

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WPS No. 3398 of 2017**

Dharmendra Shrivastava S/o S/o Late Shri K. L. Shrivastva, Aged About 52 Years R/o Dantewada, District Dantewada Chhattisgarh.

**---- Petitioner**

**Versus**

1. State Of Chhattisgarh Through Secretary, Urban Administration And Development Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur (Chhattisgarh)
2. Director, Directorate, Urban Administration And Development Department, Indravati Bhawan, Naya Raipur, Distt. Raipur (Chhattisgarh)
3. Collector, District Dantewada, South Bastar, Dantewada, (Chhattisgarh).
4. Collector, District Dantewada, South Bastar, Dantewada, (Chhattisgarh).
5. Chief Municipal Officer, Nagar Palika Parishad, Dantewada District Dantewada, (Chhattisgarh).

**---- Respondents**

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|----------------|---|---------------------------------------------|
| For Petitioner | : | Shri Shrawan Agrawal, Advocate              |
| For State      | : | Shri Prafull Bharat, Addl. Advocate General |

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**S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava**

**Order On Board**

**27/07/2017**

Heard.

1. The petitioner has assailed the legality and validity of the order of imposition of penalty of removal after holding a departmental enquiry passed on 6.5.2017.
2. When confronted with the objection regarding maintainability of the petition on the ground of existence of alternative remedy of statutory appeal provided under Rule 56 of the MP/CG Municipal Employees (Recruitment and Condition of Service) Rules, 1968 (for short "the Rules of 1968"), learned counsel for the petitioner submits that since no order of confirmation was issued to the petitioner, the petitioner treats himself as a probationer, in which case, perforce,

provision contained in Rule 55 (d) of the Rules of 1968, the remedy of appeal would not be available to him, therefore this petition has been filed before this Court assailing correctness and validity of the order of penalty.

3. Learned counsel for the State would submit that the petitioner was a daily wage employee and his services were regularized by an order dated 30.9.2008 on probation for a period of two years and as the Rules provide for further extension of six months, the petitioner may not be correct in assuming himself to be continuing on probation till 2017. Therefore, bar under Rule 55 (d) of the Rules of 1968 would not apply and the petitioner will have the statutory remedy of appeal under Rule 56 of the Rules of 1968.
4. The impugned order, unmistakably, is an order of imposition of penalty after holding departmental enquiry. The penalty of removal from service as provided under Rule 49 (viii) of the Rules of 1968 has been imposed to the petitioner.
5. The petitioner was granted regular appointment on 30.9.2008 and placed on probation for a period of two years. Thereafter, neither the probation was extended nor any other order was passed.
6. Rule 13 of the Rules of 1968 deals with probation and confirmation. According to this Rule, an employee upon direct recruitment, is to be initially appointed on probation for a period of two years. Rule clearly states that the probation may be extended to a further period of 6 months in case of direct recruitment. Therefore, the maximum period of probation prescribed under the Rules is of 2 & ½ years, which elapsed long back. Therefore, the petitioner attained the status of a confirmed employee by application of principle of deemed confirmation as laid down by the Supreme Court in the case of **Dayaram Dayal Vs. State of M.P. and Anr. (AIR 1997 SC 3269)**.
7. In the conclusion, I find that the petitioner was a confirmed employee who was proceeded against in a departmental enquiry and the penalty imposed. Therefore, bar under Rule 55 (d) of the Rules of 1968 would not come in his way and the petitioner would have remedy of statutory appeal against order of penalty as provided under Rule 56 of the Rules of 1968, therefore, I am not inclined to entertain the petition on merits.
8. The petition is therefore dismissed with liberty to the petitioner to file an appeal under Rule 56 of the Rules of 1968. Taking into consideration that the doubt with regard to availability of remedy has been cleared by this judicial order, it is

directed that in case the petitioner files appeal under Rule 56 of the Rules of 1968 within a period of 45 days from today, the appellate authority shall examine the appeal on its own merits without taking any objection to the limitation aspect.

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

Praveen