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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.661 of 2016

Smt. Pushpa Sahu, W/o Shri Ganesh Sahu, aged about 31 years, R/o Village & Post Sarsinwa (Bhatapara), Tehsil Bilaigarh, District Baloda Bazar (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Urban Administration, New Mantralaya, Zero Point, Post & PS Mandir Hasaud, Raipur (C.G.)

2. Directorate Urban Administration and Development, Chhattisgarh, through the Director, Naya Raipur (C.G.)

3. The Chief Municipal Officer, Municipal Council, Saraipali, District Mahasamund (C.G.)

4. Deputy Director (Administration), Urban Administration and Development, Regional Office Raipur, District Raipur (C.G.)

5. Municipal Council, Saraipali, through the President, District Mahasamund (C.G.)

6. Rashtriya Shiksha Parishad, Through the Director, 6-B, P-Block, Eighty Feet V.I.P. Road, Yashoda Nagar, Kanpur (Uttar Pradesh)

---- Respondents

For Petitioner: Mr. Jitendra Pali, Advocate.
For the State/Respondents No.1, 2 and 4: -
Mr. Dhiraj Kumar Wankhede, Govt. Adv.
For Respondents No.3 and 5: -
Mr. Akhilesh Kumar, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

14/02/2017

1. The petitioner is working as Shiksha Karmi Grade-III appointed pursuant to the recommendation of the President-

in-Council of Municipal Council, Saraipali, on 21-3-2012, as such, appointing authority of the petitioner is the President-in-Council of Municipal Council, Saraipali and she has been confirmed on the post of Shiksha Karmi Grade-III on 29-9-2014. On some complaint made against the petitioner that her educational qualification is not valid, some enquiry was conducted by the Directorate of Urban Administration and Development and by order dated 7-12-2015, the Director, Urban Administration and Development directed the Chief Municipal Officer, Municipal Council, Saraipali to give an opportunity of hearing to the petitioner and cancel her order of appointment. Pursuant to that order, the Chief Municipal Officer, Municipal Council, Saraipali, issued notice to the petitioner along with enquiry report to file her reply otherwise, her appointment shall be cancelled. Calling in question, legality and validity of the aforesaid two notices issued by the Director, Urban Administration and Development and the Chief Municipal Officer, Municipal Council, Saraipali, this writ petition has been filed principally on the ground that the appointing authority of the petitioner is the President-in-Council of Municipal Council, Saraipali, as per Rules 2(b) and 5 of the Chhattisgarh Nagarpalika Shiksha Karmi (Recruitment and Conditions of Service) Rules, 2008 (for short, 'the Rules of 2008'). Therefore, the notices issued by the respondent authorities are without

jurisdiction and as such, the impugned orders deserve to be quashed.

2. Mr. Jitendra Pali, learned counsel appearing for the petitioner, has placed vehement reliance on the decision of the Supreme Court in the matter of **Joint Action Committee of Air Line Pilots' Association of India (ALPAI) and others v. Director General of Civil Aviation and others**[1] and submitted that the petitioner's appointing authority is the President-in-Council of Municipal Council, Saraipali and as such, respondents No.1 and 2 have no jurisdiction to initiate proceedings of termination.

3. Appearing for the State/respondents No.1, 2 and 4, Mr. Dhiraj Kumar Wankhede, learned Government Advocate, would submit that the order Annexure P-1 dated 7-12-2015 is only a direction to the Chief Municipal Officer, Municipal Council, Saraipali, to proceed in accordance with law after giving an opportunity to the petitioner and as such, the writ petition is not maintainable, as the same is inconsonance with clause 9 of the order of appointment which clearly stipulates that in case the certificate is found to be forged or false, her appointment is liable to be quashed. Therefore, the writ petition deserves to be dismissed.

4. Mr. Akhilesh Kumar, learned counsel appearing for respondents No.3 and 5, would submit that the notice

1 (2011) 5 SCC 435

Annexure P-2 dated 2-2-2016 is only a show cause notice issued to the petitioner supplying the enquiry report and to show cause and as such, the writ petition is not maintainable against the bare show cause notice and it is liable to be dismissed on that ground only, as the petitioner's certificate has been found to be fake by the enquiry officer.

5. In rejoinder submission, Mr. Jitendra Pali, learned counsel appearing for the petitioner, would submit that the notice Annexure P-1 issued by respondent No.2 is without jurisdiction, as the President-in-Council of Municipal Council, Saraipali, is the appointing authority of the petitioner and the petitioner's case was never placed before the appointing authority for taking any action, as such, the writ petition would be maintainable.

6. I have heard learned counsel for the parties and considered the rival submissions made herein and also perused the record.

7. The petitioner was appointed in accordance with the Rules of 2008 on the recommendation of the President-in-Council of Municipal Council, Saraipali, on 21-3-2012 and therefore appointing authority of the petitioner is President-in-Council of the said Municipal Council.

8. Rule 10 of the Rules of 2008 clearly provides that Shiksha

Karmis shall be under the administrative control of Municipal Corporation, Municipal Council or Nagar Panchayat, as the case may be, and the President-in-Council of Municipal Council shall be disciplinary authority for major punishment and Chief Municipal Officer of Municipal Council shall be the disciplinary authority for minor punishment. Rule 11 clearly provides that the services of a Shiksha Karmi may be terminated by appointing authority. Therefore, undisputedly, the appointing authority of the petitioner to impose penalty of termination is the President-in-Council of Municipal Council, Saraipali.

9. Notice Annexure P-2 has been issued to the petitioner by the Chief Municipal Officer, Municipal Council, Saraipali, which clearly states that reply be filed within 15 days failing which her appointment shall be cancelled. It is not the case of the Municipal Council that the matter has been placed before the President-in-Council and the President-in-Council has considered and authorised the Chief Municipal Officer to issue notice to the petitioner and as such, the impugned notice Annexure P-2 deserves to be quashed, as the show-cause notice issued is without jurisdiction.

10. Objection of respondent No.2 with regard to maintainability of the writ petition can be considered at this point.

11. It is well settled law that the writ court may not exercise its

discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless it is without jurisdiction and without authority of law, but it is equally well settled that when the notice is issued with premeditation, the writ petition would be maintainable against the show cause notice.

12. In the matter of **Siemens Ltd. v. State of Maharashtra and others**[2], Their Lordships of the Supreme Court have held that the writ petition against show cause notice would be maintainable when notice is issued with premeditation and observed as under: -

> "9. Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including State of U.P. v. Brahm Datt Sharma[3], Special Director v. Mohd. Ghulam Ghouse[4], and Union of India v. Kunisetty Satyanarayana[5], but the question herein has to be considered from a different angle viz. when a notice is issued with premeditation, a writ petition would be maintainable. In such an event, even if the court directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose. (See K.I. Shephard v. Union of India[6]). It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter-affidavit as also in its purported show-cause notice.

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2 (2006) 12 SCC 33
3 (1987) 2 SCC 179 : AIR 1987 SC 943
4 (2004) 3 SCC 440
5 (2006) 12 SCC 28
6 (1987) 4 SCC 431 : AIR 1988 SC 686

> 10. The said principle has been followed by this Court in V.C. Banaras Hindu University v. Shrikant[7], stating: (SCC p.60, paras 48-49)
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> > "48. The Vice-Chancellor appears to have made up his mind to impose the punishment of dismissal on the respondent herein. A post-decisional hearing given by the High Court was illusory in this case.
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> > 49. In K.I. Shephard v. Union of India (supra) this Court held: (SCC p. 449, para 16)
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> > > 'It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose.' "
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> (See also Shekhar Ghosh v. Union of India[8] and Rajesh Kumar v. D.C.I.T.[9])"

13. Similar is the proposition of law laid down by the Supreme Court in the matter of **State of U.P. v. Arezzo Developers Ltd.**[10] holding that when any show-cause notice is issued without jurisdiction, writ petition would be maintainable.

14. Aforesaid determination brings me to the notice Annexure P-1 in which the Director, Urban Administration and Development has directed the Chief Municipal Officer of Municipal Council, Saraipali, to cancel the appointment of the petitioner on the post of Shiksha Karmi Grade-III after giving an opportunity of hearing to her.

15. The Supreme Court in **Joint Action Committee of Air Line**

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7 (2006) 11 SCC 42 : (2006) 6 Scale 66
8 (2007) 1 SCC 331 : (2006) 11 Scale 363
9 (2007) 2 SCC 181 : (2006) 11 Scale 409
10 (2016) 12 SCC 530

Pilots' Association of India (ALPAI) (supra) has held that the authority which is conferred with competence under the statute can alone pass an order, no other person, even a superior authority, can interfere with the functioning of the statutory authority and observed as under: -

> "27. Similar view has been reiterated by this Court in *Commr. of Police v. Gordhandas Bhanji*[11], *Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia*[12] and *Pancham Chand v. State of H.P.*[13] observing that an authority vested with the power to act under the statute alone should exercise its discretion following the procedure prescribed therein and interference on the part of any authority upon whom the statute does not confer any jurisdiction, is wholly unwarranted in law. It violates the constitutional scheme.
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> 28. In view of the above, the legal position emerges that the authority who has been vested with the power to exercise its discretion alone can pass the order. Even a senior official cannot provide for any guideline or direction to the authority under the statute to act in a particular manner."

16. In view of the aforesaid principle of law laid down by Their Lordships of the Supreme Court, respondent No.2 – Director, Urban Administration and Development, though is superior authority, he is not entitled to issue direction to the Chief Municipal Officer of Municipal Council, Saraipali, for cancellation of the petitioner's appointment, as under the Rules of 2008, only the President-in-Council of the Municipal Council being the disciplinary authority can

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11 AIR 1952 SC 16
12 (2004) 2 SCC 65 : AIR 2004 SC 1159
13 (2008) 7 SCC 117 : AIR 2008 SC 1888

impose major punishment of termination / cancellation of appointment.

17. In sum and substance, the orders Annexures P-1 and P-2 issued by the Director, Urban Administration and Development and the Chief Municipal Officer, Municipal Council, Saraipali, respectively, are without jurisdiction and without authority of law and therefore deserve to be quashed and are hereby quashed. However, the respondents are at liberty to proceed in accordance with law.

18. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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