

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WPS No. 1809 of 2015**

- Smt. Kunti Jaiswal W/o Shyam Sundar Jaiswal Aged About 45 Years  
Shikshak Panchayat, Village Chorbhatti, Block Kartala, P.S. Kartala,  
District Korba, Chhattisgarh

**---- Petitioner**

**Versus**

1. State Of Chhattisgarh Through Secretary, Panchayat And Social  
Welfare, P.S. Rakhi, Tahsil Aarang, Naya Raipur, District Raipur  
Chhattisgarh
2. Collector Korba, District Korba Chhattisgarh
3. Chief Executive Officer Zila Panchayat Korba, P.S. Korba, District  
Korba Chhattisgarh
4. Block Education Officer Kartala PS Kartala, District Korba  
Chhattisgarh
5. Head Master, Govt. Middle School Chorbhatti, Block Kartala, P.S.  
Kartala, District Korba Chhattisgarh

**---- Respondent**

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For Petitioner : Shri CJK Rao, Advocate.

For Respondent/State : Shri Sangharsh Pandey, Deputy Govt. Advocate.

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**Hon'ble Shri Justice Prashant Kumar Mishra**

**C A V Order**

**Passed on** :5/10/2015

1. The petitioner has prayed for a direction to the respondents to provide  
joining on the post of Teacher (Panchayat) and for salary from August,

2013 till date.

2. The petitioner was appointed as Teacher (Panchayat) on 19.6.2010. However, after some period, she remained absent and failed to attend duties. Therefore, show cause notice was issued to her on 1.2.2014 (Annexure-P/2) as to why disciplinary proceeding be not initiated against her. After enquiry, the petitioner was terminated on 20.8.2014. Challenging the said order, the petitioner preferred an appeal before the Collector, Korba, which was allowed on 2.3.2015 (Annexure-P/10) with a direction to the Zila Panchayat to take action in accordance with law. Since the appeal was allowed only on technical ground that the order of termination was not approved by the General Administration Committee and the appellate authority had also given liberty, the matter was again taken to the General Administration Committee wherein a meeting was convened on 2.5.2015 and the order of termination was approved vide Annexure-R-3/1.
3. In the present writ petition, the petitioner has not assailed the subsequent order Annexure-R-3/1 dated 22.5.2015. It appears, as soon as the General Administration Committee of the Zila Panchayat convened a meeting on 2.5.2015 and approved the termination, the petitioner preferred this writ petition on 7.5.2015 before the final order could be issued. The petitioner appears to have preferred this writ petition without disclosing the meeting of the General Administration Committee.

4. Be that as it may, return filed by the respondents would reveal that the villagers had lodged a complaint with the authorities vide Annexure-R-1/2 alleging that the petitioner used to attend the classes only for 2-4 days in a month and even in these days, she leaves the school at about 2 pm. In the meeting of the BEO, Korba centre, the CEO, Zila Panchayat, Korba was informed about the teachers who are absent since long. Sarpanch of the village had also lodged complaint against the petitioner. All such teachers who were found absent for years together have been terminated by the Zila Panchayat.
5. In the considered opinion of this Court, such teachers who are absent from duties for years together do not deserve any sympathy or indulgence. Block Kartala in Korba district is pre-dominately tribal area. If the school and the students in such area, where weaker section of people reside, remains without any teacher, it is a serious lapse which needs to be dealt with impunity. Moreover, while allowing the appeal, the Collector had directed the Zila Panchayat to proceed in accordance with law and thereafter the General Administration Committee of the Zila Panchayat approved the order of termination.
6. It is also to be seen that the order passed by the Zila Panchayat is not appealable before the Collector, however, the Collector, Korba wrongly entertained the appeal preferred by the petitioner, therefore, the order passed by the Collector, Korba is without jurisdiction and the petitioner is not entitled to any benefit flowing from the order which has been

passed in inherent lack of jurisdiction.

7. At the time of entering the service, the petitioner was governed by Chhattisgarh Panchayat Shikshakarmi (Recruitment and Conditions of Service) Rules, 2007, which is now substituted by the new set of Rules known as Chhattisgarh Teacher (Panchayat) Cadre (Recruitment and Conditions of Service) Rules, 2012 (for short 'the Rules, 2012'). Under Rule 13 of the Rules, 2012, any order passed under the Rules shall be appealable in accordance with the provisions of the Act. Under Rule 2(1)(a), the word 'Act' has been defined to mean the Chhattisgarh Panchayat Raj Adhiniyam, 1993. Under the said Adhiniyam, provision for appeal has been provided under Section 91 and the procedure for preferring an appeal or revision is prescribed under the Chhattisgarh Panchayat (Appeal and Revision) Rules, 1995. Under the said rules, the order passed by the Zila Panchayat is appealable before the Commissioner, Revenue Division. Thus, the Collector, Korba had no jurisdiction to entertain the appeal preferred by the petitioner.

8. In **Deepak Agro Foods Vs. State of Rajasthan and others**<sup>1</sup>, the Supreme Court has held in paras-17 and 19 thus:-

“17. All irregular or erroneous or even illegal orders cannot be held to be null and void as there is a fine distinction between the orders which are null and void and orders which are irregular, wrong or illegal. Where an authority making order lacks inherent jurisdiction, such order would be without jurisdiction, null, *non est* and *void ab initio* as defect of jurisdiction of an

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<sup>1</sup> (2008) 7 SCC 748

authority goes to the root of the matter and strikes at its very authority to pass any order and such a defect cannot be cured even by consent of the parties. (See *Kiran Singh vs. Chaman Paswan*<sup>2</sup>.) However, exercise of jurisdiction in a wrongful manner cannot result in a nullity – it is an illegality, capable of being cured in a duly constituted legal proceedings.

**19.** In *Rafique Bibi v. Sayed Waliuddin*<sup>3</sup> explaining the distinction between *null and void decree* and *illegal decree*, this Court has said that a decree can be said to be without jurisdiction, and hence a nullity, if the court passing the decree has usurped a jurisdiction which it did not have; a mere wrong exercise of jurisdiction does not result in nullity. The lack of jurisdiction in the court passing the decree must be patent on its face in order to enable the executing court to take cognizance of such a nullity based on want of jurisdiction. The Court further held that a distinction exists between a decree passed by a court having no jurisdiction and consequently being a nullity and not executable and a decree of the court which is merely illegal or not passed in accordance with the procedure laid down by law. A decree suffering from illegality or irregularity of procedure, cannot be termed inexecutable.”

9. In view of the above settled legal position, the order passed by the Collector, Korba was *void ab initio* and *non est* and cannot be acted upon.

10. For the foregoing, there is no substance in the writ petition, which deserves to be and is hereby dismissed.

Sd/-  
**Judge**  
(Prashant Kumar Mishra)

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<sup>2</sup> AIR 1954 SC 340

<sup>3</sup> (2004) 1 SCC 287