

MADHYA PRADESH PANCHAYATS (APPEAL AND REVISION) RULES, 1995

M. P. PANCH. (APPEAL & REVISION) RULES, 1995 (PR)182 person receiving the payments stating the sum and the tax or penalty on account of which it has been paid

9. Recovery of tax.-Any arrear of tax or penalty shall be recoverable in accordance with the provisions of section 81

10. Sharing of taxes.-The realisation of tax under section 77 in the previous. financial year shall be shared by the Gram Panchayat and Janapac- ?anchayat in-such proportion as may be determined by the State Government by general or special order

11. Repeal.-The previquis rules on the subject shall stand repealed on the date of final publication of these rules in the Madhya Pradesh Gazette. THE MADHYA PRADESH PANCHAYATS (APPEAL 1. 2. 3. 4. 5. 6. 7. 8. 9. 10

11. AND REVISION) RULES, 1995 CONTENTS Short title.Definition. Appeal and appellate authorities. Limitation of appeal. Revision. Limitation for revision. Form of appeal or application for revision. Stay of execution of orders or decision. Power of appellate or revisional authority. Costs. Repeal. 11 THE MADHYA PRADESH PANCHAYATS (APPEAL AND REVISION) RULES, 1995 dated 28th March, 1995, publish- ed in M.P. Rqj13atra, Extraordinary, dated 29th March, 1995, page 310(1)- (3)l.-In exercise of the powers conferred by the sub-section (1) of Section 95 read with Section 91 of the Madhya Pradesh Panchayat Raj Adhiniyam, 1993 (No. 1 of 1994) the State Government hereby makes the following rules, the same having been previously published as required by the sub-section (3) of the Section 95 of the said Act, namely:- 1. Short title.-These rules may be called the Madhya Pradesh Panchayats (Appeal and Revision) Rules, 1995

2. Definition.-lwthesexules, unless the context otherwise requires,— (a) "Act" means the-Madhya Pradesh Panchayat Raj Adhiniyam, 1993 (1 eof,,1994): (b) "Section" means_a section of the Act; 3. Appeal and appellate authorities.-Save where it has been other- wise provided in the Act or rules or bye-laws made thereunder, an appeal shall lie,— (a) in the case of an order passed by the Sub-Divisional Officer under any provision of the Act or rules or byelaws made thereunder-to the Collector. M. P. PANCH. (APPEAL & REVISION) RULES, 1995 (PR)183 (b) in the case of an order passed by the Collector under any provision of the Act or rules or bye laws made thereunder-to the Commissioner. (c) in the case of an order passed by the Commissioner or Director of Panchayats-to the State Government. (d) in the case of an order passed by the Panchayat specified in Column (1) of the Table below- to the authority specified in the corresponding entry in column (2) thereto. TABLE (1) (a) Gram Panchayat (b) Janapad Panchayat (c) Zila Panchayat (2) Sub-Divisional Officer. Collector. Commissioner. COMMENTARY 1. Right of Appeal.-Right of appeal is not restricted to a party to the proceeding. An appeal under Rule 3 can even be preferred by any person aggrieved. Harish Chandra Yadav v. State of M.P., 2012(2) MPLJ 27 = 2012(1) MPHT 397

2. Maintainability of Appeal.-[ll Appointment of petitioner as Panchayat Karmi by resolution. Under Section 91 of Act, order appoint- ing Panchayat Karnu IS appealable and not a resolution. - Rajkumar Kushwaha v. State of M.P., 2013(1) MPLJ 238 = 2013(1) MPWN 24 = ILR 2013 MP 53. [2] Termination of services of Panchayat Karmi by passing a resolu- tion. No further orders were issued and instead the services of respon- dent No. 5, Panchayat Karmi were brought to an end by the said resolution itself. The resolution in substance amounts to an order. Appeal against the said resolution was maintainable before the SDO. Chandrakant Kushwaha v, Collector, Katni, 2011(3) MPIJ 196 = 2011(3) MPHT 19. [31 Resolution passed by Gram Panchayat. Appeal Before Collector against the resolution not maintainable. Jurisdiction exercised by the Collector and the Commissioner in quashing the resolution is unsus- tainable. Phool Singh Marko v. State of M.P., 2010(3) MPIJ 66

3. Necessary parties.-Appeal filed by candidates before Additional Commissioner in the matter of appointment of Shiksha Karmi. Appel- lants at whose instance the impugned order is passed are not impleaded as party. ThWis anateriallacuaa. Court cannot interfere into the matter in the absence of the appellants at whose instance the impugned pppellate ordeev was passed as #hey ace necessary parties. Petition suffers from misjoinder of the parties. Chahresh Kumar Jain v. State of M.P., 2012(1) MPLJ 461 MPHT 162 4. Appeal incompetent.- Appeal challenging the appointment of Guruji, made under Education

Guarantee Scheme, could neither be preferred before the Chief Executive Officer, Zila Panchayat, after two years nor he was competent to hear such an appeal. Appeal could not be preferred by an individual but appeal can be entertained by him if filed by the Gram Panchayat. The appeal had to be heard by the District Education Guarantee Scheme Committee. Even otherwise, appeal could not be entertained after a period of two years. *Shivshakti Vyas v. Somat Singh*, 2002 (2) MPLJ 231

5. Appointment of Panchayat Karmi.-[1] Appeal shall lie & Appellate Authority have necessary powers.-The provisions of an Act cannot be interpreted by reference to the provisions of a Scheme made by the Government to give effect to the provisions of the Act, but has to be interpreted by reference to the provisions of the Act. Hence an appeal would lie against an order of appointment of Panchayat Karmi issued by Sarpanch of Gram Panchayat under Section 91 of the Adhiniyam read with Rule 3 of the Rules of 1995. Held, while deciding the appeal, the Appellate Authority will have all necessary powers to grant relief in a case where he decides to allow the appeal and such powers will also include the power to decide whether the selection made by the Gram Panchayat by adopting a resolution was not correct either on facts or in law. Further held that the view taken by the learned Single Judge in *Ramlakhan Rawat v. State of M.P.*, 2000(2) MPLJ 176 = 2001(1) eJLJ 280, is not correct in law, [OVERRULED]. *Devidayal Raikwar v. State of M.P.*, 2009(1) JIJ 7 = 2008(4) MPLJ 647 = 2008(3) MPHT 505 [DB]. [21 Gram Panchayat Karmi appointed by majority of voting not on merit hence selection process vitiated. Further an objection towards maintainability of the appeal raised by the petitioner at the last stage of final arguments also rejected for the reason that it was not raised before all three authorities below and also not even in writ petition. *Prajapal Singh v. State of M.P.*, 2009(1) MPLJ 640 = 2009(1) MPWN 24 = 2008(5) MPHT 421. [3] Appointment order of Panchayat Karmi issued by the Sarpanch of Gram Panchayat is appealable and a Revision under the Rules did not lie at all. *Rajkumari Rai v. State of M.P.*, 2009(1) MPLJ 203 = 2009(1) MPWN 107. [4] Commissioner is empowered to entertain appeal against order of appointment of Panchayat Karmi. *Dhyanendra Singh v. State of M.P.*, 2007(1) MPHT 291. See also: *Abdul Hussain Qureshi v. State of M.P.*, 2008 (4) MPLJ 546 = 2009(1) JIJ 320 = 2009(1) MPHT 3264 *Vijay Shankar Mishra v. State of M.P.*, 2008 (4) MPLJ 190

6. Appeal and revision.-[1] Appointment made by the Janpad Panchayat is amenable & the appellate jurisdiction of the Collector under Section 3 and the order of the Collector is further subject to revision before the Commissioner under Rule 5. *Shyama Dwivedi v. State of M.P.*, 2009 (1) MPLJ 456. [21 An appeal lies against an order and not against the resolution. *Vijay Shankar Mishra v. State of M.P.*, 2008 (4) MPLJ 190. t t t M. P. PANCH. (APPEAL & REVISION) RULES, 1995 (PR)185 [3] Sarpanch cannot sue and appeal independently.-Gram Panchayat is a body corporate, having power to sue or to be sued, and Gram Panchayat has to authorise somebody to act on its behalf and without the resolution by authorising any person to sue of behalf of the Panchayat, the Sarpanch cannot sue and appeal independently. *Gram Panchayat, Bamrol v. Jagdish Singh Rawat*, 2008 (3) MPLJ 127 = 2008(4) MPHT 132 = 2008(2) MPWN 102 DB. [41 Where a motion of no confidence is passed or failed, no appeal or revision lies against it, since it is neither an order nor any proceeding in any pending case. 1998 (2) JIJ 267 Relied on. *Ramnath Kaushik v. State of M.P.*, 1999 (1) JIJ 146. [51 The State Government and Prescribed Authority empowered to suspend resolution, etc. passed by panchayat hence, no appeal lies against a motion of no confidence passed. *Ramcharan Ahirwar v. S.D. O. Jatara*, 1998 (2) JIJ 267. [61 Where remedy under this rule is available no writ petition can be entertained. *Dhumsingh v. State of M.P.*, 1998 (11) MPWN 23. See also: *Moolchand Soni v. State of M.P.*, 2007(1) MPLJ 343 = 2007(2) MPHT 133

4. Limitation of appeal.-(1) shall lie to the appellate authority under rule 3 after the expiration of thirty days from the date of the order against which the appeal is made. (2) The appellate authority may admit an appeal after the expiry of thirty days referred to in sub-rule (1), if it is satisfied that there was sufficient cause for not-presenting it within that period

5. Revision.-(1) (a) The State Government, the Commissioner, the Director of Panchayat, the Collector may on its/ his own motion or on the application by any party, at any time for the purpose of satisfying itself/ himself as to the legality or propriety of any order passed by or as to the regularity of the proceeding of, the authority subordinate to/ him call for and examine the record of any case pending before, or disposed of by, such authority and may pass such order in reference thereto as it/ he may think fit:

Provided that it/ he shall not vary or reverse any order unless notice has been served on the parties interested and opportunity given to them for being heard: Provided further that no application for revision shall be entertained against an order appealable under the Act. (b) An application for revision by any party shall only be entertained if it is on the point of law and not on facts. (2) Notwithstanding anything contained in sub-rule (1),— (i) (ii) Where proceedings in respect of any case commenced by the State Government under sub-rule (1) no action shall be taken by other Officer mentioned in the said sub-rule in respect thereof, and Where proceedings in respect of any such case have been commenced by the Officer mentioned in sub-rule (1), the State (PR)186 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. M. P. PANCH. (APPEAL & REVISION) RULES, 1995 Government may either refrain from taking any action under this rule in respect of such case until the final disposal of such proceeding by such officer or may withdraw such proceeding and pass such order as it may deem fit. COMMENTARY SYNOPSIS Appeal and revision. Any party. Opportunity of hearing. Order under. Revision. Appellate authority-Powers. Appeal. Direct writ petition-not justified. Direct writ petition why justified. Jurisdiction. I till 1. Appeal and revision.-[I] Where a motion of no confidence is passed or failed, no appeal or revision lies against it, since it is neither an order nor any proceeding in any pending case. 1998 (2) J.L.J. 267 Relied on. Ramnath Kaushik v. State of M.P., 1999 (1) J.L.J. 146. See also Omprakash v. State of M.P., 1998 (11) MPWN 30. [2] No revision lies against an order of Panchayat Karmi issued by the Sarpanch of Gram Panchayat is appealable and a Revision under the Rules did not lie at all. Rajkumari Rai v. State of M.P., 2009 (1) MPLJ 203 = 2009 (1) MPWN 107. [3] No revision lies against resolution. Abdul Hussain Qureshi v. State of M.P., 2008 (4) MPLJ 546 - 2009 (1) J.I.J. 320 = 2009 (1) MPHT 322

2. Any party.-In the instant case the petitioners were appointed Shiksha Karmi Grade-III and the Collector exercising powers conferred upon him directed cancellation of appointments. Although the petitioners were not made party to the proceedings still, the order of cancellation of appointments having affected them, they are included in the term 'any party' and can avail the remedy of revision. Gajendra Singh Arya v. State of M.P., 2000 (2) MPLJ 50

3. Opportunity of hearing.-Selection list of teachers was prepared by the panchayat but on certain complaints the Collector in his revisional jurisdiction cancelled the said list and ordered for preparation of revised select list. No opportunity was afforded to the candidates who were selected earlier but whose names were omitted in the revised list. Held that the decision of the select committee rejecting a particular candidate by not including his name in the revised select list prepared after adhering to procedure is not made appealable and the Collector was competent to exercise his revisional jurisdiction over it under rule 5 of the Rules of 1995. The M.P. Panchayat Shiksha Karmi (Recruitment and Conditions of Service) Rules, 1997 clearly secure an in- M. P. PANCH. (APPEAL & REVISION) RULES, 1995 (PR)187 defeasible right to be appointed in favour of a selectee if the statutory requirements under rule 5 stood satisfied. The Collector in his order had indicated that it was found that the earlier list required correction as it was not prepared showing merits of the candidates. The revisional jurisdiction of the Collector could be exercised by the Collector only on the point of law as clearly mandated in rule 5(1)(b) of the Rules of 1995. The candidates whose names were sought to be deleted from revised list ought to have been afforded an opportunity of hearing on the limited question of law on the basis of which the Collector had taken suo motu action to cancel the earlier select list. Arti Bhatnagar v. State of M.P., 2000 (2) MPLJ 151=2000 (1) J.L.J. 349 (DB)

4. Order under.-The decision of the selection committee rejecting a particular candidate by not including his name in the select list required to be prepared adhering to the procedure and the manner regulating the assessment as contemplated under Rule 5(9) of the Rules does amount to an order as contemplated under Rule 5 and the selection Committee in view of the statutory obligations cast upon it, has to be taken to fall within the ambit of "authority" as contemplated therein. In the circumstances, even the appointing authority standing authorised to challenge the select list if it finds that the select list has not been prepared in accordance with the statutory provisions or is otherwise vitiated in- law. Arti Bhatnagar u. State of M.P., 2000 (2) MPLJ 151=2000 (1) J.I.J. 349 (DB)

5. Revision.-[I] Power of revision.-Can be exercised even suo motu. Harish Chandra Yadav v. State of M.P., 2012 (2) MPLJ 27 = 2012 (1) MPHT 397. [2] Second revision.-(i) After disposal of the revision before the Commissioner the respondent No. 5 filed the second revision before the Minister. Revision so

filed was maintainable. *Ramkinkar Vishwakarma v. State of M.P.*, 2012(2) MPLJ 690 = 2012(3) MPHT 253. (ii) Second revision before the State Government against the revisional order of the officer mentioned in Rule 5 would lie after final disposal by such officers by virtue of class (ii) of sub-rule (2) of Rule 5. *Abdul Hussain Qureshi v. State of U.P.*, 2008 (4) MPLJ 546 = 2009(1) JIJ 320 = 2009(1) MPHT 322. [3] Scope of Second revision.-Second revision against the order of the Commissioner passed in first revision is maintainable. *Sarpanch, Gram Panchayat, Bharjuna Khurd v. Santosh Singh*, 2010(4) MPLJ 417. [4] Ascribing of reasons in disposal orders.-If an order of Revisional Authority does not disclose any kind of reason, it would be an anathema to the fundamental concept of natural justice. The doctrine of *audi alteram partem* in its quintessentialness encapsulates, engulfs and inheres in it the basic concept of giving reasons, for reason is the life and soul of the order. In the absence of life and soul, the order is bound to be treated as unsustainable, indefensible and pregnable. A singular line order or the order which does not reflect any kind of applicability of (PR)188 M. P. PANCH. (APPEAL & REVISION) RULES, 1995 judicial mind cannot withstand scrutiny. By the aforesaid, it may not be understood that an elaborate order is to be passed but what is required in the order must reflect there has been application of judicial mind. Such reflection cannot be perceived unless some reasons are ascribed. Therefore, ascribing of reasons while disposing of the revision is a must. *Anita Singh v. State of M.P.*, 2009(2) MPLJ 273 JIJ 132 = 2009(1) MPHT 392. [5] No interference by High Court under Art. 226/227.-For misconduct, removal order to vacate the post of Sarpanch passed. Collector dismissed the appeal, only remedy of revision was available, but the Sarpanch moved case in the High Court. Held, when an efficacious alternative remedy by filing revision is provided, then until and unless a case is made out for invoking jurisdiction of High Court under Art. 226/227 of the Constitution of India on the ground that the impugned order is without jurisdiction or is against the settled principles of this petitioner cannot be entertained. *Malti Bai v. State of M.P.*, 2007(1) MPLJ 332. [6] Where proceedings for removal were initiated by the Collector himself (he being the Appellate Authority himself) and the Sarpanch was removed by Sub-Divisional Office after enquiry then, appeal before the appellate Authority himself against the removal was not appropriate and the Additional Commissioner was justified in entertaining the revision. Such power should be used sparingly and with cogent reasons. *Shahza Ahmed v. State of M.P.*, 2004 (3) MPLJ 577. [7] The rule empowers the revisional authority to entertain a revision against an order which is not appealable. The words used 'an order' is not to be construed in a narrow manner to understand that no revision would lie if one appeal has been provided. It deserves acceptance that a revision would lie if the order impugned is not appealable. It is to be noted that the order passed by the Collector is not appealable, and therefore, a revision would definitely lie against the said order. True it is, apart from the embargo engrafted under rule the Revisional Authority has also to act by keeping in mind the distinction between an appeal and a revision, but that does not debar him to entertain a revision. *Omkarlal Asatkar v. Sub-Divisional Officer*, 2001 (1) MPLJ 52. [8] Any person aggrieved by the rejection of his candidature by the selection committee and on inclusion of his name with select list can also invoke the revisory jurisdiction contemplated under Rule 5 on any point of law but not on facts. The revisory jurisdiction, however, cannot be exercised in a case where the order sought to be impugned is appealable under the Act, and if the aggrieved person has a right of appeal, he cannot be permitted to bypass the remedy of appeal. *Arti Bhatnagar v. State of M.P.*, 2000 (2) MPLJ 151=2000 (1) JIJ 349 (DB). [9] No appeal lies against the selection list prepared by the selection committee. But suo motu revision can be made under rule 5. *Arti Bhatnagar v. State of M.P.*, 2000 (2) MPLJ 151=2000 (1) JIJ 349 (DB). 11 M. P. PANCH. (APPEAL & REVISION) RULES, 1995 (PR)189 [10] Sua motu powers of revision should be exercised within a reasonable time. *Mohd. Yusuf v. State of M.P.*, 1999 (2) JIJ 156. [11] Collector taking case in suo-motu revision. But he cannot any order without notice to the interested parties and without hearing them. No powers can be exercised contrary to the provisions of law. *Mohd. Yusuf v. State of M.P.*, 1999 (2) JIJ 156

6. Appellate authority-Powers.-Appellate Authority has ample power to conduct an enquiry. *Mukesh Kumar v. State of M.P.*, 2000 (1) JIJ 276

7. Appeal.- No appeal lies against the resolution of no-confidence motion under S.21(1). *Kandhilal Patel v. State of M.P.*, 1999 (2) JIJ 109. An appeal lies against an order and not against the resolution. *Vijay Shankar Mishra v. State of M.P.*, 2008 (4) MPLJ 190

8. Direct writ petition-not justified.-[1] Direct writ petition not maintainable when alternative remedy of revision under Rule 5 of M.P. Panchayat (Appeal and Revision) Rules, 1995 is available. *Ramesh Soni v.*

State of M.P., 2008 (1) MPLJ 207. [2] Where remedy under this rule is available no writ petition can be entertained. *Dhumsingh v. State of M.P.*, 1998(11) MP WN 23

9. Direct writ petition why justified.-Despite alternative remedy a writ petition may be preferred directly :- (i) where the Court or the Tribunal lacks inherent jurisdiction; or (ii) when a writ is for enforcement of fundamental rights; or (iii) there is a violation of principle of natural justice ; or (iv) where vires of the Act is in question. The mandatory extent of the provision could be relaxed only if it could be shown that no prejudice was caused to the party complaining. *Ramesh Soni v. State of M.P.*, 2008 (1) MPLJ 207

10. Jurisdiction.-The respondent No.5, by suppressing the fact that the writ petition preferred by him has already been dismissed has preferred a revision before the State Government. In any case, the Minister, Panchayat and Social Welfare Department cannot sit over the order passed by the Division Bench of High Court. The initiation of proceedings by respondent No.5, before the Minister, amounts to abuse of process of law. *Mordhvaj v. State of M.P.*, 2013(2) MPLJ 196

6. Limitation for revision.-(1) No application for revision shall be entertained under sub-rule (1) of rule 5 after the expiration of 60 days from the date of the order. (2) The revisional authority may admit application for revision after expiry of sixty days if it is satisfied that there was sufficient cause for not presenting it within that period

7. Form of appeal or application for revision.-An appeal or application for revision under these rules shall be in the form of memorandum setting forth concisely the grounds of objection to the order against which I (PR)190 M. P. PANCH. (APPEAL & REVISION) RULES, 1995 appeal or application for revision is preferred and shall be accompanied by a certified copy of such order

8. Stay of execution of orders or decision.-The appellate or revisional authority referred in rules 3 and 5 may stay execution of the order appealed against pending the decision of the appeal or application for revision. **COMMENTARY Grant of stay.**-Where motion of no confidence is passed in the manner provided under section 21, revision authority under rule 8 is not competent to stay operation of the same because the effect of passing such a resolution operates immediately on the motion being passed under section 21 of the Act. The provisions of this rule cannot override the effect of the provisions of section 21. *Kaushalyabai v. Addl. Collector, Chhatarpur*, 1998 (1) MPLJ 418

9. Power of appellate or revisional authority.-The appellate or revisional authority after giving an opportunity to parties to be heard and after such further enquiry, if any, as it may deem necessary subject to the provisions of the Act and the rules made thereunder, may confirm, vary or set aside the order or decision appealed against. **IO. Costs.** -The appellate or revisional authority may award suo costs to the parties as it may deem proper

11. Repeal.-The previous rules on the subject shall stand repealed on the date of final publication of these rules in the "Madhya Pradesh Gazette". ft - *q-r-ä o ot, q-Ifi-€T fifi