

HIGH COURT OF MADHYA PRADESH, JABALPUR**WRIT APPEAL NO.1032/2017**

State of Madhya Pradesh and another

-Versus-

Sujit Khare and another

CORAM:-

Hon'ble Shri Justice Hemant Gupta, Chief Justice,
Hon'ble Shri Justice Vijay Kumar Shukla, Judge.

Shri Amit Seth, Government Advocate for the appellants.

Shri B.K.Upadhyay, Advocate for the respondent no.1.

Whether approved for reporting ? Yes/No

J U D G M E N T**JABALPUR : (Dated 13/04/2018)****Per: V.K.Shukla, J.**

In the present Intra Court appeal, a challenge has been made to the order dated 09-08-2017, passed by the learned Single Judge, whereby the writ petition has been allowed and the order of punishment of withholding of 3 annual increments with cumulative effect dated 07-09-2015 has been quashed and the order passed by the respondent no.1 dismissing the departmental appeal vide order dated 31-12-2015 has also been quashed on the ground that the order of punishment passed by the Additional Director General of Jail is without jurisdiction.

2. The facts leading to filing of the writ petition to the extent they necessary are as follows:

The petitioner was posted as Deputy Superintendent of Jail at Central Jail, Indore. On 04-09-2014, one detenue Jitendra was killed by another detenue Arjun Tyagi by shooting him inside the jail. According to the petitioner, there was no negligence as he had conducted the search in time and he is not involved in the supply of pistol to detenue Jitendra, who had fired on Arjun Tyagi. A charge sheet was issued to the petitioner alleging that the petitioner had not taken the search of the jail as per Rule 185 of the Madhya Pradesh Jail Manual, 1968 and he has been negligent in not following the instructions issued by the Jail Headquarter from time to time. Other charge was that as per Rule 570 of M.P. Jail Manual, inspite of recovery of prohibited articles from the detenues, he was negligent in discharging his duties, as failed to take further action in the matter.

3. The petitioner denied the charges and made an excuse that the prisoners in the jail were more than total capacity of Indore Central Jail and only 9 guards were posted inside the jail and one Head Guard and they were looking after other duties of distribution of food etc. Thus, it was under the heavy work load, the guards were not able to keep a close watch on the prisoners. It was also submitted in defence that one Over-Bridge namely

Rajkumar passes near the Ward No.5 of the jail and anybody can throw illegal articles inside the jail by standing over the bridge. Many excuses and the reasons were disclosed by him in failure of his duties to keep proper watch on the prisoners. The charges were found proved in the departmental inquiry and thereafter after following the procedure, the petitioner was imposed major penalty of withholding of 3 annual increments with cumulative effect by the impugned order dated 07-09-2015 and it was also directed that except the suspension allowance, no other benefits would be permissible to the petitioner for the aforesaid period. The appeal was also dismissed by the impugned order dated 31-12-2015.

4. The impugned orders of punishment and dismissal of departmental appeal were challenged mainly on the ground that the appointing authority of the Deputy Superintendent of Jail is the State Government and therefore, only the State Government was competent to impose the punishment as the State Government can only be the disciplinary authority whereas in the present case the punishment has been imposed by the Additional Director General of Jail, which is subordinate to the appointing authority and therefore, the punishment order is without jurisdiction. It is further submitted that no reason has been assigned by the respondents in passing the impugned orders

wherein it is observed that the explanation given by the petitioner is not satisfactory. It is further submitted that the Enquiry Officer has specifically found that the geographical situation of the jail is not suitable from the security point of view and anybody can throw the prohibited articles inside the jail from the outside jail. It is also contended that only minor punishment could have been imposed in the facts of the present case.

5. The learned Single Judge has dealt only with the issue regarding the authority and held that the order of punishment has been passed by the Additional Director General of Jail, who is not the competent authority. Reliance was placed on the Gazette Notification Annexure RJ/1 dated 20-10-2008 submitting that the post of Deputy Superintendent of Jail was declared Gazetted post. Copy of Schedule-I of Gazette Notification dated 06-08-2009 was also filed as Annexure RJ-2. Schedule-I of the Madhya Pradesh Jail (Gazetted) Service, Recruitment and Promotion Rules, 2002 (hereinafter referred to as Promotion Rules, 2002) provides that the State Government has been made the appointing authority of the post of Deputy Superintendent of Jail. The order of punishment has been passed by an incompetent authority and order suffers from jurisdictional error. He also submitted that the post of Deputy Superintendent of Jail notified is a gazetted post vide Notification dated 20-10-2008 and as per Schedule-I of

Gazetted Notification dated 06-08-2009 under the Promotion Rules, 2002, the State Government has been made the appointing authority of the post of Deputy Superintendent of Jail and therefore, the respondents have misread the Schedule Annexure R-1 because it is the post of Assistant Medical Officer for which the disciplinary authority was the Inspector General of Prisons/ Director Health Services/Superintendent of Jail and not for the post of Jailor as has been projected by the respondents. Relying on these notifications, he submitted that as per the Schedule , the disciplinary authority is Superintendent of Jail and not the Inspector General of Prisons or Director General of Prisons.

6. The respondents submitted that there are rules governing the disciplinary proceedings framed by the State Government in exercise of the powers conferred by proviso to Article 309 of the Constitution of India called the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 (hereinafter referred to as Rules, 1966) and the disciplinary authority has been prescribed as Inspector General of Jail/Director Health Services / Superintendent of Jail. It is submitted that the post of Deputy Superintendent of Jail was earlier known as Jailor and the appointing authority of Jailor was Inspector General. Subsequently amendment was incorporated in the Madhya Pradesh Prison Rules, 1968 by the State Government and the nomenclature of Inspector

General was changed as Director General of Prisons and the nomenclature of Jailor was changed as Deputy Superintendent of Jail. The amendment was brought by Notification dated 01-09-2008, copy of the same has been placed as Annexure R/1 on record but rules relating to the disciplinary proceedings in Rules, 1966, the appointing authority for the post of Jailor was Inspector General of Prisons and disciplinary authority was the Inspector General of Prisons/Director Health Services/Superintendent of Jail. It is submitted that in the disciplinary Rule, 1966, the amendment was not made and for the post of Jailor whose nomenclature was changed as Deputy Superintendent of Jail, the appointing authority for the said post remains Inspector General of Prisons and the disciplinary authority was Inspector General of Prisons/Director Health Services/ Superintendent of Jail. Thus, though in the Appointment Rules, the amendment was made but so far the Disciplinary Rules was concerned, the Inspector General of Prisons was the competent authority for the post of Jailor redesignated as Deputy Superintendent of Jail. It is contended that the learned Single Judge has failed to appreciate the Schedule appended to Rules, 1966, whereby the Inspector General of Prisons is the disciplinary authority for the post of Deputy Superintendent of Jail and there is no illegality in the order impugned passed by the respondents.

7. After hearing the learned counsel for the parties, we find that the amendment was incorporated in M.P. Prison Rules, 1968 by the State Government in exercise of the Powers conferred by Section 59 of Prison Act, 1994, whereby nomenclature of post of Inspector General of Jail was changed as "Director General of Prisons" and nomenclature of "Jailor" was changed as "Deputy Superintendent of Jail". In the Schedule appended to "Rules 1966", the appointing authority for the post of Jailor was prescribed as Inspector General of Jail (changed nomenclature -Director General of Prisons) and the disciplinary authority has been prescribed Inspector General of Prisons/Director Health Services/ Superintendent of Jail. The order of punishment has been issued by the Additional Director General of Jail and Reformatory Services, Madhya Pradesh, Bhopal (after change of nomenclature) under the Rules, 1966, the said authority is competent to impose the punishment for the post of Deputy Superintendent of Jail. The respondent/employee was appointed by the Inspector General of Jail. After declaring the post of Deputy Superintendent of jail as Gazetted post, no amendment has been carried out in the schedule appended to the Rules, 1966. In the said Schedule, the Inspector General of Jail (Director General) is still the appointing authority of the Jailor (Deputy Superintendent of Jail), therefore, for the purpose of disciplinary action, the Inspector General of Jail (changed nomenclature-Director General

of Prisons) remains the appointing authority of the respondent no.1/ employee. Rules, 1966 specifically deal with the procedure for imposition of punishment including both major and minor punishment. These rules are general rules governing the disciplinary proceedings of the Govt. servants of civil services of the State. The appointing authority is defined under Rule-2, which is reproduced as under :

"2. Interpretation. – In these rules, unless the context otherwise requires,–

(a) "appointing authority" in relation to a Government servant means–

(i) the authority empowered to make appointments to the service of which the Government servant is for the time being a member or to the grade of the Service in which the Government servant is for the time being included, or

(ii) the authority empowered to make appointments to the post which the Government servant for the time being holds, or

(iii) the authority which appointed the Government servant to such service, grade or post, as the case may be, or

(iv) Where the Government servant having been a permanent member of any other service of having substantively held and other permanent post, has been in continuous employment of the Government, the authority which appointed him to that Service or to any grade in the Service or to that post, whichever authority is the highest authority ;

(b) "Commission" means the Madhya Pradesh Public Service commission;

(c) "Department of the Government of Madhya Pradesh" means any establishment or organization declared by the Governor by a notification in the official Gazette to be a department of the Government of Madhya Pradesh;

(d) "disciplinary authority" means the authority competent under these rules to impose on a Government servant any of the penalties specified in rule 10;

(e) "Government" means the Government of Madhya Pradesh;

(f) "Government Servant" means a person who—

(i) is a member of a Service or holds a civil post under the State, and includes any such person on foreign service or whose services are temporarily placed at the disposal of the Union Government, or any other State Government or a local or other authority;

(ii) is a member of a Service or holds a civil post under the Government of India or any other State Government and whose services are temporarily placed at the disposal of the State Government;

(iii) is in the service of a local or other authority and whose services are temporarily placed at the disposal of the State Government;

(g) "head of the department" for the purpose of exercising the powers as appointing, disciplinary, appellate or reviewing authority, means the authority, declared to be the head of the department under the Fundamental and Supplementary Rules or the Civil Service Regulations, as the case may be;

(h) "Schedule" means the Schedule to these rules;

(i) "Service" means a civil service of the state;

(j) "State" means the State of Madhya Pradesh."

Rule-12 of Rules, 1966 deals with the Disciplinary authorities for the purpose of imposition of any of the penalties specified in Rule-10 (major punishment) on any Government servant. Rule states that the appointing authority or any other authority specified in the Schedule shall have the power to impose the punishment under Rule-10 except that no penalty specified in clauses (v) to (ix) of Rule-10 shall be imposed by any authority subordinate to the appointing authority.

8. In the light of the aforesaid, we have considered that the respondent n.1/employee was initially appointed by the Inspector General of Jail and after declaration the post of Deputy Superintendent of Jail as gazetted post, no amendment has been made in the Rules, 1966, therefore the Inspector General of Jail is still the appointing authority of the post of Jailor (Deputy Superintendent of Jail) for the purpose of disciplinary action and imposition of punishment for the post of Deputy Superintendent of Jail. The "M.P.Prison Rules, 1968" and the "Promotion Rules" do not deal with the disciplinary proceedings or the authorities for imposition of punishment. As per definition of rules appointing authority under the Rules, 1966 for the respondent no.1, the

I.G.Jail (new nomenclature Director General of Jail) is the competent authority. Thus, the order impugned is not passed by the incompetent authority. The nomenclature of the post of Inspector General is changed as Director General which includes Additional Director as well.

9. In view of the aforesaid consideration of facts and provisions of Rules, we find that there is no illegality in the order of punishment passed by the Additional Director General of Jail and the order passed by the State Government dismissing the appeal.

10. Accordingly, the writ petition is dismissed and the writ appeal is allowed.

(HEMANT GUPTA)
CHIEF JUSTICE

(VIJAY KUMAR SHUKLA)
JUDGE

hsp