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

**BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL**

ON THE 28th OF FEBRUARY, 2024

WRIT PETITION No. 5002 of 2024

BETWEEN:-

SARWANLAL YADUWANSHI S/O SHRI SUMRANLAL YADUWANSHI, AGED ABOUT 57 YEARS, OCCUPATION: PANCHAYAT SECRETARY , GRAM PANCHAYAT KUKARPANI, JANPAD PANCHAYAT JUNNARDEO R/O VILLAGE BILAWARKALA, TEHSIL JUNNARDEO, DISTRICT CHHINDWARA (MADHYA PRADESH)

.....PETITIONER

(BY SHRI UTKARSH AGRAWAL - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH THROUGH ITS PRINCIPAL SECRETARY DEPARTMENT OF PANCHAYAT AND RURAL DEVELOPMENT MANTRALAYA, VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)**
- 2. ZILA PANCHAYAT CHHINDWARA THROUGH ITS CHIEF EXECUTIVE OFFICER DISTRICT CHHINDWARA (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI PIYUSH BHATNAGAR - PANEL LAWYER)

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

ORDER

Petitioner's contention is that petitioner is aggrieved of the order of suspension dated 16/02/2024 passed by the Chief Executive Officer, Zila Panchayat, Chhindwara placing the petitioner under suspension invoking the provisions contained in the Madhya Pradesh Panchayat Service (Discipline and

Appeal) Rules 1999.

It is submitted that new set of rules have been framed as contained in Annexure P-7 namely Madhya Pradesh Panchayat Service (Gram Panchayat Secretary Recruitment and Conditions of Service) Rules, 2011. It is submitted that these rules do not provide for any suspension and, therefore, the action of the authority in passing an order of suspension is *per se* illegal and liable to be set aside.

Shri Piyush Bhatnagar, learned Panel Lawyer placing reliance on the decision of this court in **Lakhpati Yadav Vs. State of M.P. and others** W.P. No. 16960/2021 decided on 9/11/2021 wherein this court has held as under :-

After hearing learned counsel for the parties and going through the relevant provisions of the Rules of 2011, it is necessary to make a mention of the fact that Rule 7 of the Rules of 2011 specifically provides that the Madhya Pradesh Panchayat Service (Conduct) Rules, 1998 (for brevity "Rules of 1998") shall be applicable to the Gram Panchayat Secretary. The Gram Panchayat Secretary shall be under the administrative control of the Gram Panchayat. The disciplinary action against the Gram Panchayat Secretary shall be taken in accordance with the provisions of the Madhya Pradesh Panchayat Service (Discipline & Appeal) Rules, 1999 (for brevity "Rules of 1999").

Thus, it is evident from a plain reading of Rule 7 of the Rules of 2011 that the provisions of the Madhya Pradesh Panchayat Service (Discipline & Appeal) Rules, 1999 are applicable even in case an action is taken under Rule 7 of the Rules of 2011. Rule 4 of

the Rules of 1999 deals with suspension and provides that the appointing authority or any authority to which it is subordinate, or disciplinary authority in that behalf, may place a member of the Panchayat service under suspension.

There is a provision for appeal against an order passed under Rule 4 of the Rules of 1999.

Rule 15 of the Rules of 1999 provides that appeal against the order of suspension or the order imposing penalty will be maintainable to the authority specified as appellate authority in the appendix appended to these rules within a period of ninety days from the date he receives the order. It is further provided that the appellate authority may entertain an appeal after expiry of the said period if it is satisfied that the appellant had sufficient cause for not submitting the appeal in time. Rule 16 of the Rules of 1999 provides for a mechanism for disposal of appeals.

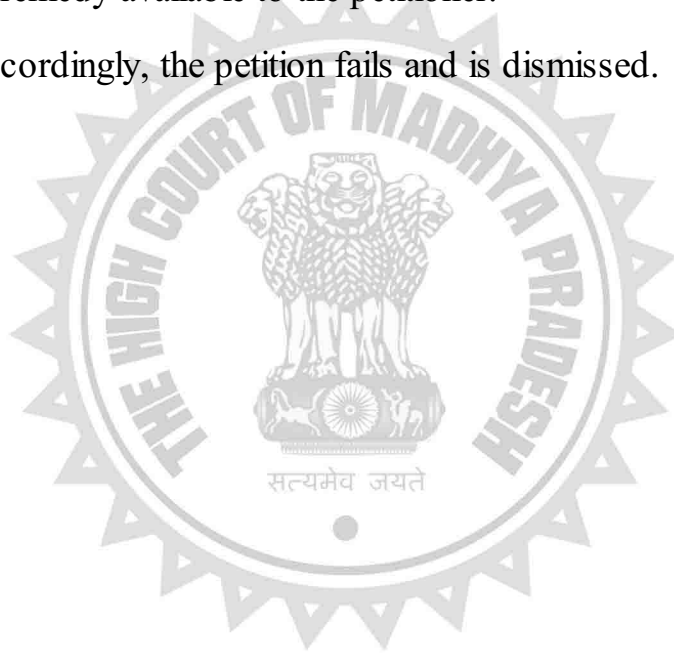
Thus, it is evident from a plain reading of Rule 7 of the Rules of 2011 that when disciplinary action is to be taken even after promulgation of the Rules of 2011, in accordance with the provisions of the Madhya Pradesh Panchayat Service (Discipline & Appeal) Rules, 1999 then by incorporation provisions of the Rules of 1999 have been adopted in the Rules of 2011 and, therefore, an appeal as provided under Rule 15 of the Rules of 1999 is maintainable, therefore, the petitioner is relegated to avail said remedy of appeal as is provided under Rule 15 of the Madhya Pradesh Panchayat Service (Discipline & Appeal) Rules, 1999.

It is made clear that if the petitioner files an appeal within

fifteen days from today then in place of adverting to the issue of limitation, the appellate authority shall consider and decide such appeal on its own merits within a further period of forty-five days.

Thus, in view of the aforesaid decision of this court which has been relied on by a coordinate Bench at Indore in W.P. No. 12253/2022 decided on 18th July 2022, this court is of the opinion that since suspension has been made under the Rules of 1999 and there is a provision of appeal against the said order of suspension, this petition is not maintainable in view of the alternative statutory remedy available to the petitioner.

Accordingly, the petition fails and is dismissed.



(VIVEK AGARWAL)
JUDGE