

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 314 of 2006

1. Arun Kumar Chandrakar s/o. Vishnu Prasad Chandrakar, aged about 40 years, Ex. Moharir, Nagar Palika Parishad, Mahasamund, Dist. Mahasamund (CG).
2. Padam Das Manikpuri s/o. Late Aratidas Manikpuri, aged about 48 years, Ex. Moharir, Nagar Palika Parishad, Mahasamund, Dist. Mahasamund (CG) currently residing at village Bundeli via Pithoura, Dist. Mahasamund (CG).

---- Appellants.

Versus

1. Nagar Palika Parishad, Mahasamund through Mukhya Nagar Palika Adhikari, Nagar Palika Parishad, Mahasamund, Dist. Mahasamund (CG).
2. President, Nagar Palika Parishad, Mahasamund, Dist. Mahasamund (CG).
3. State of Chhattisgarh through its District Collector, District Mahasamund (CG).
4. G.R. Rana, then Sub Divisional Officer and Administrative of Nagar Palika Parishad, Mahasamund, Dist. Mahasamund (CG).

---- Respondent

For appellants : Mr. Sushobhit Singh, Advocate

For respondents : Mr. Sudeep Agrawal, Advocate.
No. 1, 2 and 4.

For respondent No.3 : Mr. Afroz Khan, Panel Lawyer

SB: Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board

04-04-2019

- 1) This appeal is preferred under Section 100 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 14-3-2006

passed by 1st Additional District Judge , Mahasamund (CG) in Civil Appeal No. 9-A/2001 wherein the said court reversed the judgment and decree dated 19-1-2001 passed by the 1st Civil Judge, Class-II, Mahasamund in Civil Case No. 143-A/1998 and dismissed the suit filed by the appellants.

2) The appellants who were posted as Moharir in Nagar Palika Parishad, Mahasamund, Dist. Mahasamund (CG) had instituted a civil suit for reinstatement of their services which were terminated on 22-7-1994. Both appellants were charge-sheeted for manipulation in the recovery of taxes and its receipt books *inter alia* that they have not deposited the amount of taxes which were recovered by them through receipt book of Nagar Palika Parishad.

3. Learned counsel for the appellants would submit that the court below failed to appreciate that the order of termination passed by the respondent authority is ab initio wrong. The appellants were not provided an opportunity of hearing and they could have been terminated only after the prior sanction of the State Government. They later on deposited the amount. Therefore, the impugned judgment passed by the court below be set aside. Reliance has been placed the decision of Hon'ble Supreme Court in the matter of **Rajasthan SRTC and others vs. Mohar Singh 2008 STPL 11028 SC.**

4) On the other hand, learned counsel for the respondents would submit that the appellants have forged the receipt book and misappropriate the amount of Nagar Palika Parishad, some amount has been deposited by them and rest of the amount is still pending to be deposited in the office of Nagar Palika Parishad. It is further submitted that the Revenue Moharir is not covered under Section 94(4) MP Nagar Palika Adhiniyam, 1961 and termination can be questioned in appeal as per Rule 56 of the Madhya Pradesh Municipal Employees Recruitment and Conditions of Service Rules, 1968 (for short, "The Rules, 1968"), but no appeal was filed by them. Again there is provision of revision under Rule 57 of the said Rules, 1968 but they did not avail remedy of revision, therefore, the order of the court below is not liable to be set aside.

5) I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.

6) To dwell with the issue, Rule 56 & 57 of the Rules 1968 may be read as under:

"56. Appeal (1) Subject to the provisions contained in rule 55 every municipal employee, other than the employee specified in sub section (4) of 94 of the Act, drawing Rs.20/- per mensem or above shall have a right of appeal against the order of the Council or the Standing

Committee, to the Collector. The Collector's orders shall be final in the case of a municipal employee drawing less than Rs.50/- per mensem and shall not be subject to revision.

(2) A second appeal shall lie to the Commissioner against the order of the Collector under sub rule (1) in the case of an employee drawing Rs.50/- per mensem or above. Except as otherwise provided in rule 57 the Commissioner's order shall be final.

(3) Subject to the provisions contained in rule 55 a municipal employee of the class specified in sub section (4) of section 94 of the Act shall have a right of appeal against the orders of the Council to the Commissioner. A second appeal shall lie to the State Government and the orders of the State Government shall be final.

57. Revision – A revision shall lie to the State Government against an order passed by the Commissioner in second appeal under sub rule (2) of rule 56 in the case of an employee drawing Rs.150/- per mensem and above”

7. Section 94(4) of the MP/CG Municipalities Act, 1961 may be read as under:

“94(4) The appointment of Revenue Officer, Accounts Officer, Sanitary Inspector, Sub-Engineer, Revenue Inspector and Accountant shall be subject to confirmation by the State

Government and no such post or the post of any other officer or servant as may be specified by the State Government in this behalf shall be created or abolished and no alteration in the emoluments thereof shall be made without the previous approval of the State Government, and every appointment to, and dismissal from, such post, shall be subject to a like approval”.

8. From the above said provisions, it is clear that Moharir of Nagar Palika Parishad is not included in Section 94(4) of the Act, 1961. Therefore, remedy was available to him for filing of appeal under Rule 56 of the Rules 1968 before the Collector and second appeal before the Commissioner. Again, he has remedy to file revision against the order of Commissioner to the State Government, but all the remedies have not been availed by the appellants. Without availing remedy of appeal and revision, suit filed by the appellants was not in the fitness of procedure and therefore, lower court is right in holding that the appellants are not entitled for any relief.

9. After going through the entire record and provisions contained in the Act/Rules, this court has no reason to substitute contrary finding. The case law cited by learned counsel for the appellants does not help to them as the same is clearly distinguishable from the facts of the present case.

10. Accordingly, the appeal is dismissed at motion stage itself.

Sd/-

(Ram Prasanna Sharma)

JUDGE

Raju