

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2204 of 2015

1. Dalchand Manikpuri S/o Marhudass Manikpuri Aged About 41 years Secretary (Panchayat), At Village Panchayat Kandavani, Police Station- Kukdur, Janpad Panchayat- Pandariya, Distt. Kabirdham (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh, Through- Secretary, Panchayat And Rural Development Department, Mahanadi Bhawan, Naya Raipur, Distt. Raipur (Chhattisgarh)
2. Collector Kabirdham, Distt. Kabirdham (Chhattisgarh)
3. Chief Executive Officer District Panchayat, Kabirdham, Distt. Kabirdham (Chhattisgarh)
4. Chief Executive Officer Janpad Panchayat, Pandariya, Distt. Kabirdham (Chhattisgarh)

---- Respondent

For Petitioner	Shri A.S. Rajput, Advocate
For Respondent/State	Shri P.K. Bhaduri, Govt. Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

30/06/2015

Heard learned counsel for the parties.

1. Petitioner is working as Panchayat Secretary of Gram Panchayat, Kandavani. He is assailing the legality and validity of the order dated 11-6-2015 whereby the Collector, Kabeerdham, has suspended him in exercise of power under Rule 9 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966.
2. Learned counsel for the petitioner would refer to the judgment of this Court rendered in **Ram Narayan Sahu v. State of C.G. & Others**¹ and **Joint Action Committee of Air Line Pilots' Association of India (ALPAI) and Others v. Director General of Civil Aviation and Others**², to argue that the Collector neither being the appointing authority nor the disciplinary authority of the petitioner, he has no jurisdiction to pass an order of suspension with respect to a Panchayat Secretary. Referring to the circular dated 19-5-2003 learned counsel would submit that the prescribed authority under Section 69 (1) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 is the Joint Director/Deputy Director, Department of Panchayat and Social Welfare, therefore, the impugned order is without jurisdiction.
3. This Court in **Ram Narayan Sahu** (supra) held thus :

“5.....It is true that the Joint Director/Deputy
Director, Panchayat and Social Welfare

1 2006 (2) CGLJ 406

2 (2011) 5 SCC 435

Department is the competent officer under Section 69 (1) of the Rules, 1993 (*sic* Adhiniyam, 1993) as per notification No.705/P/22/2003 dated 19.5.2003 issued by the State Government.”

4. It is a settled legal proposition that the authority which has been conferred with the competence alone can pass the order. The Supreme Court in **Joint Action Committee of Air Line Pilots' Association of India (ALPAI)** (*supra*) held thus :

“26. The contention was raised before the High Court that the Circular dated 29-5-2008 has been issued by the authority having no competence, thus cannot be enforced. It is a settled legal proposition that the authority which has been conferred with the competence under the statute alone can pass the order. No other person, even a superior authority, can interfere with the functioning of the statutory authority. In a democratic set-up like ours, persons occupying key positions are not supposed to mortgage their discretion, volition and decision-making authority and be prepared to give way to carry out commands having no sanctity in law. Thus, if any decision is taken by a statutory authority at the behest or on suggestion of a person who has no statutory role to play, the same would be patently illegal. (Vide *Purtabpore Co. Ltd. v. Cane Commr. of Bihar*, *Chandrika Jha v. State of Bihar*, *Tarlochan Dev Sharma v. State of Punjab* and *Manohar Lal v. Ugrasen*.)

27. Similar view has been reiterated by this Court in *Commr. of Police v. Gordhandas Bhanji*, *Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia* and *Pancham*

Chand v. State of H.P. observing that an authority vested with the power to act under the statute alone should exercise its discretion following the procedure prescribed therein and interference on the part of any authority upon whom the statute does not confer any jurisdiction, is wholly unwarranted in law. It violates the constitutional scheme.

28. In view of the above, the legal position emerges that the authority who has been vested with the power to exercise its discretion alone can pass the order. Even a senior official cannot provide for any guideline or direction to the authority under the statute to act in a particular manner.”

5. Applying the well settled principles of law to the facts of the present case and for the reasons mentioned hereinabove, the impugned order, which has been passed by an incompetent authority, is set aside. However, the respondents would be at liberty to pass fresh order on the issue in accordance with law.
6. In the result, the writ petition is allowed to the extent indicated above.
No order as to costs.

Sd/-

Judge

Prashant Kumar Mishra

Gowri