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Arvind Kumar Samadhia Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Jul-09-2013

Appellant : Arvind Kumar Samadhia

Respondent : The State of Madhya Pradesh

Advocate for Pet/Ap. : Shri. Ajay S. Raizada, Shri. D.K. Tripathi, Shri. Subodh Kathar, Shri. J.P. Sharma, Shri. Mahendra Pateriya, Shri. A.S. Raizada, Shri. V.K. Shukla, Shri. Sandeep Singh, Shri. Rahul Tripathi, Shri. K.C. Ghildiyal

Judgement :

HIGH COURT OF MADHYA PRADESH: JABALPUR Writ Petition No.12577 OF 2010(S) Arvind Kumar Samadhia Versus The State of MP. & Ors. _____ Shri Ajay S. Raizada, learned counsel for the petitioner. Shri Rahul Jain, learned Deputy Advocate General for the respondents. _____ Writ Petition No.19552 OF 201.(S) J.L. Barme Versus The State of MP. & Ors. _____ Shri D.K. Tripathi, learned counsel for the petitioner. Shri Rahul Jain, learned Deputy Advocate General for the respondents. Writ Petition No.14064 OF 200.(S) Ku. Joyce Das Versus The State of MP. & Ors. _____ Shri Subodh Kathar, learned counsel for the petitioner. Shri Rahul Jain, learned Deputy Advocate General for the respondents. Writ Petition No.9514 OF 20010(S) Umashanker

Singh Baghel Versus The State of MP. & Ors. _____ Shri Ajay S. Raizada, learned counsel for the petitioner. Shri Rahul Jain, learned Deputy Advocate General for the respondents. Writ Petition No.5882 OF 201.(S) Tikam Chandani Versus The State of MP. & Ors. _____ Shri J.P. Sharma, learned counsel for the petitioner. Shri Rahul Jain, learned Deputy Advocate General for the respondents. Writ Petition No.17321 OF 201.(S) B.P. Ahirwar Versus The State of MP. & Ors. _____ Shri A.M. Trivedi, learned senior counsel with Shri Mahendra Pateria, for the petitioner. Shri Rahul Jain, learned Deputy Advocate General for the respondents. Writ Petition No.5156 OF 201.(S) Surendra Singh Rajput Versus The State of MP. & Ors. _____ Shri A.M. Trivedi, learned senior counsel with Shri Mahendra Pateriya, learned counsel for the petitioner. Shri Rahul Jain, learned Deputy Advocate General for the respondents. Writ Petition No.5617 OF 201.(S) Surendra Singh Rajput Versus The State of MP. & Ors. _____ Shri A.M. Trivedi, learned senior counsel with Shri Mahendra Pateriya, learned counsel for the petitioner. Shri Rahul Jain, learned Deputy Advocate General for the respondents. Writ Petition No.6658 OF 201.(S) K.B. Singh Versus The State of MP. & Ors. _____ Shri A.M. Trivedi, learned senior counsel with Shri Mahendra Pateriya, learned counsel for the petitioner. Shri Rahul Jain, learned Deputy Advocate General for the respondents. Writ Petition No.6661 OF 201.(S) K.B. Singh Versus The State of MP. & Ors. _____ Shri A.M. Trivedi, learned senior counsel with Shri Mahendra Pateriya, learned counsel for the petitioner. Shri Rahul Jain, learned Deputy Advocate General for the respondents. Writ Petition No.9200 OF 201.(S) Gopal Singh Parihar Versus The State of MP. & Ors. _____ Shri A.M. Trivedi, learned senior counsel with Shri Mahendra Pateriya, learned counsel for the petitioner. Shri Rahul Jain, learned Deputy Advocate General for the respondents. Writ Petition No.11779 OF 201.(S) Uma Shanker Naidu Versus The

State of MP. & Ors. _____ Shri A.S. Raizada, learned counsel for the petitioner. Shri Rahul Jain, learned Deputy Advocate General for the respondents. Writ Petition No.13480 OF 201.(S) Rajeev Khare Versus The State of MP. & Ors. _____ Shri A.M. Trivedi, learned senior counsel with Shri Mahendra Pateriya, learned counsel for the petitioner. Shri Rahul Jain, learned Deputy Advocate General for the respondents. Writ Petition No.15761 OF 201.(S) B.P. Ahirwar Versus The State of MP. & Ors. _____ Shri A.M. Trivedi, learned senior counsel with Shri Mahendra Pateriya, for the petitioner. Shri Rahul Jain, learned Deputy Advocate General for the respondents. Writ Petition No.16871 OF 201.(S) Rakesh Shankwar Versus The State of MP. & Ors. _____ Shri A.M. Trivedi, learned senior counsel with Shri Mahendra Pateriya, learned counsel for the petitioner. Shri Rahul Jain, learned Deputy Advocate General for the respondents. Writ Petition No.16874 OF 201.(S) Rakesh Shankwar Versus The State of MP. & Ors. _____ Shri A.M. Trivedi, learned senior counsel with Shri Mahendra Pateriya, learned counsel for the petitioner. Shri Rahul Jain, learned Deputy Advocate General for the respondents. Writ Petition No.18675 OF 201.(S) Madan Mohan Tiwari Versus The State of MP. & Ors. _____ Shri V.K. Shukla, learned counsel for the petitioner. Shri Rahul Jain, learned Deputy Advocate General for the respondents. Writ Petition No.19967 OF 201.(S) Shailendra Kumar Shrivastava Versus The State of MP. & Ors. _____ Shri A.M. Trivedi, learned senior counsel with Shri Mahendra Pateriya, learned counsel for the petitioner. Shri Rahul Jain, learned Deputy Advocate General for the respondents. Writ Petition No.20054 OF 201.(S) Vikram Dutt Dubey Versus The State of MP. & Ors. _____ Shri A.M. Trivedi, learned senior counsel with Shri Mahendra Pateriya, learned counsel for the petitioner. Shri Rahul Jain, learned Deputy Advocate General for the respondents. Writ Petition No.20055 OF 201.(S) Onkar Singh Versus The State of MP. & Ors. _____ Shri A.M. Trivedi,

learned senior counsel with Shri Mahendra Pateriya, learned counsel for the petitioner. Shri Rahul Jain, learned Deputy Advocate General for the respondents. Writ Petition No.2666 OF 201.(S) Narendra Kumar Versus The State of MP. & Ors. _____ Shri A.M. Trivedi, learned senior counsel with Shri Mahendra Pateriya, learned counsel for the petitioner. Shri Rahul Jain, learned Deputy Advocate General for the respondents. Writ Petition No.5831 OF 201.(S) Vijay Seth Versus The State of MP. & Ors. _____ Shri Sandeep Singh, learned counsel for the petitioner. Shri Rahul Jain, learned Deputy Advocate General for the respondents. Writ Petition No.6942 OF 201.(S) Onkar Singh Chandel Versus The State of MP. & Ors. _____ Shri A.M. Trivedi, learned senior counsel with Shri Mahendra Pateriya, learned counsel for the petitioner. Shri Rahul Jain, learned Deputy Advocate General for the respondents. Writ Petition No.6945 OF 201.(S) Onkar Singh Chandel Versus The State of MP. & Ors. _____ Shri A.M. Trivedi, learned senior counsel with Shri Mahendra Pateriya, learned counsel for the petitioner. Shri Rahul Jain, learned Deputy Advocate General for the respondents. Writ Petition No.7712 OF 201.(S) Seva Ram Thakur Versus The State of MP. & Ors. _____ Shri Rahul Tripathi, learned counsel for the petitioner. Shri Rahul Jain, learned Deputy Advocate General for the respondents. Writ Petition No.8442 OF 201.(S) Hemant Tiwari Versus The State of MP. & Ors. _____ Shri A.M. Trivedi, learned senior counsel with Shri Mahendra Pateriya, learned counsel for the petitioner. Shri Rahul Jain, learned Deputy Advocate General for the respondents. Writ Petition No.17062 OF 201.(S) N.K. Pandey Versus The State of MP. & Ors. _____ Shri A.M. Trivedi, learned senior counsel with Shri Mahendra Pateriya, learned counsel for the petitioner. Shri Rahul Jain, learned Deputy Advocate General for the respondents. Writ Petition No.8572 OF 201.(S) Bhupendra Kumar Pandey Versus The State of MP. & Ors. _____ Shri A.M. Trivedi, learned senior counsel with Shri Mahendra Pateriya, learned counsel for

the petitioner. Shri Rahul Jain, learned Deputy Advocate General for the respondents. _____ Writ Petition No.2040 OF 201.(S) Dev Lal Prem Versus The State of MP. & Ors. _____ Shri K.C. Ghildiyal, learned counsel for the petitioner. Shri Rahul Jain, learned Deputy Advocate General for the respondents. PRESENT : Honble Shri R.S. Jha, J.:

ORDER

(9-07-2013) As all the aforesaid writ petitions involve similar and identical issues, therefore, they are heard and decided together concomitantly with the consent of the learned counsel appearing for the parties.

2. Petitioners who are Inspectors working in the Police Department have filed this petition being aggrieved by the issuance of a charge sheet proposing initiation of disciplinary proceedings by the Deputy Inspector General of Police/Inspector General of Police.

3. It is submitted that the petitioners are Gazetted Officer in view of the circulars of the State Govt. dated 11.4.2008 and December 2008 and therefore, it is the State which is empowered and authorised to initiate disciplinary proceedings against them in view of the provisions of the M.P. Civil Services (Classification, Control and Appeal) Rules 1966 and therefore, the impugned charge sheets be quashed.

4. A similar issue came up before the Gwalior Bench of this Court wherein the matter was referred for decision before a Division Bench in the case of Arun Prakash Yadav V. State of MP & Ors. decided on 28th June 2013 alongwith the question of the correctness of the decisions rendered in the case of N. K. Pandey V. State of M.P . I.L.R. (2011) MP 216.and Dalchand Ahirwar Vs. State of M.P. I.L.R. (2012) MP 90.and the Division Bench has recorded its conclusions in paragraphs 14, 28 and thereafter summarized the same in paragraph 36 in the following terms :- 14. The contention of the learned counsel for petitioner that mere declaration of the post of Inspector as Gazetted Class-II inducts the post of Inspector into the Gazetted service constituted under the Gazetted Rules, deserves outright rejection for the reason that the Gazetted Rules categorically prescribe three kinds of persons forming the Gazetted cadre under Rule 4 which

does not contemplates a fourth kind(i.e. Inspector) who claims his existence in the Gazetted service merely by implication based upon declaration of Inspector as gazetted. If such a course of action of induction by implication is permitted, then the sanctity of the Recruitment Rules shall stand eroded and arbitrariness will come into play bestowing unbridled power to the executive of making recruitment by a mode foreign to the recruitment rules by merely getting an executive order passed in favour of a select few without amending the Recruitment Rules. Moreover, it is further to be seen that the post of Inspector of Police continues till date to be the feeder post for filling up the Gazetted cadre compromising of the posts of various nomenclature falling broadly under three categories of SP, Additional SP and Dy.SP comprised under the Gazetted Rules. Accordingly, this Court is of the considered view that the first contention of the learned counsel for petitioner of seeking induction of the post of Inspector of Police by implication into the Gazetted cadre constituted under the Gazetted Rules deserves to be and is, therefore rejected.

28. In the cases, at the hand charge sheet impugned in the writ petitions have either been issued by the DIG. DIG is an authority superior in rank to SP. This Court, thus, has no hesitation to hold that initiation of the disciplinary proceedings/issuance of charge sheet by the DIG or any other authority except SP runs counter to the provisions of Regulation 228.

36. This Bench, thus, answers the re- framed question in the following manner :- 1. An Inspector of Police while assailing the competence of authority to issue major penalty/charge-sheet against him cannot avail induction into the gazetted cadre constituted under the Gazetted Rules of 200 merely because of being declared as Gazetted and being upgraded in the scale of pay of Rs.6500-10,500/-, unless the Gazetted Rules of 2000 are amended suitably.

2. For the purpose of deciding the competence of an authority to institute disciplinary proceeding/ issuance of charge sheet against an Inspector of Police, the M.P. Police Regulations alone would apply to the exclusion of M.P. Civil Service (Classification, Control and Appeal) Rules, 1966.

3. As per Regulation 228 of Police Regulations, the Superintendent of Police alone is the competent authority to initiate disciplinary proceeding/issue charge sheet for major penalties, against an Inspector of Police; and 4. Neither the decision rendered in the case of N.K.Pandey Vs. State of M.P. : ILR(2011) M.P.2168 not the decision in the case of Dalchand Ahirwar Vs. State of M.P.: ILR(2012) M.P. 902 lay down the correct law for deciding the question of competency of authority to initiate disciplinary proceeding/issue charge sheet to an Inspector of Police.

5. From a perusal of the aforesaid decision of the Division Bench, it is clear that the Division Bench has held that the petitioners do not acquire the status of Gazetted Officer but at the same time, the issuance of the charge sheet to them by the Deputy Inspector General of Police/Inspector General of Police and not by the Superintendent of Police is bad in law as it is the Superintendent of Police who is competent to do so in view of the Police Regulations.

6. The aforesaid legal position laid down by the Division Bench is not disputed by the learned counsel appearing for the parties and it is submitted by them that the issue raised in the present case is squarely covered by the decision of the Division Bench rendered in Arun Prakash Yadav (Supra).

7. In view of the aforesaid, the petitions filed by the petitioners are allowed in similar terms and for the same reasons as have been recorded by the Division Bench in the case of Arun Prakash Yadav V. State of M.P. And Ors. Decided on 28.6.2013.

8. It is however, made clear that the respondents/authorities would be at liberty to issue fresh charge sheet to the petitioners if so advised, in accordance with the provisions of law and the decision in the present case would not come in their way while doing so. It is also observed on the request of the learned counsel appearing for the parties that they would be at liberty to file an application for review etc. in case of modification of the order passed by the Division Bench in future. A copy of this order be placed in the records of aforesaid writ petitions. (R.S.Jha) Judge a

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