

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 5591 of 2017**

D. D. Mahant S/o Late B.D.Mahant, Aged About 61 Years At Present Working
As A Tehsildar Cum S L R, Bijapur, District Bijapur, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Revenue And Disaster Management Department, Mahanadi Bhawan, New Raipur, District Raipur, Chhattisgarh
2. Commissioner, Bastar Division At Jagdalpur, District Bastar, Chhattisgarh
3. Collector, Bijapur, District Bijapur, Chhattisgarh
4. Collector, Dantewada, District Dantewada, Chhattisgarh
5. Sub Divisional Officer (Revenue), Bijapur, District Bijapur, Chhattisgarh

---- Respondents

Shri Vishnu Koshta and Shri Shobhit Koshta, counsel for the petitioner/s.
Shri A.S. Kachhawaha, Addl. A.G. for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****27/10/2017**

By this petition under Article 226 of the Constitution of India, the petitioner has assailed correctness and validity of order dated 04/10/2017 by which, he has been placed under suspension by the Commissioner of the division. The challenge is also made to the correctness of the preliminary enquiry report.

2. Learned counsel for the petitioner would submit that the petitioner has been placed under suspension in respect of an order passed by him towards payment of compensation in proceedings which are quasi judicial in nature. According to him, in

such cases, there is complete protection against any disciplinary action and if the order is wrong, it could be assailed by filing an appeal against the order.

Second submission of learned counsel for the petitioner is that a preliminary enquiry was held in the matter on the basis of certain complaints but in the preliminary enquiry, the petitioner was not afforded opportunity of hearing. Therefore, the said report could not be acted upon as to whether or not disciplinary proceedings is to be instituted or the petitioner to be placed under suspension.

The third ground is that the suspension order is non-speaking and it has virtually reached to a conclusion that the allegations of misconduct against the petitioner is correct.

Learned counsel for the petitioner has relied upon decisions of the Supreme Court in the case of **State of Orissa v. Bimal Kumar Mohanty, AIR 1994 SC 2296** and **State of Maharashtra and ors. v. Saeed Sohail Sheikh etc. etc., AIR 2013 SC 168**.

3. At the admission stage, learned State counsel would submit that in the absence of any allegations of absence of jurisdiction by the authority who has passed the order of suspension nor there being any allegation of malafide, against the authority who has passed the order, the petition is liable to be dismissed on the ground of availability of alternative remedy of filing appeal under Rule 23 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1963 (for short 'the Rules of 1963').

4. The suspension order goes to show that on certain complaints of preparation of false case of compensation, a preliminary enquiry was got held, in which, allegations were found to be *prima facie* correct. This has led to suspension of the

petitioner.

The argument that the order passed by the petitioner as Tahsildar is in quasi judicial capacity, therefore, no departmental enquiry could be initiated against him, is liable to be rejected. There is no absolute bar for initiation of disciplinary enquiry where the action which has led to initiation of enquiry and allegations of misconduct were based on quasi judicial functions. In cases where allegations are of preparation of order of the nature as has been levelled in the present case, enquiry is permissible.

5. The next submission that the petitioner ought to be given opportunity of hearing even at the stage of preliminary enquiry cannot be accepted. The purpose of preliminary enquiry was only to arrive at a *prima facie* satisfaction, whether or not the disciplinary enquiry needs to be instituted and whether he be placed under suspension. It is not a stage where the petitioner has been subjected to any penalty based on the fact finding report in the preliminary enquiry. Therefore, on this ground, the impugned order cannot be assailed.

6. The background in which observations were made by the Supreme Court in the case of **Saeed Sohail Sheikh** (supra) were entirely different and is completely distinguishable because it is not a case of disciplinary enquiry where an officer is placed under suspension under an order passed in judicial proceedings but on the basis of *prima facie* satisfaction of commission of misconduct by the departmental authorities themselves.

7. The third ground that the order of suspension is non-speaking, also deserves to be rejected because the order itself shows that the authority, while placing the petitioner under suspension, has taken into consideration, the nature and gravity of allegations and a preliminary enquiry report and a *prima facie* satisfaction.

8. While passing an order of suspension, no detailed orders are required to be passed. Challenge has been laid to the legality and validity of preliminary enquiry report. This is not a stage where this Court should undertake the exercise of examining the correctness and validity of preliminary enquiry report as this would amount to interference with the departmental enquiry which is impermissible under the law. The preliminary enquiry report is factual in nature and factual allegations would not be gone into by this Court at this stage where the petitioner has only been placed under suspension in contemplation of a departmental enquiry.

9. In the absence of there being any allegations of absence of jurisdiction or malafide against the authority who has passed the suspension order, the Writ Court ordinarily does not invoke writ jurisdiction in view of the judgment of the Supreme Court in the case of **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai, (1998) 8 SCC 1**, as the petitioner has an alternative efficacious remedy of filing appeal under Rule 23 of the Rules of 1963.

10. In the result, this petition is dismissed with liberty to file appeal.

**Sd/-
(Manindra Mohan Shrivastava)
Judge**