

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No. 3553 of 2007

Parikshit Sahu S/o. Shri Mahasingh Sahu, Resident Of Village Badhul,
Post,tahsil And Block Navagarh, District. Durg (C.G)

---- Petitioner

Versus

1. State Of Chhattisgarh through The Secretary, Department of Panchayat and Social Welfare, DKS Bhawan, Raipur (CG)
2. The Additional Collector, Bemetara, Distt. Durg (CG)
3. The Sub Divisional Officer, (Revenue), Bemetara, Distt. Durg (CG)
4. Gram Panchayat Badhul Through The Sarpanch, Gram Panchayat Badhuyl, Tahsil And Block Nawagarh, District. Durg (C.G)

---- Respondents

For Petitioner:	Shri Parth Pritam Sahu, Advocate.
For Respondents No.1 to 3/State:	Shri UNS. Deo, Government Advocate.
For Respondent No.4.:	Shri Manoj Dubey, Advocate.

Single Bench: Hon'ble Shri P. Sam Koshy, J
Order On Board

8.12.2015

1. The Petitioner through the instant Writ Petition has challenged Annexure P-8 dated 25.4.2007 passed by the Additional Collector, Bemetara, Distt. Durg (as it then was) in Revision Case No.4-b/21/2006-07. By the said impugned order, the Additional Collector has reversed the order of the Sub Divisional Officer, Bemetara who had allowed the appeal of the Petitioner under Section 91 of the Panchayat Raj Adhiniyam, 1993 (hereinafter referred to as 'the Act of 1993').

2. Brief facts relevant for the disposal of the present Writ Petition are that the Petitioner was initially appointed as Panchayat Karmi in village Baghul, Block Navagarh, District Durg in the year 1995. On 22.3.2005, a show cause notice was issued by the Gram Panchayat, Baghul making certain allegations against the Petitioner of certain misconducts that he had committed while

discharging his duties on the post of Panchayat Secretary. To the said show cause notice, the Petitioner gave a detailed reply dated 2.4.2005 specifically denying all the allegations.

3. It is pertinent to mention at this juncture that the Petitioner referred to a village proceedings dated 25.2.2005 Annexure P-3 whereby, the Village Panchayat had already passed a resolution for terminating the services of the Petitioner for certain alleged misconducts without conducting any formal inquiries on the allegations. The said resolution of the Village Panchayat, Baghul was issued much prior even to the show cause notice Annexure P-1 dated 22.3.2005. This, according to the Petitioner itself, shows the pre-determination and bias approach on the part of the Village Panchayat against the Petitioner. Subsequently, the resolution of the Village Panchayat dated 22.3.2005 was also approved by the Gram Panchayat on 5.4.2005, Annexure P-4. This action on the part of the Village Panchayat as well as by the Gram Panchayat was challenged by way of an appeal under Section 91 of the Act of 1991 to the Sub Divisional Officer, Bemetara. The Sub Divisional Officer, after hearing the parties to the dispute, vide Annexure P-7 dated 9.5.2006, allowed the appeal holding that the action on the part of the Village Panchayat as well as by the Gram Panchayat proceeding to terminate the services of the Petitioner is bad in law.

4. The Village Panchayat, through its Surpanch, preferred a revision petition before the Additional Collector against the order passed by the Sub Divisional Officer. The revisional authority i.e. the Additional Collector, vide the impugned order dated 22.5.2004, Annexure P-8 allowed the revision of the Village Panchayat and set aside/quashed the order of the Sub Divisional Officer and held that the proceedings drawn by the Village Panchayat and Gram Panchayat passing the resolution for terminating the services of the Petitioner was proper,

legal and justified.

5. It is this order of the revisional authority which is under challenge in the present Writ Petition.

6. Learned Counsel for the Petitioner confining his argument to a solitary ground, states that the Petitioner being a Panchayat Karmi, his service conditions are governed by the Panchayat Service (Discipline and Appeal) Rules, 1999 (hereinafter referred to as 'the Rules of 1999'). Rule – 5 of the said Rule, specifies the penalties which can be imposed upon an employee of a Panchayat Department and Rule – 7 prescribes the procedure for imposing major penalty. Referring to Rule – 5, Learned Counsel for the Petitioner draws the attention of this Court to the heading “Major Penalties” stating that one of the punishments under the major penalties is removal from service not disqualifying from future employment which has been initiated against the present Petitioner. He submits that for imposing such a penalty, the procedure as laid down under Rule-7 is mandatorily required and which has not been complied with and not adhered to while proceeding to terminate the services of the Petitioner and therefore, the entire action on the part of the Respondents is bad in law and deserves to be set aside.

7. For ready reference, provision of Rule – 7 (2) of the Rules of 1999 is reproduced as under:-

“(2) When an order for formal inquiry has been made, the disciplinary authority shall frame Definite charges on the basis of allegations and shall communicate such charges, along with the statement of the allegations, to the member of the Panchayat Service and also require him to submit, within such time as may be specified a written statement of defence and also to state whether he desires to be heard in person”

8. A perusal of the show cause notice dated 22.3.2005 on the basis of which the Respondents intended to terminate the services of the Petitioner clearly reflects that there was no definite charge levelled against the Petitioner of committing a misconduct while discharging the duties of Panchayat Secretary. He further submits that the contents of show cause notice was only an omnibus complaint against the Petitioner without there being any specific details in respect of the allegations and therefore, the requirement under sub-Rule (2) of Rule 7 of the Rules of 1999 wherein, requiring the disciplinary authority to frame definite charge was not reflected and therefore, there is a clear violation of the said provision of the Rules of 1999 and therefore, the order of the revisional authority as well as the action initiated by the Respondents are all bad in law and would not be sustainable.

9. Learned Counsel for the Petitioner further in support of his contention relied upon three judgments of this Court reported in (2009) 3 C.G.L.J 72 (Aghan Singh Jangade vs. State of Chhattisgarh & Ors), (2010) 2 C.G.L.J 76 (Ilesh Kumar Sahu vs. State of Chhattisgarh & Ors), (2006) 2 C.G.L.J 186 (Dhaluram Kosaria Vs. State of Chhattisgarh & Ors.), wherein this High Court dealing with the similar matter pertaining Rule – 7 of the Rules of 1999, has set aside the order of termination of those Panchayat Karmis who were terminated from the services without compliance of the mandatory requirement of the said Rules and therefore prayed for setting aside of the impugned order.

10. Per contra, Learned Counsel for the Respondents Shri Deo and Shri Dubey submit that a perusal of the records enclosed with the Writ Petition and the return filed by the Respondents would clearly show that the Petitioner was served with show cause notice at every stage and in the show cause notice, the charges were specifically mentioned and therefore, it cannot be said that the

proposal for terminating the services of the Petitioner was without affording an opportunity of hearing. They further submit that that the authorities concerned have acted upon the resolution passed by the Village Panchayat as well as by the Gram Panchayat as a whole and therefore, it also cannot be said to be an action taken by an individual person but rather it is a case where there was an unanimous decision taken both by Village Panchayat as well as Gram Panchayat seeking for termination of the services of the Petitioner and thus prayed for rejection of the Writ Petition.

11. Having considered the rival contentions put forth by either side, the sole question which has to be looked into at this juncture is the sole ground on which the Petitioner has confined his petition of non-compliance of the requirement as envisaged under sub-Rule (2) of Rule – 7 of the Rules of 1999. The law in this regard by now is well settled and the judicial pronouncement of this High Court in the three judgments referred to by the Petitioner also holds good till date and that it has been categorically held by the judicial pronouncements of this Court in many cases that when ever there is non-compliance of the provisions of Rule – 7 of the Rules of 1999, the order automatically is liable to be held to be bad in law and the same deserves to be set aside.

12. In the instant case also, neither the show cause notice nor the other complaints which have been received are there any specific allegations of the alleged misconduct committed by the Petitioner. The documents enclosed by the Respondents along with the return also do not disclose the fulfillment of the requirement as per sub-Rule (2) of Rule – 7 of the Rules of 1999 while initiating order of termination against the Petitioner.

13. In addition to the judgments cited by the Petitioner, which squarely applies in the present case there are a couple of other decisions also decided

by this Court which are (2007) 3 M.P.H.T 106 (Chandikeshwar Singh vs. State of Chhattisgarh and Ors.) and the order dated 6.1.2010 passed by this Court in W.P.(S) No.2527/2008 in the case of Ravindra Kishore Chandra vs. State of Chhattisgarh and Ors. wherein also applying the principles laid down in Dhaluram Kosariya (supra), this Court has set aside the order of termination of the Panchayat Karmis on the ground of non-compliance of the mandatory requirement as required under Rule – 7 of the Rules of 1999.

14. Accordingly, this Court has no hesitation in holding that the order passed by the revisional authority which is impugned in this petition i.e. order dated 24.5.2007, Annexure P-8 is also bad in law and thus deserves to be and is accordingly set aside. Recently also this Court while deciding a similar petition i.e. W.P.(S) No.264 of 2010 on 4.9.2015, had held that if the requirement under Rule 7 is not followed, the order of termination and subsequent orders upholding them gets vitiated. It was also held that it not only amounts to infraction of Rule 7 but also of Article 311(2) of the Constitution of India as it also is against the principles of natural justice.

15. Learned Counsel for the Petitioner, at this juncture submits by virtue of an interim order granted by this Court as also the interim protection granted by the Sub Divisional Officer, the Petitioner is still in employment and is presently working at Gram Panchayat Hardi and accordingly, the present Writ Petition stands allowed and the impugned order is set aside with consequential relief. No order as to cost.

Sd/-
(P. Sam Koshy)
J U D G E