



IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE
HON'BLE SHRI JUSTICE PRANAY VERMA

WRIT PETITION No. 40939 of 2024

SANJAY

Versus

STATE OF M.P. AND OTHERS

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Appearance:

Shri Harshit Tapadiya, learned counsel for the petitioner.

Ms. Ashi Vaidya, learned Panel Lawyer for the respondents/State
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ORDER

(Reserved on 08.01.2025)

(Pronounced on 28.01.2025)

1. Heard.
2. This petition under Article 226 of the Constitution of India has been preferred by the petitioner being aggrieved by the order dated 26.11.2024 (Annexure P/3) passed by the Commissioner, Ujjain Division, Ujjain affirming the order dated 30.04.2024 (Annexure P/2) passed by the Sub Divisional Officer (Revenue), Sub Division Dewas, District Dewas, affirming the order dated 13.02.2024 (Annexure P/1) passed by the Naib Tehsildar, Tappa Vijayganj Mandi, Tehsil Dewas, District Dewas whereby his services as a Gram Kotwar had been terminated.
3. The petitioner was appointed on 08.02.2014 on the post of Kotwar in village Narkhedhi after the death of his father who was himself a Kotwar and who had been appointed as such on the death of his father.



Complaint was made against the petitioner by the local residents of the village to the effect that he has encroached over government land and well, that he has dug a tube-well in the cremation ground and is using the water for himself and that he misbehaves with the residents of the village. A resolution passed by the Gram Panchayat was also submitted wherein recommendation was made for removal of the petitioner. The complaint was inquired into by the Naib Tehsildar in presence of the villagers and the land near the house of the petitioner was inspected. During inspection it was found that petitioner has encroached over government land, government well and over land of school and adjoining road.

4. Thereafter notice was issued to the petitioner who filed his reply to the same denying all the allegations levelled against him. The Naib Tehsildar then recorded certain statements. On the basis of the material brought on record he held that the petitioner has encroached over government land and well, that he has dug a bore-well on land of cremation ground and is using the water for himself and that near his house also he has encroached over government land. The complaint was held to be correct and concurring with the resolution of the Gram Panchayat the services of the petitioner were terminated by order dated 13.02.2024 which order has been affirmed by the Sub Divisional Officer as well as by the Commissioner.

5. I have considered the submissions of the learned counsel for the parties.

6. It has been held by this Court in Hira Vs. State 1965 RN 307 (DB) that a Kotwar appointed under Section 230 of M. P. Land Revenue



Code, 1959 is a civil servant. He holds a 'civil post'. He is entitled to the guarantee under Article 311 of the Constitution of India and he cannot be dismissed without an inquiry. Similar view has been taken by this Court in **Dinesh V/s. Board of Revenue and others 1998 RN 343**. The relevant part of the order is as under:

"2. It is contended that the post held by Kotwar is not a civil post and, therefore, the Administrative Tribunals would not have any jurisdiction to decide this case. A Kotwar is entitled to be appointed under section 230 of M.P. Land Revenue Code (henceforth 'the Code') in accordance with the Rules framed under section 258 of the code. Under rule 1 of the aforesaid Rules, it has been provided that a Kotwar may be appointed for any village or group of villages in accordance with the preceding settlement. The appointing authority of the Kotwar is Collector, S.D.O. Assistant, Collector Grade-I or Assistant Collector Grade-II, and this power of appointment can be delegated to Tahsildar or Naib-Tahsildar as per rules, read with section 24 (2) of the Code. The qualifications for eligibility to the post of a Kotwar are prescribed by Rule 2 of the aforesaid Rules framed under section 258 of the Code, rule 4 (1) provides that the appointing authority shall appoint the Kotwar after inviting applications and select a suitable person in accordance with the qualifications prescribed under the Rules. It has also been provided that the power to terminate the service of Kotwar shall rest with the appointing authority. Under section 231 of the code the State Government is authorised to fix the remuneration of the Kotwar.

3. It is clear from the above narration that the appointment of Kotwar under section 230 of the code is made under a law framed by legislature. *****

4. In view of the aforesaid discussion it is clear that a Kotwar is a servant of the State and he holds a civil post." *****

7. Further more in **Segraj C. Phulla V/s. Babulal and Others 2003 RN 448** it has been by this Court that the services of a Kotwar cannot be terminated without holding a detailed inquiry. Since he is a civil servant, his services cannot be terminated on mere resolution of a Gram Panchayat. The allegations levelled against him and the reply and the material on record has to be considered. Opportunity of hearing also has to be afforded to the Kotwar and without such inquiry his termination would be bad and liable to



be quashed. It has been held as under :-

"7. Having heard learned counsel for the parties and on perusal of the records, it is the considered view of this Court that the petition deserves to be allowed and the order impugned passed by the Board of Revenue is unsustainable. Admittedly, the petitioner was discharging his duties for about 20 years. The Patwari concerned has given a report indicating that the petitioner's work was satisfactory. Only because certain resolutions were passed by the Gram Panchayat recommending for appointment of respondent No. 1 and removal of petitioner from service, the competent authority should not have proceeded to take action without conducting enquiry into the matter and without considering the reply filed by the petitioner. The impugned order Annexure P-2 passed by the Nayab Tahsildar indicates that after narrating the facts and contents of the resolution, he has simply allowed the application filed by respondent No.1 and removed the petitioner from the post of Kotwar. There is no finding on how the facts cited in the resolution are correct, the basis for the same and explanation submitted by the petitioner was not at all considered. The Division Bench in the case of Hira (supra) having held that the Kotwar is a civil post holder entitled in protection under section 311 (2) of the Constitution. The competent authority was required to conduct a detailed enquiry into the matter and record a finding that the petitioner is not fit to perform the duties, for reasons which are established from the enquiry. Nothing of the sort seems to have been done. The resolution submitted by the Gram Panchayat was accepted to be the gospel truth, acted upon by the competent authority without applying his mind into the same and without conducting any enquiry into the matter. When the statutory rules requires that the appointing authority should come to a conclusion and form an opinion that the incumbent is no longer fit to perform his duties, then the independent opinion by the authority for coming to such a conclusion is required to be made. The impugned order and the reasons indicating therein if considered in its totality only indicates that the resolution was considered and accepted as truth without there being any enquiry into the matter. Even the report of the Patwari was not considered even though reproduced in para 4 of the impugned order. It is not a finding recorded in the order that the petitioner is over-age or his mental or physical condition are such that he is unable to perform his duties. That being so, the termination in the present case is unsustainable and in that view of the matter, the Additional Commissioner was right in holding that the action could be taken only after conducting proper enquiry as there were allegations against the petitioner. *****"

8. In the present case upon complaint having been made by the villagers and resolution having been passed by the Gram Panchayat, inquiry was conducted by the Naib Tehsildar on 29.04.2023 and inspection was done and certain findings against the petitioner were recorded. Thereafter



notice was issued to the petitioner who filed his reply to the same denying all the allegations levelled against him. Statements of witnesses of the complainant party and the villagers were then recorded and on the basis of the same, findings were recorded against the petitioner as regards the illegalities and irregularities having been committed by him.

9. Along with the notice the petitioner was not supplied the copy of the inspection report or the material which was collected by the Naib Tehsildar during the course of inquiry and prior to issuance of the notice. It also does not appear that after filing of the reply by the petitioner he was supplied the same. The matter has hence been decided by taking into consideration the material which was against the petitioner but was never supplied to him. Moreover, in the subsequent proceedings also statement of the petitioner was not recorded and he was not afforded any opportunity to cross-examine the witnesses examined on part of the complainant party or to adduce his own evidence. Only his reply was taken on record without there being any consideration of the same. He was not made a part of the proceedings. It hence cannot be said that an inquiry as contemplated under the law was conducted against the petitioner. By merely receiving the reply but not even taking the same into consideration, it cannot be said that the mandatory requirement of conducting a detailed inquiry has been followed. Since removal of the petitioner, who holds a civil post, is on the basis of casting a stigma upon him, the same could not have been done without holding a detailed inquiry.

10. As a result of the aforesaid discussion, the impugned orders



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passed by the authorities below deserve to be and are accordingly quashed.

The respondents are however granted liberty to proceed afresh against the petitioner in accordance with law.

11. The petition is accordingly allowed and disposed off.

(PRANAY VERMA)
JUDGE

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