

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on 17.08.2017****Judgment Delivered on 31.08.2017****Writ Appeal No. 197 of 2017**

(Arising out of order dated 26.04.2017 in W.P.(S) No.1284/2013 of the learned Single Judge of this Court)

- Ajit Kumar Chakradhari S/o Shri Ramlakhan Chakradhari, Aged About 41 Years
Terminated Panchayat Secretary, R/o Village Puta, P. S. Baikunthpur, Tehsil
Baikunthpur, District Koriya (Chhattisgarh)

---- Appellant**Versus**

1. State Of Chhattisgarh Through Secretary, Panchayat And Social Welfare
Department, Mahanadi Bhawan, Naya Raipur, District Raipur (Chhattisgarh)
2. The Commissioner, Surguja Division Ambikapur, District Surguja (Chhattisgarh)
3. Chief Executive Officer, Zila Panchayat Koriya, P. S. & P O. Baikunthpur, District
Koriya (Chhattisgarh)
4. Chief Executive Officer, Janpad Panchayat Baikunthpur, P. S. & P O. Baikunthpur,
District Koriya (Chhattisgarh)
5. Gram Panchayat Katkona Through The Sarpanch, Janpad Panchayat Baikunthpur,
P. S. & P O. Baikunthpur, District Koriya (Chhattisgarh)

---- Respondents

For Appellant	:	Shri V.K. Pandey, Advocates
For State	:	Shri UNS Deo, Government Advocate
Respondent No.3	:	Shri Sushobhit Singh, Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Hon'ble Shri Sharad Kumar Gupta, Judge

C.A.V. JUDGMENT

Per Sharad Kumar Gupta, Judge

1. In this writ appeal the challenge levied is to the order dated 26.04.2017 passed by the learned Single Judge of this Court in W.P.(S) No.1284/2013 whereby the said writ petition was dismissed.
2. It is admitted by the respondents No. 1 to 3 that the appellant was Class III Panchayat Karmi, posted at Gram Panchayat, Katkona and he was declared as Panchayat Secretary. On 25/11/2010 respondent No. 2 issued him a show cause notice and charge-sheet, Annexure-P/9 (Annexure R-2/1) which was replied by him vide Annexure-P/2. Gram Panchayat, Puta had allotted him an amount of Rs.6,09,584/- for execution of different works. After the verification and evaluation of the works it was found that only work worth of Rs.3,01,115/- had actually been done and the appellant intimated that the rest of the work of Rs.3,08,469/- was in progress. The appellant along with the contemporary Sarpanch deposited the remaining amount. On 21.02.2011 respondent No. 2 passed an order, Annexure-P/3 by imposing major penalty i.e. termination of service of the appellant. Being aggrieved, the appellant preferred an appeal against the said order before the Commissioner, Surguja who dismissed the appeal on 05/03/2013, vide Annexure-P/4. That was challenged by the appellant in the Writ Petition, which has been dismissed. Hence, this appeal.
3. In brief, the appellant's case is that, he had specifically denied the charges which were mentioned in Annexure-P/9 (Annexure R-2/1). After issuing the charge-sheet and notice, respondent No. 2 had not conducted any enquiry as contemplated under Rule 7 of the Chhattisgarh Panchayat Service (Discipline &

Appeal) Rules 1999 (hereafter called as, '*Rules*') and directly imposed major penalty which is not permissible under the law. He is the Class-III employee of Jila Panchayat and as per the Appendix of the Rules, only minor penalty could be imposed by respondent No. 2 and major penalty may be imposed only by the General Administration Committee, Jila Panchayat. It is violating this provision that major penalty has been imposed by respondent No. 2 who was not competent to impose such penalty.

4. In nutshell, the case of respondents No. 1, 2 and 3 is that, the writ petition was not maintainable because appellant had alternative efficacious remedy under the Rules and the appellant was involved in commission of serious irregularities. Since in his Annexure P/2 reply, the appellant himself admitted guilt regarding charge No. 3, there is no need to hold an enquiry which would be futile exercise.
5. Shri V.K. Pandey, learned counsel for the appellant vehemently argued that the appellant never admitted charge No. 3 by Annexure P/2. Imposing of major penalty upon the appellant is the violation of the provision of Rule 7 of the Rules. Respondent No. 2 was not legally competent to impose such major penalty upon the appellant as per the Appendix of the Rules.
6. The learned Government Advocate reiterated the contentions of the respondents and argued that since the appellant had admitted his guilt, the learned Single Judge was justified in dismissing the writ petition.
7. It would be pertinent to mention the provisions of Rule 5(b) of the Rules to resolve the case in hand :

“5. (b) Major Penalties-

- (iv) Reduction in rank including reduction to a lower post or time-scale or to a lower stage in a time scale;
- (v) Compulsory retirement;
- (vi) Removal from service not disqualifying for future

employment;

- (vii) Dismissal from service which shall ordinarily be a disqualification for future employment :

Provided that in the case of member who have been allocated to the Panchayat Service and who according to the terms and conditions of their service which were immediately applicable to them before such allocation were not liable to the penalty or fine, no penalty or fine shall be indicated upon them.”

8. The provision of the Rule 5(b) (vi) of the Rules clearly indicates that removal of an employee from service of the Jila Panchayat is a major penalty.
9. Rule 7 lays down the procedure for imposing major penalties and hence apt in the present case to resolve the issue. Relevant portions of the Rules are as follows:

“ **7. Procedure for imposing major penalties.** - (1) No order, imposing on a member of the Panchayat Service, any of the penalties specified in clauses (iv) to (via) of Rule 5 shall be passed except after a formal inquiry is held as far as may be, in the manner hereinafter provided.

(2) & (3)

(4) On receipt of the written statement of defence or if any such statement is not received within the time specified, the disciplinary authority may himself enquire into such of the charges as are not admitted or appoint an Enquiry Officer to hold the inquiry and forward to him his report and, if advised, his recommendation alongwith all the inquiry papers.

(5)

(6) If the servant of the Panchayat Service desires to be heard in person, he shall be so heard. If he so desires or if the disciplinary authority so directs, an oral enquiry shall be held by the Enquiry Officer. At such inquiry evidence shall be heard as to such of the allegations as are not admitted and the person charged shall be entitled to cross examine the

witness, to give evidence in person to produce documentary evidence, if any and to have such witness called as he may with:

Provided that, the Enquiry Officer may, for reasons to be recorded in writing, refuse to call a witness.

(7) At the conclusion of the inquiry, the Enquiry Officer shall prepare a report of the inquiry, recording his findings on each of the charges together with reasons therefor.

(8)....

(9) The Enquiry Officer, if he is other than the disciplinary authority, shall submit the records of the proceedings mentioned in clause (8) above to the disciplinary authority without recommendation relating to the penalty to be imposed. The disciplinary authority shall consider the record of the enquiry and its findings on each charge, having regard to the findings on the charges and the record (if the proceedings) if he is of the opinion that any of the penalties specified in clauses (iv) to (vii) of Rule 5 should be imposed, it shall furnish to the person charged a copy of the report of the Enquiry Officer, and where the disciplinary authority is not the Enquiry Officer a statement of its findings together with brief reasons for disagreement, if any, with the findings of the Enquiry Officer.”

10. On perusal of the provision of Rule 7 (1) of the Rules, it envisages that a major penalty may be imposed upon an employee of the Panchayat after holding a formal enquiry. Rule 7(4) and (6) of the Rules manifest that either Disciplinary Authority or an Enquiry Officer can enquire and record evidence, if the charges are not admitted. Rule 7(7) of the Rules demonstrate that Enquiry Officer shall prepare a report of the enquiry and give his findings on each of the charges with reasons. In the case in hand charges No. 1 and 2 had been denied by the appellant, but there is no finding, along with reasons, regarding those charges because after the

reply of the appellant, formal enquiry was not conducted.

11. It would be relevant to refer SI No.1 of the Appendix of the Rules to resolve the issue :-

Appendix

S. No.	Class of Panchayats	Class of Service	Disciplinary Authority	Kind of penalty referred to in Rule 5 which may be imposed	Appellate Authority
(1)	(2)	(3)	(4)	(5)	(6)
	Zila Panchayat/ Janpad Panchayat	Class III and IV	Chief Executive Officer	Minor Penalty	General Administration Committee.
			General Administration Committee	Major Penalty	General body.

12. It is noticeable as per the Appendix that respondent No.2 who was the Disciplinary Authority in case of the appellant is competent to impose only minor penalty. The General Administration Committee is competent to impose any major penalty, if required, upon a delinquent employee of Jila Panchayat. In other words, respondent No.2 is not competent to impose major penalty i.e. termination of service of the appellant and for this purpose, the competent authority is the General Administration Committee. Respondent No.2 has exercised such a power which is not vested with him.
13. Looking to the above circumstances, facts and the provisions of the Rules, we find that termination order of the appellant Annexure P/3, passed by respondent No.2 and appellate order Annexure P/4 passed by the Additional Commissioner, Sarguja Division Ambikapur, District – Sarguja are bad in law and deserve to be quashed. Thus, the orders Annexures P/3 and P/4 and the impugned order of the learned Single Judge dated 26.04.2017 are hereby set aside. The matter is

remitted to Respondent No.2 to proceed afresh, in the light of what is stated above, from the stage of filing of reply, Annexure P/2. This Writ Appeal is ordered accordingly.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(Sharad Kumar Gupta)
Judge