

RA-CW-310-2021(O&M) in
CWP-23139-2021

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RA-CW-310-2021(O&M) in
CWP-23139-2021
Date of decision:-31.10.2022

Surinder Kumar

...Applicant/Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Kshitij Sharma, Advocate
for the applicant/petitioner.

Mr.Vijesh Sharma, Addl.A.G., Haryana.

Mr.Navneet Singh, Advocate for
Mr.P.S. Chauhan, Advocate
for respondent No.4 – MC Barara

H.S. MADAAN, J.

1. Petitioner – Surinder Kumar had filed a civil writ petition under Articles 226/227 of Constitution of India against respondents i.e. State of Haryana through its Principal Secretary, Municipal Corporation, Ambala through its Commissioner, District Municipal Commissioner, Municipal Corporation, Ambala and Municipal Committee, Barara, District Ambala craving for issuance of a writ or direction in the nature of certiorari/mandamus for quashing the impugned order of removal from service dated 2.11.2021, charge-sheet bearing memo dated 15.7.2020 and all ancillary proceedings including inquiry report dated 14.10.2020

alleging that provisions of Haryana Civil Services (Punishment & Appeal) Rules 2016 had been violated and he sought relief of reinstatement in service.

2. Inter alia, in the writ petition, he claimed that he was an employee of Municipal Corporation, Ambala posted as Clerk at Municipal Committee, Barara (Ambala) on deputation/transfer. When the writ petition came up for hearing on 15.11.2021, it was disposed of observing that petitioner should first avail of departmental remedy. He was relegated to that remedy and the writ petition was disposed of accordingly.

3. Feeling aggrieved by the said order, the petitioner had filed LPA No.1131 of 2021 before Division Bench of this Court, which was however withdrawn by the petitioner with liberty to file appropriate application with respect to the grievances raised therein. As such, the petitioner is seeking review of the order passed by this Court in the writ petition.

4. Notice of the application was given to the respondents, who have put in appearance through counsel.

5. I have heard learned counsel for the parties besides going through the record.

6. Learned counsel for the applicant/petitioner has contended that Department of Urban Local Bodies has two sets of Municipal Organizations for managing the urban local areas i.e. The Municipal Corporations governed by Haryana Municipal Corporation Act, 1994 and the Municipal Council/Municipal Committees governed under the Haryana Municipal Act, 1973 and that the services of employees of the

Municipal Corporation are governed by the Haryana Municipal Corporation Employees (Recruitment and Conditions) Service Rules, 1998. Whereas, services of employees of Municipal Committee and Municipal Councils are governed by the Haryana Municipal Services (Integration, Recruitment and Conditions of Service) Rules, 2010. He has further pointed out that as per Appendix C of Haryana Municipal Corporation Employees (Recruitment & Conditions) Service Rules, 1998, the competent authority to take disciplinary action against petitioner is Commissioner, Municipal Corporation and District Municipal Commissioner, Municipal Council, Ambala is neither the competent authority nor head of the office of the petitioner, therefore, he does not have any jurisdiction to deal with the matter. The competent authority is Commissioner, therefore the order has not been validly passed and is liable to be set aside.

7. On the other hand, learned counsel for the respondents submits that as per notification dated 24.9.2010 (Services Rules of Municipal Committee) Rule 14(2), the authority competent to pass an order under Clause (c) or clause (d) of sub-rule (1) of rule 9 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 and appellate authority shall be as specified in Appendix D to these rules. Accordingly, the authority empowered to make the order is Deputy Commissioner and appellate authority is Director, Urban Local Bodies, Haryana. In that way, the applicant/petitioner is at liberty to approach the appellate authority i.e. Director, Urban Local Bodies, Haryana because services of the petitioner are governed under Haryana Civil Services

(Punishment and Appeal) Rules, 1987, amended up to 2016. It is further submitted that in this case order of removal has been passed by District Municipal Commissioner and vide notification dated 7.8.2020, the powers of Deputy Commissioner have been delegated to District Municipal Commissioner, therefore, the order has been rightly passed by District Municipal Commissioner, which the petitioner can challenge before the appellate authority i.e. Director. A copy of notification dated 7.8.2020 has been attached with the written reply as Annexure R2.

8. After hearing the rival contentions, I find that the impugned order of removal has been passed by District Municipal Commissioner, Ambala and against that order appeal lies to Director, Urban Local Bodies, Haryana. The petitioner has not availed of that remedy and has approached this Court straightway challenging the order of removal from service.

9. Under the circumstances, it would be proper and appropriate if the impugned order and proceedings are challenged by way of filing appeal affording an opportunity to the appellate authority to consider the grouse of the petitioner and if it is found that the grievances put forward by the petitioner have got any element of merit, then necessary remedial measures can be taken departmentally, rather than petitioner adopting a short-cut approach and coming to this Court for his grievances exercising writ jurisdiction for seeking relief in the matter. The order in the writ petition was rightly passed keeping in view the facts and circumstances of the case and availability of alternative remedy to the petitioner, which he had not availed of earlier to filing of the writ petition in this Court. There

is no reason to review the order.

The application is, therefore, dismissed.

However, it is observed that since the petitioner has been pursuing the matter before this Court for quite some time i.e. since 11.11.2021 and limitation for filing of an appeal might have expired, in order to prevent any prejudice to the petitioner in that regard, it is directed that the petitioner may file appeal before the Director, Urban Local Bodies, Haryana within a month from today and the appellate authority would entertain the appeal and then hear and dispose it of on merits without treating it as time barred within three months thereof. After availing departmental remedy, the petitioner may take recourse to the legal remedy, if so advised, as per rules.

31.10.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No