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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE VINAY SARAF
ON THE 5th OF MARCH, 2024**

WRIT PETITION No. 1497 of 2018

BETWEEN:-

**VINAY UPADHYAY S/O SHRI SUMAT KUMAR, AGED
ABOUT 32 YEARS, OCCUPATION: BRANCH MANAGER
R/O VILLAGE GIRWAR, TEHSIL SAGAR, DISTRICT
SAGAR (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI ANIL LALA - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH THR. THE
SECRETARY COOPERATIVE DEPTT.
MANTRALAYA, VALLABH BHAWAN, BHOPAL
(MADHYA PRADESH)**
- 2. DEPUTY REGISTRAR COOPERATIVE SOCIETIES
DIST. SAGAR (MADHYA PRADESH)**
- 3. PRATHMIK KRISHI SAKH SAHKARI SAMITI
THROUGH CHAIRMAN BHAIWAHI BR.
PARSORIAD DISTT. SAGAR (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI A.S. BAGHEL - GOVERNMENT ADVOCATE)

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

ORDER

In present petition filed under Article 226 of the Constitution of India, petitioner has challenged legality and validity of impugned order dated 02.01.2018 issued by Dy. Registrar, Cooperative Societies, Sagar, by which it was directed to President/Manager of Primarily Agriculture Credit Cooperative

Society Limited to cancel the appointment of petitioner and report the same.

2. Learned counsel for petitioner assailed order of Dy. Registrar and consequential order dated 10.01.2018 issued by President, whereby the service of petitioner was terminated mainly on the ground that as per the service rules, the competent authority to take decision against petitioner is Manager of the society and Dy. Registrar had no authority, jurisdiction or competence to take any decision or issue any direction to Society for cancellation of appointment order of petitioner. It is also submitted that service rules were not followed in the decision making process and therefore, order is liable to be quashed. He relied on the following orders passed by Co-ordinate Benches.

3. The relevant portion of the order passed in **W.P. No.7088/2021 decided on 6.12.2023 (Komal Prasad Basene vs. State of M.P. and others)** are extracted herein below:-

"2. The petitioners, who are working as Accountants, Assistants Clerks and Choukidars are aggrieved by the similar orders passed by the Administrator and communicated by Manager. One such order dated 28.3.2018 (Annexure P-1) shows that pursuant to a decision by Administrator, the Manager has decided to terminate the services of the petitioners. This order is called in question on twin grounds :-

(a) As per the Rule 27 of the Services Rules filed by the respondent nos. 3 and 4, the competent authority to terminate the services of Accountants is Board of Directors, whereas for remaining petitioners it is Manager. The Manager is very much available, which is clear from the impugned order dated 28.3.2018 (Annexure P-1), which is communicated by Manager and, therefore, the impugned order is passed by an incompetent authority. In that event, in the light of judgment of Supreme Court in the case of Whirlpool Corporation vs Registrar Of Trade Marks, Mumbai & others- (1998) 8 SCC- 1}, the petitioners may not be relegated to avail the alternative remedy.

(b) As per Rule 28 of the said rules, punishment can be imposed only after holding an enquiry and in the instant case without holding any enquiry punishment is passed.

3. Shri Ritweek Parashar, learned Government Advocate for the State and Shri Pravesh Naveriya, learned counsel for the respondent nos. 3 and 4 supported the impugned order but could not substantiate that decision to terminate the petitioners was taken after holding enquiry and by

competent authority, i.e. the Manager. Instead, impugned order dated 28.3.2018 (Annexure P-1) is only communicated by the Manager, whereas decision is taken by the Administrator. There is no material on record to show whether any fulfilled enquiry as contemplated in the Rules was conducted.

4. Accordingly, all the impugned orders are set aside. Liberty is reserved to the respondents to proceed against the petitioners in accordance with law."

Learned counsel for the petitioner further relied upon the order passed by the co-ordinate Bench of this Court in W.P.No.6965/2023 on 11.04.2023 in the matter of Khet Singh Lodhi Vs. State of M.P. and others, whereby in the similar circumstances, the co-ordinate Bench has stayed the operation of the impugned order. The relevant part of the order is read as under:-

"By the instant petition, petitioner is challenging the order of his termination. He relied upon the service rules of the society filed as Annexure-P-2 in which Manager (Prabandhak) has been prescribed as a competent authority to take appropriate action imposing minor and major punishment against salesman and as such any punishment imposed by other than the competent authority according to him is illegal.

Despite granting time to State to seek instruction no specific reply has come except the circular dated 16/06/2021 in which it is mentioned that the administrator is competent authority to take appropriate action in the interest of the society exercising power under Section 49 of Co-operative Societies Act, 1960 but that instruction does not contain whether in presence of competent authority i.e Manager (Prabhandk) action can be taken by the administrator."

4. The relevant portion of the order passed in **W.P. No.6965/2023 decided on 11.4.2023 (Khet Singh Lodhi vs. State of M.P. and others)** are extracted herein below:-

"By the instant petition, petitioner is challenging the order of his termination. He relied upon the service rules of the society filed as Annexure-P-2 in which Manager (Prabandhak) has been prescribed as a competent authority to take appropriate action imposing minor and major punishment against salesman and as such any punishment imposed by other than the competent authority according to him is illegal.

Despite granting time to State to seek instruction no specific reply has come except the circular dated 16/06/2021 in which it is mentioned that the administrator is competent authority to take appropriate action in the interest of the society exercising power under Section 49 of Co-operative Societies Act, 1960 but that instruction does not contain whether in presence of competent authority i.e Manager (Prabhandk) action can be taken by the administrator."

5. The relevant portion of the order passed in **W.P. No.9554/2016 decided on 15.6.2016 (Pritpal Singh and others vs. State of M.P. and others)** are extracted herein below:-

"In the present case, the order impugned Annexure P/2 has been passed by the Deputy Registrar, Cooperative Societies, Chhatarpur on 30.3.2016 terminating the services of the salesman. This Court having an occasion to consider the issue of dismissal of the services of the salesman working in a society. However, it was found that the order cannot be passed by the Deputy Registrar and it ought to be passed by the Society.

Learned Deputy Advocate General for the State is not in a position to assert on the legal issue in the light of the order passed this Court in Writ Petition No.19392/2012 on 17.3.2016.

In view of the aforesaid, the order impugned Annexure P/2 dated 30.3.2016 stands quashed with a liberty to the Society to recourse of law as observed by this Court in Writ Petition No.19392/2012 on 17.3.2016.

Accordingly, this petition stands disposed of and the order passed by this Court in Writ Petition No.19392/2012 on 17.3.2016 shall be applicable mutatis mutandis to the present case."

6. The relevant portion of the order passed in **W.P. No.19392/2012 decided on 17.3.2016 (Amrendra Singh vs. State of M.P. and others)** are extracted herein below:-

"I have considered the submissions made by learned counsel for the parties. Taking into account the fact that the petitioner is an employee of Co-operative Society namely, Seva Sahakari Samiti Baamnaura and the Sub Divisional Officer has no authority in law to remove or dispense with the services of the petitioner who is an employee of the aforesaid Cooperative Society. Needless to state that the Cooperative Society, Seva Sahakari Samiti Baamnaura shall be at liberty to take an appropriate action in respect of the petitioner in accordance with law.

7. Learned counsel appearing for respondent/State opposed the prayer mainly on the ground that under Section 55 (2) of M.P. Cooperative Societies Act, 1960, the alternative remedy of appeal is available to petitioner and without availing the remedy of appeal, petitioner has approached this Court invoking jurisdiction of Article 226 of the Constitution of India and, thus, petition deserves to be dismissed.

8. Considering the objection raised by the learned counsel appearing on behalf of respondents, it appears that impugned order has been challenged on the ground of jurisdiction, competency and not following the principle of natural justice, therefore, in the light of **Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and others**, reported in (1998) 8 SCC 1, petition is maintainable despite availability of alternation remedy.

9. It appears from record that petitioner who was employee of Primarily Agriculture Credit Cooperative Society Limited and posted as Assistant Manager, was terminated by President of the Society in compliance of directions issued by Dy. Registrar, without serving any show cause notice and without holding any inquiry. No opportunity of hearing was provided to the petitioner and order was passed without following service rules and principles of natural justice.

10. Rule 27 of Prathmik Krishi Saakh Sahkari Sanstha Ke Karamchhari Seva Niyam, provides that any action against Assistant Manager may be taken by Manager only and Manager is the competent authority. However, Dy. Registrar by usurping the power of Manager issued the direction for dismissal of petitioner, whereas he was not competent to punish petitioner. Further order of dismissal issued by President in compliance of order passed by Dy. Registrar was also without jurisdiction as President is not a competent authority for dismissal of services of petitioner. No disciplinary action can be taken against petitioner, without following the rules.

11. It is not the case of respondents that before issuance of dismissal order, any prior notice was issued to petitioner and petitioner was provided any opportunity of hearing or any inquiry was conducted. Coordinate Benches in similar circumstances quashed the orders of termination passed by

Administrator/President of Society issued without following Rule 27 of Niyam by holding that Manager is the only competent authority to take action against the employees of the society.

12. In view of above, the present petition is **allowed** and impugned order dated 02.01.2018 and 10.01.2018 are quashed. Petitioner is entitled for reinstatement. However, liberty is granted to the respondents to initiate action against the petitioner afresh in accordance with Rules.

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(VINAY SARAF)
JUDGE