NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No. 2569 of 2017

- Teshudhar Singh Kashyap S/o Late Loknath Kashyap, Aged About 29 Years Posted As Technical Assistant, Janpad Panchayat, Nagri, District Dhamtari, R/o Village & Post Sankra, Tehsil Nagri, District Dhamtari (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through : Secretary, Department Of Panchayat And Rural Development, Mahanadi Bhawan Mantralaya, New Raipur, District Raipur (Chhattisgarh)
2. Chief Executive Officer, Janpad Panchayat Nagri, District Dhamtari Chhattisgarh
3. Chief Executive Officer, Zila Panchayat Dhamtari, District Dhamtari Chhattisgarh
4. Collector Dhamtari District Dhamtari Chhattisgarh

---- Respondents

For Petitioner: Mr. Saurabh Dangi, Advocate
For State: Mr. D.R. Minj, Dy. Government Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

13.06.2017

1. The challenge in the present Writ Petition is Annexure P/2 based upon which the Chief Executive Officer, Janpad Panchayat, Nagri has issued impugned order of recovery against the Petitioner as has been reflected in the annexures enclosed along with Annexure P/1.

2. Learned Counsel for the Petitioner submits that the said

impugned order Annexure P/1 has been passed in the light of the Annexure P/2 dated 19.07.2016 passed by the Chief Executive Officer, District Panchayat, Dhamtari whereby the Chief Executive Officer in a meeting dated 20.05.2016 found that there were certain financial irregularities in the working of different Janpad Panchayats.

3. The Chief Executive Officer, District Panchayat, Dhamtari had ordered for calling of explanation from the concerned employees and thereafter to take appropriate actions. However as per the Counsel for the Petitioner no such show cause notice was ever issued before issuance of the impugned order Annexure P/1. It is further alleged by the Counsel for the Petitioner that even though the Chief Executive Officer, Janpad Panchayat is said to have found financial irregularities, it was necessary for the Chief Executive Officer, Janpad Panchayat to first have held a preliminary enquiry to reach to the assessment of the extent of financial irregularities, if any and who were the actual persons who had committed the same. Only thereafter, there should have been any action initiated, which has not been done in the present case. As such, the impugned order Annexure P/1 is bad in law.

4. The learned State Counsel however opposes the Petition on the ground that there is finding of the Chief Executive Officer, District Panchayat that there were some financial irregularities and the

impugned order has been issued based upon the same to the extent of recovering the loss caused to the Janpad Panchayat.

5. Taking into consideration the rival contention put forth on either side and perusal of the record, prima facie it appears that there was no preliminary enquiry held. Neither any enquiry as such has been conducted by the competent authorities to fasten liability upon the individual persons. It also reflects that the Chief Executive Officer, Janpad Panchayat Respondent No.2 has not followed the instructions given by Respondent No. 3, the Chief Executive Officer, District Panchayat before issuance of Annexure P/1.

6. The reason this Court would like to interfere with the impugned order is also for the fact that in the event if the Petitioner does not challenge the action of recovery it would amount to the Petitioner accepting the act of having committed the misappropriation and which at later stage can also prove fatal in his service career.

7. For the aforesaid reasons, this Court is of the opinion that the impugned order is not sustainable and same is accordingly set aside / quashed.

8. However, liberty is granted to the concerned Authorities, if they so desire, to first hold the preliminary enquiry and in the course of enquiry an opportunity of hearing be also given to the respective individuals/Petitioner and only thereafter an

appropriate order be passed, if required.

9. With the aforesaid observation the present Writ Petition stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
VACATION JUDGE

kishore