

HIGH COURT OF MADHYA PRADESH : JABALPUR

W.P. No.1298/2019

Shiv Pratap Singh Gaharwar
-Versus-
State of M.P. and others

Appearances:

*Shri Adarsh Muni Trivedi, Senior Advocate along with
Shri P.S. Gaharwar, Advocate for the petitioner.*

Shri Amit Seth, Govt. Advocate for the State.

Single Bench:

Hon'ble Shri Justice Vijay Kumar Shukla, Judge

<i>Whether approved for reporting ?</i>	Yes.
<i>Law laid down</i>	* Against an order of suspension remedy of appeal under Rule 23 of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 is an alternative efficacious remedy. * Allegations of malafide cannot be examined unless the same are made against an individual.
<i>Significant paragraph Nos.</i>	Paras 6 and 7.

ORDER
(Jabalpur, dtd.29.01.2019)

In the instant petition the petitioner has invoked extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, challenging the legality and validity of the order dated 11-01-2019 passed by the respondent No.1, whereby the

petitioner has been placed under suspension in exercise of powers under Rule 9 of the M.P. Civil Services (Classification, Control & Appeal) Rules, 1966 [hereinafter referred to as 'the Rules'].

2. On being confronted with availability of the statutory alternative efficacious remedy of appeal under Rule 23 of the Rules, learned counsel for the petitioner submitted that the petitioner has already preferred an appeal on 21-01-2019 before the competent authority after filing of the present writ petition. He urged with vehemence that still validity of suspension order can be examined by this Court, as the impugned order has been assailed on the ground of malafide and it has been passed in an arbitrary and capricious manner without giving any show cause notice to the petitioner.

3. To bolster his submission, the learned senior counsel for the petitioner referred the judgment passed by a Single Bench of this Court in the case of **Suresh Kumar Purohit vs. State of M.P. and another, 2005(4) MPLJ 524**, wherein it was held that an order of suspension can be passed, only after the competent authority comes to the conclusion that there are sufficient reasons for keeping an employee under suspension and there has to be proper application of mind and satisfaction of the authority to the fact that suspension

is warranted. He also produced a copy of the Circular of the State Government, dated 22-11-1984 issued by the General Administration Department contending that suspension order should not be passed ordinarily, unless the charges and lapse are grave in nature.

4. Per contra, learned counsel for the State raised a preliminary objection regarding maintainability of the petition on the ground that the petitioner cannot prosecute two simultaneous proceedings. He has already filed an appeal on 21-01-2019, as stated by him, and further the ground of malice is not available to the petitioner, because he has not made allegation of malafide against any individual. He submitted that no person has been impleaded as respondent in the personal capacity. He submitted that there are allegations against the petitioner to commit misbehaviour with the senior officer – Divisional Forest Officer in his chamber. He strenuously urged that the order of suspension has been passed after conducting a preliminary enquiry and taking into consideration the report dated 14-9-2018. He further submitted that the order of suspension is not an order of punishment and, therefore, the contention of the learned counsel for the petitioner that a show cause should have been issued before issuance of the impugned order of suspension, has no merit.

5. Having heard the learned counsel for the parties, I find that the present petition is not maintainable, in view of the fact that the petitioner has already filed an appeal, which is an alternative and efficacious remedy provided under Rule 23 of the Rules. The judgment referred by the learned counsel for the petitioner rendered in the case of **Suresh Kumar Purohit (supra)** has already been held to be *per incuriam* by a Division Bench of this Court in the case **A.P. Singh Gaharwar vs. State of Madhya Pradesh and others, 2012(4) MPHT 189**. Further, I do not find any force in the contention advanced by the learned counsel for the petitioner that the impugned order has been passed in malafide exercise of power. The petitioner has not made any individual as respondent in the present petition. Besides, the allegations made in the writ petition are against the Divisional Forest Officer, by post, against whom allegation of malafide is made, whereas the impugned order has been passed by the State Government. Since the impugned order of suspension of the petitioner is not an order of punishment, therefore, the contention of the learned counsel for the petitioner that a show cause notice ought to have been issued, has no merit.

6. In the case of **S.A. Khan vs. State of Haryana and others, (1993) 2 SCC 327** the Apex Court held that against an order

of suspension, statutory remedy of appeal is available to the petitioner as an alternative efficacious remedy.

7. The Division Bench of this Court in the case of **State of M.P. and others vs. Ashok Sharma (Dr.), 2011 (2) MPLJ 206** held that remedy of appeal against an order of suspension is an efficacious remedy and the writ petition was held not to be entertained in view of availability of the remedy of appeal.

8. In view of the aforesaid, I do not find any merit in the present petition and no interference is warranted at this stage when the appeal filed by the petitioner against the impugned order of suspension is pending for consideration.

9. Accordingly, the present writ petition being sans merit, is **dismissed**. There shall be no order as to costs.

(Vijay Kumar Shukla)
Judge

ac.