

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 1702 of 2013**

1. Shoukilal Miri S/o Mohitram Miri, Aged About 42 Years, Caste – Satnami, Occupation Service, Secretary- Gram Panchayat, Bade Amakoni, Janpad Panchayat, Baramkela, Tahsil Baramkela, Thana Sariya, Civil & Revenue Distt Raigarh, Cg

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Additional Chief Secretary, Panchayat & Gramin Vikas Vibhag, Mantralaya, Mahanadi Bhawan, Thana & Tahsil Naya Raipur, Civil & Revenue Distt Raipur, Cg
2. Chief Executive Officer, Janpad Panchayat, Baramkela, Thana & Tah Baramkela, Civil & Revenue Distt Raigarh, Cg
3. Deputy Director Panchayat & Samaj Kalyan, Raigarh, Thana & Tahsil Raigarh, Civil & Revenue Distt Raigarh, C G
4. Chief Executive Officer, Jila Panchayat Raigarh, Thana, Civil & Revenue Distt Raigarh, Cg
5. Smt. Devlata Patel (Sarpanch) Gram Panchayat, Bade Amakoni, Tah Baramkeala, Thana Sariaya, Civil & Revenue Distt Raigarh, C G

---- Respondent

For Petitioner	Shri MA Latif Rahman, Advocate
For Respondent /State	Shri P.K. Bhaduri, Government Advocate
For respondent No.5	Mr. Roop Naik, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra**C A V Order****14/10/2015**

1. Petitioner is working as Panchayat Secretary of Gram Panchayat Bade Aamakoni, Janpad Panchayat Baramkela,

District Raigarh. He would assail the legality and validity of the order dated 03.06.2013, whereby, the Chief Executive Officer, Zila Panchayat Raigarh, has placed him under suspension in exercise of powers under Rule 4 of the Chhattisgarh Panchayat Service (Discipline and Appeal) Rules, 1999 (for short “the Panchayat Discipline Rules”).

2. Ordinarily, an order of suspension which is passed in exercise of statutory powers is amenable to appeal and this Court would refuse to entertain a petition under Article 226 of the Constitution of India in view of the law laid down by the Supreme Court in **Union of India and Others v. Major General Shri Kant Sharma and Another**¹. However, the petitioner having raised the plea of lack of jurisdiction with the Zila Panchayat to pass the impugned order, this Court entertained the writ petition.
3. It has been urged that the petitioner having been appointed as Panchayat Secretary under Section 69 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (for short “the Adhiniyam, 1993”), the provisions of the Panchayat Discipline Rules and the Chhattisgarh Panchayat Services (Conduct) Rules, 1998 (for short “the Panchayat Conduct Rules”) would not apply to him, therefore, the impugned order, which has derived sources from the above Rules, is without jurisdiction.

1 (2015) 6 SCC 773

4. Per contra, learned counsel appearing for the State would resist the ground of challenge on submission that the provisions of the Panchayat Discipline Rules have been excluded from application in respect of such employees who are under the State service, therefore, the petitioner's contention has no substance. He would submit that under the scheme framed by the State Government in respect of Panchayat Karmi/Panchayat Secretary, the petitioner is under the administrative control of the CEO, Zila Panchayat, therefore, the said officer has jurisdiction to place the petitioner under suspension.
5. To consider the rival submissions, it would be apt to reproduce the relevant provisions contained under Sections 69, 70 and 71 of the Adhiniyam, 1993 as under :

69. Appointment of Secretary and Chief Executive Officer.--(1) The State Government or the prescribed authority may appoint a Secretary for a Gram Panchayat or group of two or more Gram Panchayats:

Provided that the person holding the charge of a Secretary of Gram Panchayat immediately before the commencement of this Act shall continue to function as such till a Secretary is appointed in accordance with this section.

Provided further that a person shall not hold charge of a Secretary of Gram Panchayat, if such a person happens to be relative of any office bearer of the concerned Gram Panchayat.

Explanatio.-- for the purpose of this sub-section the expression "relative" shall mean father, mother, brother,

sister, husband, wife, son, daughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law.

(2) The State Government shall appoint for every Janpad Panchayat a Chief Executive Officer and may be also appoint one or more Additional Chief Executive Officer, who shall discharge such functions and perform such duties as may be assigned to them by the Chief Executive Officer.

(3) The State Government shall appoint for every Zila Panchayat a Chief Executive Officer and may also appoint one or more Additional Chief Executive Officers, Deputy Chief Executive Officers and Executive Officers who shall discharge such functions and perform such duties as may be assigned to them by the Chief Executive Officer.

(4) During the absence of a secretary of Gram Panchayat or Chief Executive Officer of Janpad Panchayat or Zila Panchayat due to leave, retirement, death, resignation or otherwise the prescribed authority shall, as soon as possible, make such arrangements as he deems fit, for carrying on the office of Secretary of Gram Panchayat or Chief Executive Officer of Janpad Panchayat or Zila Panchayat as the case may be. A person while carrying on such office shall exercise all powers conferred by this Act or rules made thereunder on the Secretary of Gram Panchayat or Chief Executive Officer of Janpad Panchayat or Zila Panchayats as the case may be.

(5) The Secretary of the Gram Panchayat, the Chief Executive Officer of the Janpad Panchayat and Zila Panchayat shall be responsible for keeping and maintaining the records of the Gram Panchayat, Janpad Panchayat or Zila Panchayat as the case may be.

70. **Other officers and servants of Panchayat.**—(1) Subject to the provisions of Section 69 every panchayat may with previous approval of prescribed authority

appoint such other officers and servants as it considers necessary for the efficient discharge of its duties.

(2) The qualifications, method of recruitment, salaries, leave, allowance and other conditions of service including disciplinary matters of such officer and servants shall be such as may be prescribed.

71. Deputation of Government servant.--The State Government may depute to the service of the Panchayat such of its servants as it considers necessary. The service conditions of such deputed servants shall be such as may be prescribed, by the State Government from time to time.

6. Rules 1 & 4 of the Panchayat Discipline Rules making provision for application of the Rules and suspension of the employees are also relevant for the purpose, therefore, they are reproduced as under :

1. Short title, commencement and application.--(1) These rules may be called the Chhattisgarh Panchayat Service (Discipline and Appeal) Rules, 1999.

(2) They shall come into force with effect from the date of their final publication in the Chhattisgarh Gazette.

(3) Except as otherwise provided by or under these rules, they apply to all persons employed in connection with the affairs of Zila Panchayats, Janpad Panchayats and the Gram Panchayats and discharging the functions of Zila Panchayat, Janpad Panchayat and Gram Panchayat:

Provided that nothing in these rules shall apply to officers and servants of the state service who are posted under the Panchayats under Section 69 or are on lone service to the Panchayats under Section 71 of the Act.

4. Suspension.--(1) The appointing authority or any authority to which it is subordinate, or disciplinary authority in that behalf, may place a member of panchayat service under suspension:--

(a) Where a disciplinary proceeding against him is contemplated or is pending or

(b) Where a case against him in respect of any criminal offence involving moral turpitude is under investigation, inquiry or trial:

Provided that where the order of suspension is made by an authority subordinate to or lower in rank than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made.

(2) A member of Panchayat Service shall be deemed to have been placed under suspension by an order of appointing authority :--

(a) With effect from the date of his detention, on a criminal charge or otherwise, for a period exceeding forty eight hours.

(b) With effect from the date of his conviction, if the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forth eight hours and is not forthwith dismissed or removed or compulsorily retired consequent upon such conviction.

Explanation.--The period of forty eight hours referred to in clause (b) of this sub-rule shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment if any, shall be taken into account.

(3) When a penalty of dismissal, removal or compulsory retirement from service imposed upon a member of panchayat service under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry of or action or with any other directions, the order

of his suspension shall be deemed to have continued in force with effect on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(4) Whether a penalty of dismissal, removal or compulsory retirement from service imposed upon a member of panchayat service is set aside or declared or rendered void in consequence of or, by a decision of a court of law and the Disciplinary Authority on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the meaning of panchayat service shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal, compulsory retirement and shall continue to remain under suspension until further orders.

(5) (a) An order suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.

(b) Where a member of panchayat service is suspended or is deemed to have been suspended in connection with any disciplinary proceeding or otherwise and any other disciplinary proceeding is commenced against him during the continuance of such suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing direct that the member of Panchyat Service shall continue to be under suspension until the termination of all or any of such proceedings.

(c) An order of suspension made or deemed to have been made under this rule, may at any time be modified or revoked by the authority which made or is deemed to have made it or by any authority to which, that authority is subordinate.

7. Rule 1 of the Panchayat Conduct Rules also needs reference, which is reproduced as under :

1. Short title and application.--(1)
These rules may be called the Chhattisgarh Panchayat Services (Conduct) Rules, 1998.

(2) Save as otherwise provided in these rules they shall apply to all persons appointed in Panchayat Services and the part in connection with the affairs of Panchayat:

Provided that nothing in these rules shall apply to panchayat servants who are.--

(a) Members of the All India Service or State Government Service;

(b) holders of any posts in respect of which the State Government may be general or special order, declare that these rules shall not apply:

Provided further that these rules shall apply mutatis-mutandis to any such member belonging to a Contract Service or Part Time Service under the control of Zila Panchayat and whose salary is drawn from the miscellaneous head.

8. As would be explicit on a reading of the above quoted provisions, a Secretary of the Gram Panchayat is appointed under Section 69 (1) of the Adhiniyam, 1993, whereas, the Chief Executive Officer of a Janpad Panchayat is appointed under Sub-Section (2) and the Chief Executive Officer, Additional Chief Executive Officer, Deputy Chief Executive Officer and Executive Officers of a Zila Panchayat are appointed under Sub-section (3) by the State Government.

9. Thus, Section 69 envisages two categories of appointees (i) Panchayat Secretary to be appointed by the Gram Panchayat and (ii) other officers like CEO to be appointed by the State Government. There are other officers and servants of Panchayat who can be appointed by the Panchayat under Section 70, whereas as per the provisions of Section 71 of the Adhiniyam, 1993 the State Government can place any Government Servant on deputation to the services of the Panchayat.
10. Rule 1 of the Panchayat Discipline Rules excludes from its applicability only such officers and servants who belong to State service, but are posted under the Panchayat under Section 69 of the Adhiniyam, 1993 or sent on deputation to a Panchayat under Section 71 of the Adhiniyam, 1993.
11. Similarly, the Panchayat Conduct Rules applies to all persons appointed in Panchayat Service in connection with the affairs of a Panchayat, but it specifically excludes for application on members of All India Service or State Government Service. This Rule also applies to a person in a contract service or part-time service under the control of Zila Panchayat.
12. A conjoint reading of the provisions of Sections 69, 70 & 71 of the Adhiniyam, 1993 and the Panchayat Discipline Rules as well as the Panchayat Conduct Rules makes it unexceptionable that the Panchayat Discipline Rules does

not apply to the members of State service, who are either posted or on deputation to the service of the Panchayat, however, it does not exclude its operation to a person who is in service of Panchayat by virtue of Section 69 (1) of the Adhiniyam, 1993.

13. This Court is fortified in taking the above view, in view of the law laid down by the Division Bench of this Court in **Rooplal Nayak v. State of Chhattisgarh and Others**².
14. Learned counsel for the petitioner has also urged that there is no prescription that the CEO, Zila Panchayat would be the controlling authority of a Panchayat Secretary, therefore, the petitioner having been appointed by the Gram Panchayat or the authorities prescribed under Section 69(1), the CEO, Zila Panchayat, has no jurisdiction to place the petitioner under suspension.
15. By Notification issued by the State Government on 13.05.2003, published in Official gazette on 19.05.2003, the District Joint Director/Deputy Director, Panchayat and Social Welfare has been made prescribed authority for the purpose of Section 69(1), therefore, the petitioner's appointing authority would be the State Government or the prescribed authority, however, by a separate guideline issued by the Government of Chhattisgarh on 29.08.2008, concerning the services of Panchayat Karmi/Panchayat Secretary, the CEO

² 2006 (4) MPHT 99 (CG)

Zila Panchayat has been authorised to have disciplinary control over Panchayat Karmi/Secretary.

16. Thus, the State Government having made the CEO, Zila Panchayat to have disciplinary control, the argument raised to the contrary has no substance, because, it is the settled law that the authority having disciplinary control over the employee has the power to suspend him. (See: **Corporation of the City of Nagpur, Civil Lines, Nagpur and Another v. Ramchandra and Others**³. pg.718 para 4).
17. *Ex-consequenti*, the writ petition, *sans substratum*, is liable to be and is hereby dismissed, leaving the parties to bear their own costs.

Sd/-

Judge

(Prashant Kumar Mishra)

Gowri

³ (1981) 2 SCC 714