

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (C) No.5841 of 2009

(Arising out of order dated 17-9-2009 passed by the Secretary, Department of Women and Child Development, State of Chhattisgarh)

Hemlata Sahu, Wife of Shri S.N. Sahu, aged 45 years, R/o Street No.20, Block No.5A, Sector-2, Bhilai, District Durg (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Women & Child Development & Social Welfare, Mantralaya, Dau Kalyan Singh Bhawan, Raipur (C.G.)
2. Secretary, Department of Women & Child Development & Social Welfare, Mantralaya, Dau Kalyan Singh Bhawan, Raipur (C.G.)
3. Subhadra Sharma, Care Secretary, Department of Women & Child Development & Social Welfare, Mantralaya, Dau Kalyan Singh Bhawan, Raipur (C.G.)
4. Shaheen Bano, Wife of Shirajul Bari, aged 38 years, R/o House No.143, of Ayyappa Nagar, Bhilai, Distt. Durg (C.G.)
5. Pushpa Dabhade, W/o Dilip Dabhade, aged 32 years, R/o Ward No.23, Shardapara, Camp No.2, Opp. Hanuman Mandir, Kali Chowk, Ward No.3, Bhilai, District Durg (C.G.)
6. Nirmala Devi, W/o Late Ashok Jaiswal, aged 45 years, R/o Shastri Nagar, Bhilai, District Durg (C.G.)

---- Respondents

For Petitioner: Mr. Soumya Rai, Advocate.

For Respondents No.1 and 2 / State: -

Mr. Dhiraj Kumar Wankhede, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

12/12/2017

1. The petitioner was appointed as Member of the Chhattisgarh Rajya Mahila Aayog. She was served with notice dated 31-8-2009 (Annexure P-3) by the State Government for hearing on the complaint filed against her for which she was required to appear on 9-9-2009, but before that, she appeared and sought certain documents which

were ultimately supplied to her on 4-9-2009 and thereafter, statements of witnesses were recorded on 9-9-2009 and report was submitted on 16-9-2009 by the Secretary to the Government and ultimately, on 17-9-2009, order was passed by the State Government removing the petitioner from her post in exercise of power under Section 4(3)(f) of the Chhattisgarh Rajya Mahila Ayog Adhiniyam, 1995 (for short, 'the Act of 1995') holding that continuance of the petitioner as a Member in the office is detrimental to the public interest. Feeling aggrieved against the said order of removal, this writ petition has been filed by the petitioner.

2. Learned counsel for the petitioner would submit that no show cause notice with charges was issued to the petitioner alleging that her continuance in the office is detrimental to the interest of the public and it is in violation of the proviso to sub-section (3) of Section 4 of the Act of 1995. He would further submit that on her appearance, witnesses were examined, but no opportunity of cross-examination was given to her which has caused serious prejudice to the petitioner and therefore the order impugned deserves to be set aside.
3. Learned State counsel appearing on behalf of respondents No.1 and 2 would submit that the petitioner's term had already expired in the month of December, 2009, therefore, she is not entitled for any relief, however, he would also submit that fullest opportunity to defend was provided to her and as such the writ petition deserves to be dismissed.
4. I have heard learned counsel for the parties and considered their rival submissions.
5. Sub-section (3) of Section 4 of the Act of 1995 provides for removal of a person from the Office of Chairperson or a Member referred to in

sub-section (2). It provides as under: -

“4. Term of Office and conditions of Service of Chairperson and Members.....

(3) The State Government shall remove a person from the Office of Chairperson or a Member referred to in sub-section (2) if that person-

.....

(f) in the opinion of the State Government, has so abused the position of Chairperson or Member as to render his continuance in office detrimental to the public interest:

Provided that, no person shall be removed under this clause until he has been given a reasonable opportunity of being heard in the matter.

.....”

6. A focused glance of the aforesaid provision would show that in order to remove a person from the office of Chairperson or a Member, the State Government is required to extend a reasonable opportunity of being heard in the matter which includes the issuance of show cause notice, opportunity to lead evidence and opportunity to cross-examine the witnesses examined on behalf of the Government, as removal is a serious matter and provisions relating to removal must be observed strictly.
7. The Supreme Court (Constitution Bench) in the matter of **Khem Chand v. Union of India and others**¹, while defining the term “reasonable opportunity” employed in Article 311(2) of the Constitution of India succinctly held as under: -

“(19) To summarise : the reasonable opportunity envisaged by the provision under consideration includes :

(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the

1 AIR 1958 SC 300

charges levelled against him are and the allegations on which such charges are based;

(b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally

(c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposes to inflict one of the three punishments and communicates the same to the government servant.”

8. Reverting back to the facts of the case and following the principles of law laid down in **Khem Chand** (supra), it is quite apparent that certain complaints were made against the petitioner that she is acting contrary to the interest of public, but no show cause notice with charges has been issued to the petitioner formulating the charges by which the Government has formed an opinion that her continuance in the office is detrimental to the public interest. Not only this, when she requested for copies of certain documents, only the copies of complaints were served to her and again no show cause notice specifying charges was served as such she was deprived of opportunity to deny her guilt and to establish her innocence. The matter did not end here, but again when the witnesses were examined on 9-9-2009 before the State Government, the petitioner was not afforded any opportunity of hearing. Thereafter, even the petitioner was not granted time to lead her evidence to prove that she has acted strictly in accordance with law to uphold the office which she was holding. Thus, the formation of opinion that her continuance in the office is detrimental to the public interest is in teeth of the proviso to sub-section (3) of Section 4 of the Act of 1995 and accordingly, the order impugned is quashed. However, the petitioner

will not be entitled for any relief, as her term had already expired in the month of December, 2009.

9. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma