

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 6670 of 2021**

Amrit Kumar Medhe S/o Late Shri Govind Medhe,
Aged about 61 years, Posted as Patwari, at P.C.
No. 9, Tahsil Dongargarh, Distt. Rajnandgaon,
Chhattisgarh.

---Petitioner

Versus

1. The State of Chhattisgarh, through the Principal Secretary Revenue Department, Mahanadi Bhawan, Mantralaya, Atal Nagar, Raipur, Distt. Raipur, Chhattisgarh.
2. The Collector Rajnandgaon, Distt. Rajnandgaon, Chhattisgarh.
3. The Sub-Divisional Officer (Revenue), Dongargarh, Distt. Rajnandgaon, Chhattisgarh.

---Respondents

For Petitioner	:-	Mr. Siddharth Pandey, Advocate
For State	:-	Mr. Amrito Das, Addl. A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

15/12/2021

1. The short question involved in this writ petition is, whether the Sub-Divisional Officer (Revenue) is competent to place the petitioner-Patwari

under suspension under Rule 9(1) of Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 ? if yes, whether the appeal before the Appellate Authority against the order of suspension is maintainable in view of the bar created under Section 46(e) of Chhattisgarh Land Revenue Code, 1959 ?

2. The petitioner, who is a Patwari, has been placed under suspension by the Sub-Divisional Officer (Revenue), Dongargarh i.e. respondent No. 3 vide impugned order dated 09/11/2021 (Annexure P/1) under Rule 9(1) of the Rules of 1966 finding his conduct in breach of Chhattisgarh Civil Services (Conduct) Rules, 1965. The impugned order has been called in question on the ground that since Collector is the Appointing Authority of the petitioner, respondent No. 3 Sub-Divisional Officer (Revenue), Dongargarh has no jurisdiction to place the petitioner under suspension and consequently, the impugned order is not appealable in view of the bar created under Section 46(e) of the Land Revenue Code, 1959.

3. Mr. Siddharth Pandey, learned counsel appearing for the petitioner, would submit that admittedly, by virtue of Section 104(2) of the Land Revenue

Code, 1959, Collector is the Appointing Authority of the petitioner, therefore, Sub-Divisional Officer (Revenue) cannot place him under suspension. Even otherwise, Section 46(e) of the Land Revenue Code, 1959 bars the appeal relating to appointment under sub-section (2) of Section 104 or sub-section (1) of Section 106, as such, the impugned order is liable to be set aside.

4. Mr. Amrito Das, learned Additional Advocate General appearing for the respondents/State, would submit that though the Appointing Authority of the petitioner, who is a patwari, is Collector undisputedly, but by notification dated 09/10/1959, the State Government has conferred the power of Collector upon the Sub-Divisional Officer for exercising power under Section 104(2) of the Land Revenue Code, 1959, therefore, petitioner has rightly been placed under suspension by the Sub-Divisional Officer (Revenue). He would also submit that the question raised by the petitioner that appeal is barred in view of Section 46(e) of the Land Revenue Code, 1959 has authoritatively been decided by the Madhya Pradesh High Court in the matter of Chandramani Prasad Patwari v. State of Madhya

Pradesh¹ wherein it has categorically been held that order removing or dismissing a Patwari after a departmental enquiry held against him, even though it may be an order passed under the provisions of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 is nevertheless an order passed under Section 104(2) of the Code. It is, therefore, subject to interference by Board of Revenue in appeal or revision under the Code. Therefore, appeal or revision before the competent authority is not barred by Section 46(e) of the Land Revenue Code, 1959.

5. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.

6. In order to decide the question as to whether the Sub-Divisional Officer (Revenue) is competent to place the petitioner under suspension under Rule 9(1) of the Rules of 1966, the provisions contained in Chhattisgarh Land Revenue Code, 1959 relating to appointment of Sub-Divisional Officer may be noticed herein.

7. Section 22 of the Land Revenue Code, 1959 defines

Sub-Divisional Officers, which states as under :-

"22. Sub-Divisional Officers - (1) The Collector may place one or more Assistant Collectors or Joint Collector or Deputy Collector in-charge of a sub-division of a district or in-charge of two or more sub-divisions of a district.

(2) Such Assistant Collector or Joint Collector or Deputy Collector shall be called a Sub-Divisional Officer and shall exercise such powers of a Collector as the State Government may, by notification, direct."

8. Section 21 of the Land Revenue Code, 1959 defines

other officers, which states as under :-

"21. Other Officers - (1) The State Government may appoint such other officers and invest them with such power as may be necessary to give effect to the provisions of this Code.

(2) Such officers shall discharge such duties and be subordinate to such authorities as the State Government may direct."

9. Section 104(1) of the Code provides for the power

and jurisdiction of the Collector to form Patwari

circles and Section 104(2) provides for the power

of the Collector to appoint Patwaris, which

states as under :-

"104. Formation of patwaris' circles and appointment of patwaris thereto. - (1) The Collector shall from time to time arrange the villages of the tahsil in patwari circles and may, at any time, alter the limits of any existing circle and may

create new circles or abolish existing ones.

(2) The Collector shall appoint one or more patwaris to each patwari circle for the maintenance and correction of land records and for such other duties as the State Government may prescribe. "

10. The Sub-Divisional Officer has been conferred powers to appoint a Patwari by the State Government itself by Notification dated 01/10/1959 published in the M.P. Gazette dated 09/10/1959 issued under the provisions of Section 22(2) of the Land Revenue Code, 1959 and that the provisions of Rule 8 of the Rules of 1966 and the Schedule appended thereto issued subsequent to the enactment of the Code are in conformity with the statutory provisions of the Code and, therefore, the Sub-Divisional Officer has the power to appoint a Patwari and as a consequence thereof, the power to dismiss him.

11. The notification dated 09/10/1959 issued by the State Government states as under :-

"No. 11429-CR-953-V11-N.2- in exercise of the powers conferred by sub-section (2) of section 22 of the Madhya Pradesh Land Revenue Code, 1959 (No. 20 of 1959), and in supersession of all previous notifications on the subject, the State Government hereby directs that all Sub-Divisional Officers shall exercise powers of a Collector under sub-section (2) of Section 57, sub-section (5) of section 59, section 87, sub-section (2) of section 104 and sub-section (2) of

section 110 of the said Code, within their respective jurisdictions."

12. The conflicting decisions on the power of Sub-Divisional Officer to appoint a Patwari has been resolved by the Full Bench of Madhya Pradesh High Court in the matter of Kala Bai v. State of M.P. and Others² wherein it has been held that a Sub-Divisional Officer has the power to appoint and remove a Patwari from service. It has been held as under :-

"26. The conclusion recorded by us on the question referred to by the Single Bench are summarized as under :-

(a) That the Sub Divisional Officer has been conferred powers of the Collector to appoint a Patwari in view of the provisions of section 22(2) of the Code and the Notification dated 1-10-1959 published in the M.P. Gazette on 9-10-1959 and as a consequence thereof he also has the power to remove a Patwari from service."

13. The decision of the Madhya Pradesh High Court has been followed by this Court in the matter of Manoj Vishwakarma v. State of Chhattisgarh and Others³. Not only this, in the matter of Vinayak Singh Thakur v. State of Chhattisgarh⁴, this Court, relying upon Rule 10 of the Chhattisgarh

2 2011 (1) MPLJ 547

3 WA No. 478 of 2019 decided on 11/11/2019

4 WPS No. 3158 of 2015 decided on 28/08/2015

Land Record Manual, has held that the Sub-Divisional Officer is empowered to suspend a Patwari and accordingly dismissed the writ petition to avail the remedy available under the law.

14. As such, I am of the considered opinion that Sub-Divisional Officer has the power to suspend a Patwari and the Sub-Divisional Officer (Revenue), Dongargarh had the power and jurisdiction to place the petitioner under suspension under Rule 9(1) of the Rules of 1966 and it cannot be branded as without jurisdiction and without authority of law.

15. Now, coming to the next question that has been canvassed that in view of the bar created under Section 46(e) of the Land Revenue Code, 1959, the appeal would not be maintainable.

16. The petitioner has been admittedly placed under suspension under Rule 9 of the Rules of 1966 and the question as to whether the appeal is barred by Section 46(e) of the Land Revenue Code, 1959 came to be considered by the Madhya Pradesh High Court in the matter of Chandramani Prasad Patwari (supra) wherein it has clearly been held that Section 46(e) of the Land Revenue Code, 1959

would not bar the appeal against the order removing or dismissing a Patwari. It has been held as under :-

"6. Learned Deputy Advocate General Shri H. D. Gupta in trying to support the impugned orders of the Board of Revenue, contended that appeal from an order removing or dismissing a patwari was excluded under clause (e) of Section 46 of the Code. That provision reads as under :-

"Section 46. - No appeal against certain orders. No appeal shall lie under this Code from an order -

(a).....

(b).....

(c).....

(d).....

(e) relating to appointment under subsection (2) of Section 104 or subsection (1) of Section 106."

It will be seen that clause (e) excludes right of appeal in the case of an order "relating to appointment" under Section 104(2). The power to appoint no doubt includes power to remove or dismiss by virtue of Section 16 of the M. P. General Clauses Act. That would not make the order removing or dismissing a patwari as an order "relating to appointment" within the meaning of clause (e). A right of appeal cannot be taken away by assumption or by analogy. Hence the order removing or dismissing a patwari does not fall within the bar contained in Section 46(e) of the Code. It is open to appeal. This is expressly laid down in the case of Ramkishan (supra). The contention raised by the learned Deputy Advocate General is, therefore, without force and is rejected."

17. Following the principle of law laid down in the aforesaid case, it is held that Section 46(e) of

the Land Revenue Code, 1959 would not bar the appeal against the order suspending a Patwari and that order of suspension would not fall within "relating to appointment" within the meaning of clause (e) of Section 46 of the Code. Accordingly, the order of suspension passed under Rule 9(1) of the Rules of 1966 would be appealable in accordance with Rule 23 of the Rules of 1966.

18. As a fallout and consequence of the aforesaid discussion, the writ petition stands dismissed. However, petitioner is at liberty to avail the remedy of appeal against the impugned order (Annexure P/1) within 30 days from the date of receipt of a copy of this order which will be considered by the Appellate Authority strictly in accordance with law expeditiously.

Sd/-

(Sanjay K. Agrawal)

Judge

Harneet

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 6670 of 2021****Petitioner**

Amrit Kumar Medhe & Anr.

Versus**Respondents**

State of Chhattisgarh & Ors.

(English)

The Sub-Divisional Officer (R) has the power and jurisdiction under Rule 9(1) of Chhattisgarh Civil Services (Classification, Appeal and Control Rules, 1966 to suspend a Patwari.

(Hindi)

छत्तीसगढ़ सिविल सेवा (वर्गीकरण, नियंत्रण तथा अपील) नियम, 1966 के नियम 9(1) के अंतर्गत अनु-विभागीय अधिकारी (रा.) को पटवारी को निलंबित करने की शक्ति एवं अधिकारिता है ।