

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 5195 of 2012

- Dayaram Sethiya S/o Tulsiram Sethiya Aged About 38 Years
Occupation Panchayat Karmi, Village Panchayat Turenar, Block Jagdalpur, Tahsil Jagdalpur, Bastar, R/o Vill. Kurandi, Block Jagdalpur, P.S. Turenar, Dist. Bastar C.G.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Panchayat & Social Welfare Department Mantralay. Bhawan, New Raipur C.G.
2. The Dy. Director Panchayat Jagdalpur, Distrtict Bastar C.G.
3. The Chief Executive Officer Janpad Panchayat,. Jagdalpur, Dist. Bastar C.G.
4. The Sarpanch/Secretary, Village Panchauat Turenar, Jagdalpur, District Bastar C.G.
5. Tulsiram S/o Gohu Aged About 34 Years, Panchayat Karmi in Village Panchayat. Jagdalpur, District Bastar C.G.

---- Respondent

For Petitioner
For Respondent /State

Mr. Avinash K. Mishra, Advocate
Mr. P.K. Bhaduri, Govt. Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

17/3/2016

1. Heard.
2. The petitioner was appointed as Panchayat Karmi of Gram Panchayat, Turenar District Bastar, Jagdalpur on 14.01.1997. Vide Notification dated 21.07.1997 issued by the Collector, Bastar, in exercise of powers under Section

69(1) of the C.G. Panchayat Raj Adhiniyam (in short "the Adhiniyam"), the petitioner was notified as Panchayat Secretary of the said Gram Panchayat.

3. The petitioner was discharging his duties of the office of the Secretary, Gram Panchayat, Turenar, however, sometimes in the year 1999, the petitioner was not allowed to work and later on, he was informed that because of negligence in performance of his duties, he has been removed by the Gram Panchayat on 17.07.1999. Document in the record of the writ petition would reveal that the petitioner had made representation before the Deputy Director, Panchayat and Social Welfare, Bastar and the said officer was in seisin of the representation. In the course of consideration of representation, the letter dated 28.11.2005 was sent to the CEO, Janpad Panchayat, Jagdalpur with observation that a Panchayat Secretary is removable from the office only after issuance of show cause notice and giving opportunity of hearing to defend himself, therefore, if any such proceeding has been drawn against the petitioner, Dy. Director (Panchayat) be informed.
4. Return filed by the State and Janpad Panchayat is conspicuously silent about the outcome of the proceeding drawn at the level of Dy. Director (Panchayat) after 28.11.2005. Thus, the petitioner's assertion that he has been removed without following the procedure prescribed under Rule 7 of the C.G. Panchayat Service (Discipline and

Appeal) Rules, 1999 (in short "the Rules, 1999") has not been followed, has to be accepted. Moreover, the Gram Panchayat has not entered appearance in the petition.

5. Be that as it may, the law in this regard is well settled that Panchayat Secretary is a member of Panchayat Service to whom the Rules of 1999 applies. Therefore, a Panchayat Secretary, who has been duly notified under Section 69(1) of the Adhinyam, is entitled to protection under Rule 7 and he cannot be removed without following the procedure prescribed under the said Rules.
6. In the matter of **Prakash Chand Soni Vs. State of Chhattisgarh and others (WPS No.1846 of 2011, decided on 15.07.2015**, this Court has held thus in para 3, 4, 5 & 6 :

(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 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 enquiry' 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 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 enquiry' 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. Since admittedly, in the present case, the petitioner is not allowed to function as Panchayat Secretary without there being any formal order of removal issued and served upon him and moreover, there is no indication that Rule 7 of Rules, 1999 was ever pressed into service and complied with for removing the petitioner, the writ petition deserves to be allowed.

8. Accordingly, Gram Panchayat Turenar is directed to allow the petitioner to function as Panchayat Secretary of Village Turenar. The petitioner may file representation for

grant of honorarium to the Deputy Director (Panchayat),
Bastar,Jagdalpur. The said authority shall consider and
decide the representation in respect of back wages within
a period of 03 months from the date of submission of
representation.

Sd/-

Judge

(Prashant Kumar Mishra)

Shyna