

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No.1846 of 2011

- Prakash Chand Soni, S/o Baldev Prasad Soni, aged about 39 years,
Address- Village Bagdumar Tahsil Damdha, District Durg (C.G.)

---- Petitioner

Versus

- State of Chhattisgarh, Through the Additional Chief Secretary,
Panchayat and Social Welfare Department, DKS Bhawan, Raipur
(C.G.)
- Director, Panchayat and Social Welfare Department, DKS Bhawan,
Raipur (CG)
- Deputy Director, Panchayat and Social Welfare Department Durg
(C.G.)
- Ku. Rekha Malviya, Panchayat Karmi Gram Panchayat Bagdumar,
Block Damdha (C.G.) through C/o Sarpanch of Gram Panchayat
Bagdumar (C.G.)

---- Respondents

For Petitioner	Mr. Ajay Shrivastava, Advocate
For Respondent/State	Mr. Bhaskar Pyasi, Panel Lawyer
For respondent No.4	Mr. Ravi Bhagat, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

15/7/2015

Heard finally with the consent of learned counsel for the parties.

(2) The petitioner has assailed the legality and validity of the order passed by the State Government (Annexure P/1), allowing revision

application preferred by Deputy Director, Panchayat & Social Welfare Department, District Durg, which in turn, was preferred by the said officer against the order passed by the Director (Panchayat), Chhattisgarh on 23.01.2009 (Annexure P/5), by which, the appeal preferred by the petitioner was allowed and the order passed by the Deputy Director, District Office, Panchayat and Social Welfare, Durg on 26.06.2008 removing the petitioner from the post of Panchayat Secretary has been set-aside.

(3) The short issue arisen for determination is - whether services of a Panchayat Secretary can be dispensed with or terminated without conducting any enquiry as envisaged under Rule 7 of of the C.G. Panchayat Service (Discipline and Appeal) Rules, 1999 (in short "the Rules, 1999")?

(4) Admittedly, on certain allegations, an enquiry was conducted against the petitioner and eventually, an enquiry report was submitted vide Annexure R/4 and thereafter, show cause notice was issued to him on 28.04.2008 vide Annexure R/3, therefore, before removing him the principles of natural justice have been complied with. However, at the same time, it is to be seen that a Division Bench of this Court in the matter of **Rooplal Nayak vs. State of Chhattisgarh and others, 2006(4) M.P.H.T. 99 (C.G.)** has held that any of the major penalty prescribed under Rule 5(b) (iv) of the Rules, 1999 cannot be imposed on a member of Panchayat service to whom the said Rules are applicable without conducting regular Departmental Enquiry as envisaged under 7 of the Rules, 1999.

(5) In the case at hand, an enquiry officer was appointed, who conducted some sort of enquiry and submitted an enquiry report, however, that runs short of a departmental enquiry as contemplated under Rule 7. The said provisions uses the words 'formal inquiry' with further stipulation that when an order for 'formal enquiry' has been made, the disciplinary authority shall frame Definite charges, communicate the same to the delinquent along with the statement of allegations, requiring him to submit within the specified time a written statement of defence and also to state whether he desires to be heard in person. Thereafter, the defence is required to to be permitted to inspect and take extracts from the records, which can be refused for reasons to be recorded in writing. On submission of reply by the delinquent, the disciplinary authority may himself enquire or appoint an enquiry officer. Appointment of Presenting Officer and seeking assistance of some other officers by the delinquent is also contemplated therein. The enquiry officer is also enabled to record evidence and thereafter, at the conclusion of the enquiry, the enquiry officer is supposed to prepare enquiry report, the copy of which is required to be furnished to the delinquent. Thus, the 'formal inquiry' envisaged under the Rules is akin to the procedure prescribed for a regular enquiry under Rule 14 of the C.G. Civil Services (Classification, Control and Appeal) Rules, 1966.

(6) The materials made available to this Court nowhere indicate that any enquiry as contemplated under Rule 7 has been initiated or conducted against the petitioner. Therefore, the impugned order of termination is *ex facie* not sustainable in law and the same deserves to be set aside.

(7) For the foregoing, the writ petition is allowed and the impugned order is set-aside. The petitioner is reinstated in service along with all consequential benefits flowing from setting aside of his order of termination. However, the respondents would be at liberty to initiate enquiry against the petitioner and take decision afresh, in accordance with law.

Sd/-

Judge
(Prashant Kumar Mishra)

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