which now reads as “Secretary or Assistant Secretary”.

10. Be that as it may, from the aforesaid provision it is clear that Section 69 of the Act of 1993 gives an independent power to the State Government or the prescribed Authority to appoint Secretary and one or more Assistant Secretaries for a Gram Panchayat. This power is an independent power given to the State Government or the prescribed Authority in addition to the power vested in it under the Panchayat Karmi Yojna, which was introduced by the Government on 12th September, 1995.

11. The State Government has made Rules named as Madhya Pradesh Panchayat Service (Discipline and Appeal) Rules, 1999 in exercise of powers conferred by sub-section (1) of Section 95 read with sub-section (2) of Section 70 of the Act of 1993. Rule 1 (3) of the aforesaid Rules prescribes that the Rules shall apply to all persons employed in connection with the affairs of Gram Panchayat. The Rule 1 (3) reads as under :

“(3) Except as otherwise provided by or under these rules, they apply to all persons employed in connection with the affairs of Zila Panchayats, Janpad Panchayats and the Gram Panchayats, and discharging the functions of Zila Panchayat, Janpad Panchayat and Gram Panchayat.

Provided that nothing in these rules shall apply to officers and servants of the state service who are posted under the Panchayats under Section 69 or are on lone service to the panchayats under section 71 of the Act.”

Rule 2 provides for definition *inter-alia* of ‘Appointing Authority’, ‘Disciplinary Authority’, ‘Member of Panchayat Service or a Panchayat Servant’ and ‘Panchayat Service’ which read thus :-

“2. Definitions.- In these rules, unless the context otherwise requires :-

(a)

(b) “Appointing authority” in relation to a person appointed in the Panchayat service means :-

(1) Such officer, who in that service in which he hold the post at that time, empowered to make appointments or such officer to whom the powers of appointment is delegated to the service of that class or grade to which he is a member at that time.

(2) Such officer, who at that time, hold the post in substantive or temporary capacity in that service in which he is appointed.

(c) “Disciplinary Authority” in relation to the imposition of penalty on a member of the Panchayat service means the authority declared to be the disciplinary authority under the Appendix appended to these Rules;

(d)

(e)

(f) “Member of Panchayat Service or a Panchayat Servant” means any person appointed to the Panchayat Service and includes an officer or servant allocated to the panchayat service;

(g)

(h)

(i)

(j) “Panchayat Service” means any Panchayat Service.”

Part II of the Rules of 1999 makes provision for suspension.

Rule 4 reads thus :-

“4. Suspension. – (1) The appointing authority or any authority to which it is subordinate, or disciplinary authority in

that behalf, may place a member of Panchayat Service under suspension :-

(a) Where a disciplinary proceeding against him is contemplated, or is pending or

(b) Where a case against him in respect of any criminal offence involving moral turpitude is under investigation inquiry or trial:

Provided that where the order of suspension is made by an authority subordinate to or lower in rank than the appointing authority, such authority shall forth with report to the appointing authority the circumstances in which the order was made.

(2) A member of Panchayat Service shall be deemed to have been placed under suspension by an order of appointing authority :-

(a) With effect from the date of his detention, on a criminal charge or otherwise, for a period exceeding forty eight hours,

(b) With effect from the date of his conviction, if the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty eight hours and is not forthwith dismissed or removed or compulsorily retired consequent upon such conviction.

Explanation. – The period of forty eight hours referred to in clause (b) of this sub-rule shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment if any, shall be taken into account.

(3) When a penalty of dismissal, removal or compulsory retirement from service imposed upon a member of panchayat service under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry of or action or with any other directions, the order of his suspension shall be deemed to have continued in force with effect on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(4) Whether a penalty of dismissal, removal or compulsory retirement from service imposed upon a member of panchayat service is set aside or declared or rendered void in consequence of or, by a decision of a court of law, and the Disciplinary Authority on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the member of panchayat service shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal, compulsory retirement and shall continue to remain under suspension until further orders.

(5) (a) An order suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.

(b) Where a member of Panchayat Service is suspended or is deemed to have been suspended in connection with any disciplinary proceeding or otherwise and any other disciplinary proceeding is commenced against him during the continuance of such suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the member of Panchayat Service shall continue to be under suspension until the termination of all or any of such proceedings.

(c) An order of suspension made or deemed to have been made under this rule, may at any time be modified or revoked by the authority which made or is deemed to have made it or by any authority to which, that authority is subordinate.”

Part III of the Rules of 1999 prescribes discipline and Rule 5 prescribes penalties, minor penalties and major penalties. One major penalty in accordance with the Rule 5-(b) (iv) is reduction in rank. The Rule reads as under :

“(b) Major penalties –

(iv) Reduction in rank including reduction to a lower post or time-scale or to a lower stage in a time-scale.”

12. Rule 7 prescribes procedure imposing major penalties. Rule 6 prescribes authority to impose penalties. It reads as under :

“6. Authority to impose penalties.- Subject to the provisions of these rules, the disciplinary authority or any authority to whom such authority is subordinate, may impose any of the penalties specified in rule 5 on any servant of the panchayat service to the extent shown against in the Appendix appended to these rules.”

13. In accordance with the aforesaid Rules, Disciplinary Authority or any prescribed Authority is empowered to impose the penalty to the extent shown against the Appendix to the Rules. In accordance with the

Appendix appended to the Rules in relation to Gram Panchayat Secretary the General Administration Committee is empowered to impose minor and major penalty. The relevant provision reads as under :

S. No.	Class of Panchayats	Class of Service	Disciplinary Authority	Kind of penalty referred to in rule 5 which may be imposed	Appellate Authority
(1)	(2)	(3)	(4)	(5)	(6)
5.	Gram Panchayat	Class IV	Secretary	Minor Penalty	Gram Panchayat
			General Administration Committee	Major Penalty	General Body
		Class III	General Administration Committee	Minor Penalty	General Body
			General Body	Major Penalty	Sub Divisional Officer (Revenue)

14. On a bare reading of the first proviso below sub-Section (1) of Section 69, it is clear that a person holding the charge of Secretary of Gram Panchayat immediately before the commencement of the Act of 1993 was allowed to be continued to function as such till the Secretary was appointed in accordance with this section. This proviso clearly points out that the appointment of a person must be on the post of Secretary. Whereas, person appointed as Panchayat Karmi and called upon to discharge the duties of the Secretary by issuance of notification in that behalf by itself, does not result in making substantive appointment of such person on the post of Secretary of Gram Panchayat as such. Only that person who was directly appointed as Secretary of Gram Panchayat and by denotifying him later on is appointed or

posted as Panchayat Karmi, could at best make a grievance of being reduced in rank. But, on the other hand, if the person is initially appointed as Panchayat Karmi which is his substantive appointment against that substantive post, is asked to discharge the duties of Secretary, by virtue of de-notification would not result in reduction of his rank or demotion; but would result only in withdrawal of his powers of Secretary which he was asked to discharge as per the notification issued for that purpose. For doing so, there would be no need to give opportunity of being heard to such person as he could not have claimed any vested right in the post of Secretary of Gram panchayat, being appointed against the substantive post of Panchayat Karmi only.

15. The fact that it is open for the Appropriate Authority to give charge of the Secretary to any employee of the Gram Panchayat is reinforced from sub-Section (4) of Section 69. It postulates that during the absence of Secretary of Gram Panchayat (means directly appointed on the post of Secretary), it is open to the prescribed Authority to make such arrangements as he deems fit for carrying on the office of Secretary of Gram Panchayat; and the person so nominated would be competent to exercise all powers conferred by the Act of 1993 and Rules made thereunder as the Secretary of Gram Panchayat. This power to nominate any employee of the Gram Panchayat to discharge the duties and functions of the Secretary of Gram Panchayat during the absence of directly appointed Secretary, would include power to withdraw that arrangement, if the situation so warrants. For withdrawing that arrangement, the Authority is not required to give prior opportunity to the person to whom such charge of Secretary has been invested as a temporary measure. For, the person discharging the additional duties cannot claim right to continue in the said post unless the reason for

withdrawal visits him with civil consequences. Withdrawal of nomination of additional charge of Secretary, cannot be equated with suspension from the post as such. There is marked difference between withdrawing the additional charge given to an officer and of suspending him from the office held by him as a substantive post. As regards suspension, the Discipline and Appeal Rules of 1999 postulates two situations - when the member of Panchayat service can be placed under suspension. None of the two situations referred to in Rule 4 of the Rules of 1999 are relevant, when it is a case of withdrawal of additional power of Secretary invested in the person appointed as Panchayat Karmi of the Gram Panchayat. The suspension necessarily means, suspension from the substantive post held by that person. In case of withdrawal of additional power of Secretary, the person would continue to occupy the post of Panchayat Karmi substantively held by him and can avail all the benefits thereunder until placed under suspension *qua* that post, in terms of Rule 4 of the Rules of 1999. Further, as there is no provision in the schedule appended to the Rules of 1999 in regard to imposition of penalty on a Panchayat Secretary, if a Panchayat Karmi is de-notified or prohibited to work as Panchayat Secretary for a particular period, it would not amount to reduction in rank or removal from service because he would still continue to work as Panchayat Karmi and he would be able to get the honorarium fixed by the Panchayat. No additional benefit of pay has been prescribed to a Panchayat Karmi after his notification as Panchayat Secretary. He is assigned certain duties to be performed by Panchayat Secretary after his notification in accordance with the provisions of Section 69 of the Act of 1993.

16. The Division Bench of this Court in the matter of *Lalla Prasad Burman* (supra) has observed as under in regard to withdrawal of charge of

Secretary of Gram Panchayat by way of making a de-notification under Section 69 (1) of the Act of 1993. The Division Bench held as under :

5. *After hearing learned counsel for the parties, we find that the Collector, Shahdol has lost sight of the Madhya Pradesh Panchayat Service (Discipline and Appeal) Rules, 1999 (for short 'the Rules, 1999) while passing the order dated 29.06.2007 denotifying the appellant as Panchayat Secretary under Section 69 (1) of the Act. Sub-rule (3) of Rule 1 of the Rules, 1999 states that except otherwise provided by or under these rules, they apply to all persons employed in connection with the affairs of inter alia the Gram Panchayat and discharging the functions of Gram Panchayat. Secretary of Gram Panchayat is employed in connection with the affairs of Gram Panchayat and discharging the functions of Gram Panchayat. Hence, the Rules, 1999 are applicable to him. It is not disputed that the appellant was notified as Panchayat Secretary as far back as on 12.10.1999 and is working as such Panchayat Secretary for about eight years. Hence, any action against the appellant for misconduct could only be taken in accordance with the Rules, 1999 and not otherwise.*

6. *Part III of the Rules, 1999 provides for penalties. Rule 5 categorized the minor penalties and the major penalties which can be imposed on a member of the Panchayat Service. Under clause (b) major penalties which can be imposed on a member of a Panchayat Service have been enumerated and reduction in rank and removal from service have been categorized as major penalties. When a Secretary of a Gram Panchayat is either reverted to the rank of Panchayat Karmi or removed from the post of Secretary, he suffers a major penalty mentioned under clause (b) of Rule 5 of the Rules, 1999.*

7. *Rule 7 of the Rules, 1999 provides that no order imposing on a member of the Panchayat Service; any of the major penalties shall be passed except after a formal inquiry is held as far as may be in the manner provided therein. Hence,*

unless the procedure laid down in the Rule 7 of the Rules, 1999 is followed, the Secretary of the Gram Panchayat cannot be removed or reverted from the post of Secretary, Gram Panchayat. Therefore, the stand taken by the appellant that he could not have been removed from the post of Secretary, Gram Panchayat or could not have been reverted to a lower post of Panchayat Karmi without any inquiry appears to be correct.

17. The Division Bench has placed reliance on Sub-rule (3) of Rule 1 and held that the provisions of Rule of 1999 are applicable to Panchayat Secretary. The Division Bench further held that the Secretary of Gram Panchayat could not have been reverted to a lower post of Panchayat Karmi without an inquiry. The Division Bench has not considered the aspect that whether the nomination as Panchayat Secretary amounts to promotion from the post of Panchayat Karmi or the post of Panchayat Karmi is lower to the post of Panchayat Secretary, as the case may be. As stated earlier, there was no difference between the salary of Panchayat Secretary and Panchayat Karmi because no additional allowance was paid to the Panchayat Karmi after his notification as Panchayat Secretary before coming into force the Rules of 2011.

18. The Supreme Court in the matter of *The High Court, Calcutta and another vs Amal Kumar Roy and others* reported AIR 1962 Supreme Court 1704 has held as under in regard to reduction in rank.

“The plaintiff sought to argue that “rank”, in accordance with dictionary meaning, signifies “relative position or status or place”, according to Oxford English Dictionary. The word “rank” can be and has been used in different senses in different contexts. The expression “rank” in Art. 311(2) has reference to a persons’s classification and not his particular place in the same cadre in the hierarchy of the

service to which he belongs. Hence, in the context of the Judicial Service of West Bengal, “reduction in rank” would imply that a person who is already holding the post of a Subordinate Judge has been reduced to the position of a Munsif, the rank of a Subordinate Judge being higher than that of a Munsif. But Subordinate Judges in the same cadre hold the same rank, though they have to be listed in order of seniority in the Civil List. Therefore, losing some places in the seniority list is not tantamount to reduction in rank. Hence, it must be held that the provisions of Article 311(2) of the Constitution are not attracted to this case.”

19. A Constitution Bench of the Supreme Court in a celebrated case ***Parshotam Lal Dhingra vs. Union of India*** reported in ***AIR 1958 SC 36*** has held as under in regard to reduction in rank :

“Applying the principles discussed above it is quite clear that the petitioner before us was appointed to the higher post on an officiating basis, that is to say, he was appointed to officiate in that post which, according to Indian Railway Code, R. 2003 (19) corresponding to F. R. 9 (19) means, that he was appointed only to perform the duties of that post. He had no right to continue in that post and under the general law the implied term of such appointment was that it was terminable at any time on reasonable notice by the Government and, therefore, his reduction did not operate as a forfeiture of any right and could not be described as reduction in rank by way of punishment.”

20. When a Panchayat Karmi is notified to work as Panchayat Secretary in accordance with the provisions of Section 69 of the Act of 1993, he has to perform certain duties in accordance with the provisions of the Act of 1993 and Rules made thereunder and further he enjoys a position in accordance with the provisions of the Act of 1993. Under Section 69 of the Act of 1993 no pay scale or pay of Panchayat Secretary is fixed neither his service

conditions are prescribed nor there is a provision of disciplinary control. Hence, it cannot be said that the Panchayat Secretary was considered independent post or a promotional post from the post of Panchayat Karmi. Even under the Scheme of 1995 named as Panchayat Karmi Yojna a Panchayat Karmi is eligible to get an honorarium.

21. The Division Bench in *Lalla Prasad Burman* (supra) has not considered these aspects while holding that the Rules of 1999 are applicable to the Panchayat Secretary that as per the schedule appended with the Rules of 1999 for Gram Panchayat Class IV and Class III services, the Panchayat Secretary and the General Body of the Gram Panchayat is authorized to impose minor and major penalty. However, as per Section 69 of the Act of 1993 the State Government or the prescribed Authority has been empowered to nominate or designate the incumbent as a Panchayat Secretary. It means that the State Government or the prescribed Authority is the Disciplinary Authority of Panchayat Secretary. The Rules of 1999 cannot override this statutory provision of the Act of 1993. In holding that the Panchayat Secretary is governed by the Rules of 1999, there would be anomaly and absurdity because the Disciplinary Authority in regard to Panchayat Secretary as per Section 69 of the Act of 1993 is quite different than the disciplinary authority of Panchayat employee mentioned in the Appendix of the Rules of 1999.

22. It is well settled principle of Rule of interpretation that interpretation which would lead to absurdity and inconsistency must be avoided, as held by the Constitution Bench judgment of the Supreme Court in the matter of *The Central India Spinning and Weaving and Manufacturing Co., Ltd., The*

Empress Mill, Nagpur vs. The Municipal Committee, Wardha, AIR 1958 Supreme Court 341.

23. In *Kunjan Singh vs. State of M.P. and others, 2003 (3) M.P.H.T. 370*, the learned Judge did not consider the fact that Disciplinary Authority in the Rules of 1999 is different in regard to Disciplinary Authority mentioned in Section 69 of the Act of 1993. That has also not been considered by the Division Bench of Chhattisgarh High Court in *Rooplal Nayak vs State of Chattisgarh and others*, reported in *(2006) 4 M.P.H.T. 99*. Hence, these cases are distinguishable. In the case of *Mool Chand Soni vs. State of M.P.* reported in *(2007) 1 M.P.L.J. 343*, the petition was disposed off with the observation that the petitioner can avail alternate remedy of appeal. None of the cases cited by the learned counsel for the appellant has noticed the legal position as discussed hitherto, hence, the cases are distinguishable.

24. On the basis of above discussion, in our opinion, the nomination of Panchayat Karmi of the Gram Panchayat as Panchayat Secretary, prior to coming into force of the statutory Rules named as Madhya Pradesh Panchayat Service (Gram Panchayat Secretary Recruitment and Conditions of Service) Rules, 2011, was a pleasure appointment. For that reason, the Panchayat Secretary could be de-notified by the State Government or the prescribed Authority in accordance with the procedure prescribed by the Government in this regard.

25. The learned Deputy Advocate General placed circular issued by the Panchayat and Rural Development Department dated 02.11.2006. It is mentioned in the circular that the State had taken a decision that before removal of Panchayat Secretary the Sub-Divisional Officer shall conduct an

inquiry and adopt *quasi judicial* procedure and he shall afford opportunity of hearing to the concerned persons and thereafter, he shall take appropriate decision and the action be taken against the Panchayat Secretary in accordance with the decision taken by the Sub-Divisional Officer (Revenue).

26. We answer the reference in affirmative by holding that the case of *Lalla Prasad Burman vs State of M.P. and others*, reported in 2008 (3) *M.P.L.J.* 394 does not expound the correct law – to the extent of applicability of Rules of 1999 in regard to Panchayat Karmi nominated as Panchayat Secretary prior to coming into force of the Rules of 2011. However, after introduction of the circular dated 02.11.2006, action against the Panchayat Secretary nominated prior to coming into force of Rules of 2011, was required to be taken in accordance with the said circular issued by the Department.

27. We further hold that the powers of a Panchayat Secretary appointed prior to coming into force of the Rules of 2011, could be suspended temporarily or withdrawn (de-notified) – without serving a show cause notice or by giving an opportunity of hearing in the event of registration of a criminal case against him.

28. Now we may revert to the dispensation in relation to the appointments made on the post of Gram Panchayat Secretary post-Rules of 2011. These Rules are called Madhya Pradesh Panchayat Service (Gram Panchayat Secretary Recruitment and Conditions of Service) Rules, 2011. Rule 3 provides for definition *inter alia* of ‘Appointing Authority’, ‘Gram Panchayat Secretary’ and ‘Qualification’, which read thus :-

“**3.Definitions.-** (1) In these rules unless the context otherwise requires,-
(a)

(b) “Appointing Authority” with respect to Gram Panchayat Secretary means the Chief Executive Officer, Zila Panchayat;

(c)

(d) “Gram Panchayat Secretary” means such person appointed by Chief Executive Officer, Zila Panchayat in the Gram Panchayat coming under its control;

(e)

(f) “Qualification” means the qualification for Gram Panchayat Secretary as specified in Schedule II;”

29. Rule 5 provides for method of absorption and selection. The incumbents who were nominated as Gram Panchayat Secretary and holding that office immediately before the commencement of the said Rules, were absorbed to the post and pay scale of Gram Panchayat Secretary through a one time absorption on specified terms. In the present case, which came up for consideration before the Division Bench, admittedly, it is an appointment made on the post of Panchayat Karmi for the session 2007-08. He was notified as Secretary of the said Panchayat on 14.09.2012, after coming into force Rules of 2011. As a result, the provision regarding absorption to the post and pay scale of Gram Panchayat Secretary did not arise, nor it is a case where the appellant has been substantively appointed on the post of Gram Panchayat Secretary post-Rules of 2011. Thus, the case before the Division Bench was in respect of the first category of appointment on the post of Panchayat Karmi and notified to discharge duties and functions of Gram Panchayat Secretary in absence of the Secretary directly appointed on that post. Not being a case of substantive appointment on the post of Gram Panchayat Secretary, but only one of invested with powers of Gram Panchayat Secretary, to such a case, the same principle as discussed earlier must apply with regard to the consequence of withdrawal of nomination. In other words, cases in which charge of Secretary is given to a Panchayat Karmi of the Gram Panchayat by issuance of notification, it would not be a

case of suspension but limited to withdrawal of charge of the Secretary. Even in respect of suspension of the member of Panchayat service in terms of Rule 4, if applicable does not require prior notice, unlike in the case of procedure to be followed for taking disciplinary action and imposing penalty. Had it been a case of appointment of a Panchayat Karmi who entered Panchayat service prior to coming into force of Rules of 2011 and after coming into force of the said Rules having been absorbed or substantively appointed on the post of Gram Panchayat Secretary; and as a consequence of order issued by the Appropriate Authority, he would stand reverted to his original post of Panchayat Karmi, the question of giving him opportunity of hearing may arise.

30. After the Rules of 2011, the post of Gram Panchayat Secretary has been made a substantive post. The incumbent may be absorbed or freshly appointed against that substantive post, as the case may be. For being appointed to that post, the procedure prescribed in the said Rules will have to be followed. As regards discipline and control, Rule 7 of the Rules of 2011 stipulates that Rules of Madhya Pradesh Panchayat Services (Conduct) Rules, 1998 would apply. The Rules of 1998, however, do not provide for the situation in which the incumbent can be placed under suspension or for imposing penalty. For that, the principle underlying Discipline and Appeal Rules of 1999 may have to be invoked - which apply to all persons employed in connection with the affairs of Zila Panchayat, Janpad Panchayat and Gram Panchayat and discharge the functions of Zila Panchayat, Janpad Panchayat and Gram Panchayat. The exception is only of officers and servants of the State service who are posted under the Panchayats under Section 69 or are on lone service to the Panchayats under Section 71 of the Act of 1993. Any person, if appointed as Panchayat Karmi or Gram

Panchayat Secretary, may be considered as a member of Panchayat service or Panchayat servant to whom Rules of 1999 would apply in respect of action of suspension or disciplinary proceedings, as the case may be. However, as aforesaid, withdrawal of charge bestowed on any employee of the Gram Panchayat to discharge the duties and functions of Secretary of the Gram Panchayat cannot and does not result in disciplinary action or for that matter reduction in rank or suspension. In the present case, the appointment of the appellant is on the substantive post of Panchayat Karmi with investiture of charge of Gram Panchayat Secretary after coming into force of Rules of 2011; and for which reason, it was always open to the Authority to withdraw the said charge for which prior notice was not required to be given.

31. We, accordingly, conclude that the legal principles stated in the case of **Lalla Prasad Burman** (supra) of the Division Bench to hold that prior notice should be given in such a case, is not the correct position of law. We hold that no prior notice or opportunity of hearing before suspension of the Gram Panchayat Secretary or for that matter withdrawal (de-notified) of such charge given to the Panchayat Karmi, is required to be given by the competent Authority to the concerned employee much less who is facing serious criminal case.

32. We answer the reference accordingly.

33. As the reference has been answered, appeal be placed before the appropriate Court for further consideration on any other questions and for decision on merits.

(A.M. Khanwilkar)
Chief Justice

(S. K. Gangele)
Judge

(Alok Aradhe)
Judge

