

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 264 of 2010**

Suresh Kumar S/o Manglu Ram Satnami, R/o Village Gelugaon, Tahsil Lormi,
Distt.-Bilaspur (C.G.)

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through : Secretary, Department of Panchayat and Rural Development, D.K.S. Bhawan, Mantralaya, Raipur (C.G.)
2. Director, Directorate of Panchayat, Raipur (CG)
3. Chief Executive Officer, Janpad Panchayat Lormi, Distt.-Bilaspur (CG)
4. Sarpanch Gram Panchayat Rajpalpur, Tahsil Lormi, Distt.-Bilaspur (CG)
5. Rajkumar Shashtri S/o Bhagawat Prasad, Secretary, Panchayat Karmi, Village Panchayat Rajpalpur, Tahsil Lormi, Distt.-Bilaspur (CG)

---- Respondents

For Petitioner	:	Ms. Anju Ahuja, Counsel
For State	:	Mr. U.N.S. Deo, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****04/09/2015**

1. By way of present Writ Petition the Petitioner has challenged the Order dated 19.08.2008 passed in Revision Case No. 516/A-89(3)/03-04. By the said impugned order the Revision Petition preferred by the Petitioner before the Director, Panchayat, Raipur (C.G.) against his removal from the post of Panchayat Karmi/Sachiv on 20.04.2000 was rejected.

2. The case of the Petitioner is that he was appointed as Panchayat Karmi/Sachiv on 29.06.1997 and continued to the said duties at village Gelugaon, Lormi District Bilaspur till April, 2000. The service of the Petitioner was terminated vide order dated 20.04.2000. Against the said order the Petitioner preferred an appeal before the Sub Divisional Officer, Lormi, District Bilaspur and the appeal was allowed on 28.04.2001. Thereafter, the Petitioner was reinstated into the Service. Subsequently, the Gram Panchayat through Sarpanch preferred Review Petition before the Collector, Bilaspur, ultimately which was allowed vide order dated 24.04.2002 setting aside the order of the Sub Divisional Officer and further ordered that the order of termination from service of the Petitioner was proper and legal. Against the said Order the Petitioner preferred Second Appeal under Section 91 of the Panchayat Raj Adhiniam 1993 before Director, Panchayat, Raipur which was again dismissed vide the impugned order dated 19.08.2008, leading to filing of the present Writ Petition.
3. The Counsel for the Petitioner submits that the entire proceedings initiated by the Gram Panchayat for terminating the service is bad in law, for the reasons that there is non-compliance of provisions of Rule 7 of the Chhattisgarh Panchayat Service (Discipline and Appeal) Rule, 1999 (in short "the Rules, 1999") and so the termination order deserves to be set aside on this ground. She further submits that there are large number of Writ Petitions which have been decided by this Court wherein on non-compliance of Rule 7 of the Rules, 1999 the Order of termination were set aside. One such order which has been relied upon by the Petitioner is the Order passed in Writ Petition No. 2143 of 2001 in the case of Smt. Anuradha Sharma Vs Gram Panchayat, Ghontha & Others, wherein this Court relying upon the earlier decisions of this Court had set aside the order of termination on account of non-compliance of provisions of Rule 7 of the Rules, 1999.
4. The Counsel for the State opposing the petition submits that the charges against Petitioner was writ large and that the case was discussed and deliberated in the Gram Panchayat and upon the resolution of the Gram Panchayat taking into account the gravity of the charges the services of the Petitioner was terminated.

5. Learned Counsel for the State very fairly admits in the instant case that on perusal of the record it would reveal that admittedly compliance of Rule 7 of the Rules' 1999 has not been made in the case of Petitioner and order of termination has been issued without following the mandatory provisions under the Rules, 1999.
6. Counsel for the State states further, also on going through the judgment passed by this Court under WP 2143 of 2001 apparently, accepts the facts that the Order passed in the said Writ Petition is also squarely applies to the facts of the present case. Further, Counsel for the State submits that in the event this Court is allowing the Petition for non compliance of Rule 7 then the Respondent may have liberty of conducting fresh inquiry against the Petitioner in accordance with Rules applicable taking into consideration the seriousness of the allegations/charges leveled against him.
7. Rule 7 of the Rules, 1999 provides for procedure before terminating services of a member of Panchayat. In the instant case though some preliminary exercise has been done but admittedly the requirement under Rule 7 were not followed.
8. Some of the decisions dealing with Rule 7 of the Rules, 1999 passed by this High Court are
 - i. Ilesh Kumar Sahu Vs State of C.G. & Ors, 2010(2) CGLJ 76
 - ii. Aghan Singh Jangade Vs State of C.G. & Ors, 2009 (3) CGLJ 72
 - iii. Chandikeshwar Singh Vs State of C.G. & Ors, 20007(3) MPHT 106 CG
 - iv. Dhaluram Kosaria Vs State of C.G. & Ors, 2006(2) CGLJ 186
 - v. Ravindra Kishore Chandra Vs State of C.G. & Ors WP(S) 2527/08 decided on 06.01.2010.
9. In view of the law laid down in the aforementioned cases, admittedly when the provisions required under Rule 7 of the Rules, 1999 having not been followed, the order of termination and the subsequent orders upholding them gets vitiated and is bad in law. Further it is just not non-compliance of the statutory provisions but is also violation and denial of the principles of natural justice. It amounts to infraction not only of Rule 7 of the Rules, 1999 but also of Article 311(2) of the Constitution of India.

10. Consequently, for the reasons of non-compliance of Rule 7 of the Rules, 1999 before issuance of termination order dated 20.04.2000, the said Order of termination in respect of the Petitioner as well as subsequent Order passed by the Collector, Bilaspur dated 24.04.2002 and Order of the Director, Panchayat dated 19.08.2008 are set aside and quashed.
11. However, while quashing Order dated 24.4.2000 the liberty is reserved with the Respondent if they so choose to initiate fresh proceeding against the Petitioner subject to due compliance of the rules governing the service conditions of the Petitioner.
12. The Petitioner after quashment of Order of termination is entitled forthwith to be reinstated in service. However, applying principles of no work no pay and also keeping in mind the fact that the order of termination is set aside on a technical ground of non compliance of Rule 7 of the Rules, 1999 the Petitioner would not be entitled for back wages for the intervening period.
13. The Writ Petition is allowed.

Sd/-
P. Sam Koshy
Judge