

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2804 of 2015

1. Ashok Kumar Chandrakar S/o S.P. Chandrakar, Aged About 52 years Principal, Presently Working On The Post Of Block Education Officer, Pondi-Uprora, Police Station Bango, Civil & Revenue Distt. Korba, (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, School Education Department, Mahanadi Bhawan, Naya Raipur, Distt. Raipur, (Chhattisgarh)
2. Secretary, Tribal Welfare Department, Mahanadi Bhawan, Naya Raipur, District Raipur, (Chhattisgarh)
3. Collector, Korba, Distt. Korba, (Chhattisgarh)
4. Assistant Commissioner Tribal Welfare Department, Distt. Korba, (Chhattisgarh)
5. District Education Officer, Korba, Distt. Korba, (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

10/08/2015

Heard learned counsel for the parties.

- (2) Learned counsel for the petitioner would submit that the petitioner, who is working as Block Education Officer and is holding the substantive

post of Principal, which is a class II gazetted post, in the Department of School Education, has been placed under suspension by the Collector, Korba. He would submit that the Collector has no authority or jurisdiction to suspend the Class II Gazetted employee of a different department, as the Collector is neither the disciplinary authority nor the controlling authority nor has been authorized by the State Government by any other general or special order empowering the Collector to suspend Class II gazetted officer of the School Education Department. Learned counsel would place reliance on the orders passed by this Court in **N.K. Panch Bhave v. The State Government of Chhattisgarh & Another**¹ and **Dalchand Manikpuri v. State of Chhattisgarh & Others**², to contend that the order passed by an incompetent authority is non est.

(3) Learned counsel for the State would submit that if the Court reserves liberty fresh order can always be passed by the authority who has competence over the matter.

(4) In view of the law laid down by this Court in **N.K. Panch Bhave** (supra) and **Dalchand Manikpuri** (supra), it is found that the Collector has no jurisdiction nor he is empowered in any other manner to place a class II gazetted officer of the School Education Department under suspension.

(5) It is a settled legal proposition that the authority which has been conferred with the competence alone can pass the order. The Supreme

¹ WPS No.2141 of 2010 (decided on 11-8-2010)

² WPS No.2204 of 2015 (decided on 30-6-2015)

Court in **Joint Action Committee of Air Line Pilots' Association of India (ALPAI) and Others v. Director General of Civil Aviation and Others**³ 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.”

(6) In **N.K. Panch Bhave** (supra) this Court held thus :

“7.....It is well settled that void order could not be validated by subsequent approval/ratification. If there was any exigency warranting suspension of the petitioner, such order of 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.....”

(7) 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.

Sd/-

Judge

Prashant Kumar Mishra

Gowri