NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 1284 of 2013

1. Ajit Kumar Chakradhari S/o Ramlakhan Chakradhari Aged About 35 Years R/o Vill Puta, PS, PO Baikunthpur, Tahsil Baikunthpur, Dist Korea, CG

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Panchayat And Social Welfare Department, Mahanadi Mantralaya, New Raipur,. Dist Raipur, CG

2. Chief Executive Officer Jila Panchayat, Korea, PS & PO Baikunthpur, Distt Korea, CG

3. Chief Executive Officer Janpad Panchayat, Baikunghpur, PS & PO Baikunthpur, Dist Korea, CG

4. Gram Panchayat Katkona, Janpad Panchayat, Baikunthpur, PS & PO Baikunthpur, Distt Korea, CG

---- Respondent

For Petitioner	Shri V.K. Pandey, Advocate
For Respondent/State	Shri Shashank Thakur, Govt. Advocate
For Respondent No.2	Shri Sushobhit Singh, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

26/04/2017

1. Petitioner has been terminated from service as Panchayat Secretary (Panchayat Karmi) of Gram Panchayat, Katkona.

2. Facts necessary for disposal of the writ petition are that the petitioner was served with a charge sheet on 25-11-2010

alleging that (i) he did not handover the charge to his successor in office namely; Shri Sahid Khan; (ii) he remained unauthorisedly absent from duty after assuming charge of the office of the Panchayat Secretary (Panchayat Karmi) of Gram Panchayat Katkona on 4-8-2010; and (iii) while posted as Panchayat Secretary (Panchayat Karmi) of Gram Panchayat Puta, Baikunthpur, Korea, he had shown expenditure of Rs.6,09,584/- in construction work undertaken by the Panchayat, but on verification it was found that the work has been completed only for the value of Rs.3.00 lacs and the rest of the amount has not been deposited, despite notice.

3. In response to the show cause notice, the petitioner replied to the charges No.(i) & (ii) by submitting that he had already handed over the charge to Shri Sahid Khan and that he has regularly attended the duties from 4-8-2010 onwards, however, in relation to the charge No.(iii) he would state that the balance work for the value of Rs.3,08,469/- has already been commenced and shall be completed by 31st March, 2011.

4. It is contended by the learned counsel for the petitioner that the abovesaid amount of Rs.3,08,469/- has already been deposited by the petitioner and further that the order of termination was

issued without holding the regular enquiry, as envisaged under the rules and held by this Court in **Prakash Chand Soni v. State of Chhattisgarh & Others**[1].

5. Petitioner's above submission is based on Rule 7 of the Chhattisgarh Panchayat Service (Discipline and Appeal) Rules, 1999 (for short 'the Rules, 1999') that once the authority proceeded to issue charge sheet the regular enquiry should have been conducted which has been left mid way and the petitioner has been terminated, therefore, there is not only violation of the mandatory provision, but it is also opposed to the principles of natural justice. It is also argued that the authority has wrongly concluded that the petitioner has admitted all the charges.

6. Having seen the papers, true it is that the petitioner has not admitted charges No.(i) & (ii), but in so far as charge No.(iii) is concerned, the petitioner did not contest the valuation report or the fact mentioned in the charge that he has shown expenditure of Rs.6,09,584/-, but has actually incurred expenditure of Rs.3.00 lacs only. The petitioner has not controverted or raised dispute against the valuation report nor has prayed for a fresh valuation. On the contrary, petitioner has stated that the work for the balance amount of Rs.3,08,469/- has already been

1 WPS No.1846 of 2011 (decided on 15-7-2015)

commenced and would be completed by 31st March, 2011. The petitioner has, thus, admitted the charge No.(iii).

7. It is the well settled proposition of law that when the facts constituted in the charge sheet have been admitted, the charge itself is admitted inasmuch as there remains nothing to be proved.

8. In **Channabasappa Basappa Happali v. The State of Mysore**[2], it has been held in para-5 thus:-

> "5. It was contended on the basis of the ruling reported in R. v. Durham Quarter Sessions; Ex parte Virgo, (1952 (2) QBD 1) that on the facts admitted in the present case, a plea of guilty ought not to be entered upon the record and a plea of not guilty entered instead. Under the English law, a plea of guilty has to be unequivocal and the Court must ask the person and if the plea of guilty is qualified the Court must not enter a plea of guilty but one of not guilty. The Police constable here was not on his trial for a criminal offence. It was a departmental enquiry, on facts of which due notice was given to him. He admitted the facts. In fact his counsel argued before us that he admitted the facts but not his guilt. We do not see any distinction between admission of facts and admission of guilt. When he admitted the facts, he was guilty. The facts speak for themselves. It was a clear case of indiscipline and nothing less. If a Police Officer remains absent without leave and also resorts to fast as a demonstration against the action of the superior officer the indiscipline is fully established. The learned Single Judge in the High Court was right when he laid down that the plea amounted to a plea of guilty on

2 AIR 1972 SC 32

> the facts on which the petitioner was charged and we are in full agreement with the observation of the learned Single Judge. {Also see Secretary to the Panchayat Raj and others v. Mohd. Ikramuddin, Additional District Magistrate (City) Agra v. Prabhakar Chaturvedi and another}.
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> (Emphasis supplied)

9. This Court in **Awadh Ram v. Steel Authority of India Ltd. And another**[3] held thus :

> 14. Even otherwise, the guilt is fully proved from the petitioner's statement in his own handwriting (Ex-P/5) and his statement before the enquiry officer recorded on 18.8.89 vide Ex.-P/7 wherein he admitted the charges and the guilt. It is also to be seen that in his averment in paragrapshs 7 & 8 of the first case, he admitted his signatures on Ex-P/5. Therefore, once the delinquent has admitted his guilt, no further evidence to prove misconduct is necessary.

10. The order passed in **Awadh Ram** (supra) travelled up to the Supreme Court and the Supreme Court dismissed the Special Leave to Appeal (C) No.6719 of 2015 by order dated 23.02.2015.

11. Even if charge Nos.(i) & (ii) have not been admitted by the petitioner, the gravity concerning the charge No.(iii) is in the nature of commission of financial irregularity or temporary embezzlement, therefore, the said charge by itself was serious to the extent that it admits of only one punishment i.e. punishment of removal from service.

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3 WP No.383 of 2004 (decided on 11-9-2014)

12. The measure of punishment is neither disproportionate nor the petitioner is required to be shown any leniency in the matter because a man holding an office under the State is not supposed to commit embezzlement and then deposit the amount to claim mercy or indulgence under Article 226 of the Constitution of India.

13. As a sequel, the writ petition, *sans stratum*, is liable to be and is hereby dismissed, leaving the parties to bear their own cost(s).

Sd/-

Judge
Prashant Kumar Mishra

Gowri