

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

Case No & Parties Name	<u>Writ Petition No.11125/2015</u> Shri Sandeep Dubey Vs. The State of Madhya Pradesh and others.
Date of Judgment	08.09.2017
Bench Constituted	Single Bench
Judgment delivered by	Justice Sujoy Paul
Whether approved for reporting	YES
Name of counsels for parties	Petitioner: Shri Sunil Kumar Pandey, Adv. Respondents : Shri D.K. Gangrade, Panel Lawyer.
Law laid down	The word “charge” used in second proviso to Section 69 of the Adhiniyam has to be given wide interpretation as to include within its purview the aspect of appointment of Panchayat Secretary. The interpretation of a statute must be as per the text and the context of a particular provision.
Significant paragraph numbers	10

ORDER
(08.09.2017)

1. This petition filed under Article 226 of the Constitution takes exception to the order dated 13.05.2015 (Annexure P-6) whereby the respondents treated the petitioner as ineligible for selection for the post of Panchayat Secretary in Gram Panchayat Durjanpur.

2. Briefly stated, the admitted facts between the parties are that the petitioner and other eligible candidates submitted their candidature for the post of Panchayat Secretary in view of advertisement dated 17.08.2010. On

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17.09.2010, the candidature of the candidates were considered. Admittedly, petitioner's father Shri Laxmi Prasad Dubey was working as an Up-Sarpanch in the same gram panchayat. Shri Laxmi Prasad Dubey tendered his resignation on 25.03.2011.

3. Since petitioner's father was an Up-Sarpanch, the petitioner was held to be ineligible and his claim was not considered. Thereafter, there is a chequered history of litigation between the parties before the lower Authorities, and the said dispute traveled to this Court in Writ Petition No.18033/2014 decided on 28.11.2014. This Court directed the respondents to consider and decide the representation of the petitioner by speaking order. In turn, by order dated 13.05.2015 (Annexure P-6), petitioner's claim was rejected.

4. Learned counsel for the petitioner submits that the sole reason for not considering and appointing the petitioner is the second proviso to Section 69 of Madhya Pradesh Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993. By placing reliance on a judgment of this Court reported in **2008 (4) MPLJ 418 [Lallu Kol Vs. State of Madhya Pradesh and others]**, it is submitted that since petitioner's father tendered his resignation, there was no embargo in appointing the petitioner. In addition, it is urged that the proviso aforesaid merely prohibits a person from holding the charge of Panchayat Secretary, if he happens to be a relative of Panch or Sarpanch of same gram panchayat. The appointment is not affected merely because petitioner's father was an Up-Sarpanch.

5. The learned Panel Lawyer supported the impugned order and placed heavy reliance on Section 69 of the Act.

6. No other point is pressed by learned counsel for the parties.

7. I have heard the parties at length and perused the record.

8. In the present case, admittedly when the meeting of the Committee was convened on 17.09.2010, petitioner's father was one of the members of the Committee being an Up-Sarpanch. The Committee opined that since

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petitioner's father is an Up-Sarpanch, he is ineligible. The second proviso to Section 69 makes it clear that a person shall not hold charge of the Secretary of gram panchayat if such a person happens to be relative of any office bearer of concerned gram panchayat.

9. The learned counsel for the petitioner made an attempt to create a distinction between holding the charge and appointment on a particular post.

10. In my opinion, the said distinction is of no importance because the holding of charge is the outcome of appointment. It cannot be said that appointment is justifiable in the teeth of second proviso to Section 69 but such appointed person cannot hold the charge. In my considered opinion, this cannot be the legislative intention behind inserting the second proviso wherein the prohibition is mentioned by using the word "shall not hold charge of the Secretary". Putting it differently, once a person is appointed to a post, he automatically gets charge of the said post. Thus, the word charge has to be given a wide interpretation in the facts and circumstances of this case which will include the aspect of the appointment also.

11. The word charge is defined in Blacks dictionary as-"to entrust with responsibilities and duties." Once a person is appointed, he automatically gets the charge to discharge duties and responsibilities attached to the said post. In the context the words "charge of a secretary" are used in the statute, it has to be given wide interpretation. It is settled principle that interpretation must depend on the text and the context..... neither can be ignored. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. Adopting the principle of literal construction of the statute alone, in all circumstances without examining the context and the scheme of the statute, may not subserve the purpose of the statute. In the words of Krishna Iyer J., such an approach would be "to see the skin and miss the soul." Whereas "the judicial key to construction is the composite perception

of *deha* and *dehi* of the provision.” [See (1977) 2 SCC 256 *Board of Mining Examination vs. Ramjee*]

12. In 2000 (1) MPHT 89 (*Prahlad Singh Patel vs. State of M.P.*) this Court opined as under:

“Second proviso to Section 69 (1) of the Act provides that 'a person shall not hold charge of Secretary' if such a person happens to be relative of any office bearer of the concerned Gram Panchayat. A plain reading of the aforesaid provision makes it clear that continuance of a person as a Panchayat Secretary is prohibited if such a person happens to be the relative of any office bearer of Gram Panchayat. Thus, notwithstanding the fact that in relation to the Panchayat Secretaries appointed prior to 7-1-1997, there was no impediment in their way to hold charge of the office of the Secretary, but in view of the legislative mandate discernible from second proviso to Section 69 (1) of the Act, Panchayat Secretaries who are related to any office bearer of the Gram Panchayat cannot be allowed to hold charge of the Secretary. Use of the expression 'shall' in the second proviso referred to above raises a presumption that prohibition of a relative of the office bearer of the Gram Panchayat to hold charge of the Secretary is imperative. Another reason to hold that a relative cannot be allowed to hold charge of the Secretary is the use of the negative expression in the proviso. It is well settled that prohibitory or negative words can rarely if ever be directory.

Thus, there is definite command of the legislature by enacting the aforesaid provision to prohibit a relative to hold charge of Secretary of Gram Panchayat. Therefore, in my opinion Panchayat Secretaries who were appointed even prior to 7-1-1997 i.e., before coming into force of second proviso to Section 69 of the Act, in view of the mandatory and imperative nature of legislation they cannot be allowed to hold charge of the office of the Secretary.”

The Judgment of *Prahlad Singh* (supra) was not brought to the notice of this Court in the case of *Lallu Kol* (supra). The judgment of *Lallu Kol* (supra) is therefore distinguishable. At the cost of repetition, in my view, legislature never intended to give restrictive meaning to the word “charge”. The person who is prevented to hold the charge of the post and performed

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the duties attached thereto cannot even be appointed. Such appointment would be of no meaning and useful purpose. Hence, the judgment of Lallu Kol is distinguishable and cannot be pressed into service in the present case.

13. In my view, petitioner was ineligible and was rightly declared so by the respondents, I find no reason to interfere in this matter in the discretionary jurisdiction of this Court under Article 226 of the Constitution.

14. In view of the aforesaid, petition fails and is hereby dismissed.

(Sujoy Paul)
Judge