

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2290 of 2013

- Sashi Shukla S/o Shri D.P. Shukla Aged About 54 years, Occupation - Service, Presently Posted as Chief Municipal Officer, Nagar Panchayat, Sarangarh Tahsil & P.S. Sarangarh Distt. Raigarh (Chhattisgarh)

---- Petitioner

Versus

- State of Chhattisgarh Through The Secretary, Urban Administration & Development, Mahanadi Bhawan, Naya Raipur, Tahsil & Distt. Raipur (Chhattisgarh)
- Collector Raigarh, Tahsil and District Raigarh (Chhattisgarh)
- Thasildar Sarangarh, Tahsil & P.S. Sarangarh Distt. Raigarh (Chhattisgarh)

---- Respondents

For Petitioner
For Respondent/State

Mr. Saurabh Sharma, Advocate
Mr. P.K. Bhaduri, Government
Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

14/07/2015

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

(2) The petitioner has assailed the legality and validity of the order dated 24.07.2013 passed by the Collector, Raigarh in exercise of powers under Rule 36 of Chhattisgarh Municipal Service (Executive) Rules, 1973 (in short "the Rules, 1973").

(3) At the relevant time, the petitioner was posted as incharge Chief Municipal Officer, Nagar Panchayat, Sarangarh. On account of the

petitioner's absence from duty, the inhabitants of Sarangarh Town were facing difficulties in obtaining supply of drinking water, electrical energy and the general upkeep of the city. Therefore, since these issues were not properly looked into by the petitioner, the Collector has suspended him.

(4) Mr. Sharma, learned counsel for the petitioner, would submit that under Rule 36 of the Rules, 1973, the powers to issue an order of suspension have been conferred upon the Appointing Authority or the Disciplinary Authority, whereas, the Collector of the District is neither the Appointing Authority nor the Disciplinary Authority, therefore, the impugned order is without jurisdiction. Even otherwise, the respondents have not issued any charge sheet against the petitioner despite lapse of about 2 years from the date of issuance of the order of suspension.

(5) Mr. Thakur, learned Government Advocate for the State, would submit that the petitioner being a Class-III employee, the Collector of the District has the authority to suspend him and no interference is called for.

(6) Admittedly, the petitioner's substantive post is Revenue Inspector and at the relevant time, he was posted as Incharge CMO. The petitioner is, thus, appointed under Section 94(1) of the C.G. Municipalities Act, 1961.

(7) A Municipal employee governed under the Rules, 1973 can be imposed penalties as mentioned under Rule 31 and the authorities competent to impose such penalties have been mentioned in Rule 32. Under the said provisions, it is the Appointing Authority or the Disciplinary Authority or the Director of Urban Administration who can

impose penalty as mentioned under Rule 31. Thus, the Collector of the District is neither the Appointing Authority nor the Disciplinary Authority of the petitioner.

(8) In the matter of **M.R. Pradhan vs. State of Chhattisgarh and another (W.P.(S) No.642 of 2010 decided on 16.07.2014)**, this Court has held thus in para 2 & 3.

“2. It is put forth by the petitioner that the appointing authority of the petitioner is the State Govt. under Schedule II of Rules of 1966, therefore, the Collector not being the appointing authority or an authority to which the petitioner is subordinate or the disciplinary authority or any other authority empowered in that behalf by the Governor by general or special order, had no jurisdiction to place the petitioner under suspension.

3. In the matter of N.K. Panch Bhave Vs. State of Chhattisgarh and others, W.P.(S) No.2141 of 2010 decided on 11th August 2010, this Court has held thus in para 7 of the order:-

7. *In view of the submission made by learned counsel for the parties and after going through the provisions of Rule 9 of the Rules of 1966 and the notification dated 23/05/1996 and 4/08/08, I am of the considered opinion that the Collector is not competent to exercise the power of suspension in relation to the petitioner, who holds a Class-II post. The ratification of the order of suspension by the State Govt. vide order dated 28/04/2010 would not validate the order passed by the Collector which is without jurisdiction and void at its inception. It is well*

settled that void order could not be validated by subsequent approval/ratification. If there was any exigency warranting suspension could be passed either by the appointing authority of the petitioner or by the authority to whom his appointing authority is subordinate or authority on whom such power of suspension has been conferred by general or special order of the Governor in terms of the provisions contained in Rule 9 of the Rules of 1966. From the notification dated 4/8/08, it is clear that such power has been conferred on the Divisional Commissioner and the Collector has been conferred power of suspension only with regard to Class-III and Class-IV employees in view of notification dated 23/05/1996”

(9) In the matter of **Dalchand Manikpuri vs. State of Chhattisgarh and others (W.P.(S) No.2204 of 2015 decided on 30.06.2015)**, this Court has held thus in para 4 :

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 then 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 Pustabpore 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 vs. 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.”

(10) For the foregoing, the impugned order, having been passed by an authority having no jurisdiction over the matter, is quashed.

(11) Accordingly, the writ petition is allowed.

Sd/-

Judge

(Prashant Kumar Mishra)

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