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HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 3449 of 2017**

Anup Kumar Kulmitra S/o Late Shri Ganesh Prasad, Aged About 57 Years Assistant Grade III, Office At Integrated Child Development Project, Basaguda, Bijapur, Present Resident Of Village And Post Jhapal (Lormi) Tahsil And District Mungeli, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Woman And Child Welfare Department, Mantralaya, Mahanadi Bhawan, Capital Complex, New Raipur, District Raipur, Chhattisgarh
2. Joint Director, Woman & Child Welfare Department, Indrawati Bhawan, District Raipur, Chhattisgarh
3. Collector, Bijapur, District Bijapur, Chhattisgarh
4. District Woman & Child Development Officer, Bijapur, District Bijapur, Chhattisgarh
5. Planning Officer (In Charge) Urur And Basguda Office Of C E O Woman & Child Development Officer, Bijapur, District Bijapur, Chhattisgarh

---- Respondents

Shri Ashok Patil, 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****31/07/2017**

This petition has been filed by the petitioner challenging legality and validity of impugned order dated 14/07/2017 by which, penalty of compulsory retirement has been imposed on the petitioner after holding a departmental enquiry.

2. When confronted with the objection with regard to exhaustion of alternative

remedy of appeal as provided under Rule 23 of the (C.G.) Civil Services (Classification, Control and Appeal) Rules, 1966 (for short 'the Rules of 1966'), learned counsel for the petitioner submits that the order is without jurisdiction because the procedure prescribed for compulsory retirement as provided in circulars (Annexure P/2 and Annexure P/3) have not been followed. The next submission is that before initiating departmental enquiry by issuance of charge sheet, some preliminary enquiry ought to be made and petitioner should have been afforded an opportunity of hearing. By not adopting that procedure, the departmental enquiry is in violation of constitutional mandate engrafted under Article 311 (2) of the Constitution of India. The third submission of learned counsel for the petitioner is that while imposing penalty of compulsory retirement, administrative guidelines applicable in the matters of those employees who belong to Scheduled Caste, Scheduled Tribe and OBC, promulgated on 12/06/2008 (Annexure P/4) and 27/11/2012 (Annexure P/5) have not been followed. Lastly, it is submitted that the departmental enquiry itself was not completed within a period of one year which violated the administrative guideline dated 12/03/2006 (Annexure P/6) requiring completion of departmental enquiry within a stipulated period. Therefore, for all these reasons, the petitioner has approached this Court without taking recourse to remedy of appeal.

3. On the face of it, the impugned order is in the nature of penalty and not an order of compulsory retirement simpliciter under Rule 42 of the CG Civil Services (Pension) Rules, 1976 on the ground that the petitioner has become deadwood. Therefore, insistence on grounds relating to procedure to be followed in such cases as stated in circulars (Annexure P/2 and Annexure P/3) is misconceived in law. The submission of learned counsel for the petitioner that the departmental enquiry is vitiated because it was not preceded by a preliminary enquiry and therefore,

violative of Article 311 of the Constitution of India, is liable to be rejected at the threshold because there is no such constitutional requirement much less statutory precondition to institute an enquiry against a Government Servant in the State of Chhattisgarh. It would depend upon facts and circumstances of each case, whether the disciplinary authority considers it necessary to hold preliminary enquiry before institution of departmental enquiry. Once a charge sheet has been issued, enquiry held and order of penalty passed, an order of penalty could not be assailed only on that ground. The next submission that administrative circulars of the Government regarding giving one more opportunity to the employee like the petitioner ought to have taken into consideration, in the opinion of this Court, is a matter of consideration for the appellate authority and not for the Writ Court. One of the grounds in the petition being enquiry completed after more than one year, this Court has only to say that only on that count, the departmental enquiry cannot be held vitiated. The issue regarding non-consideration of the administrative circulars would be within the domain of administrative consideration. Having rejected three out of four submissions made before this Court, the petitioner is given opportunity to raise other grounds including the grounds of violation of administrative circulars by filing statutory appeal as provided under the Rules of 1966.

4. With the aforesaid observations, this petition is dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge