

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 2794 of 2016**

- Shyam Kumari Ramteke D/o Late Jialal Ramteke, Aged About 41 Years Supervisor, Women And Child Development Department, Block- Patan, Sector Batrel, Distt. Durg, Civil And Revenue District. Durg, (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Women And Child Development Department, Mahanadi Bhavan, New Raipur, Distt. Raipur, (Chhattisgarh)
2. Director, Women And Child Development Department, Indrawati Bhavan, Raipur, Distt. Raipur, (Chhattisgarh)
3. Commissioner, Durg Division, Durg, Distt. Durg, (Chhattisgarh)
4. Collector, Durg, Distt. Durg, (Chhattisgarh)
5. District Program Officer, Women And Child Development Department, Durg, Distt. Durg, (Chhattisgarh)

---- Respondents

For Petitioner:

Mr. M.K. Sinha, Advocate

For State :

Mr. Adhiraj Surana, Dy. Government Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****22.03.2017**

1. The challenge through the present Writ Petition is the order dated 19.05.2016 whereby the services of the Petitioner has been placed under suspension and also the order dated 30.05.2016 whereby the charge sheet has been issued to the Petitioner. Both the order of suspension as well as the charge sheet issued to the Petitioner have been issued by the Divisional Commissioner, Division Durg, District Durg.
2. The contention of the Petitioner is that the Divisional Commissioner is not the competent authority either for

suspending the Petitioner nor for initiating disciplinary proceeding against the Petitioner. The Petitioner is working on the post of Supervisor in the department of Woman and Child Development which indisputably is a class III category post. According to the Petitioner so far as the Divisional Commissioner is concerned since there is a notification issued by the State Government whereby the Divisional Commissioner has been empowered to initiate disciplinary action only against Class I and II Officers in the division in which he is Commissioner. The Commissioner would not be empowered to initiate any disciplinary proceeding or issuing of order of suspension so far as an employee in class III or IV category is concerned.

3. He further submits that pending the Petition the order of suspension against the Petitioner has been revoked and grievance of the Petitioner so far as the order of suspension is concerned now stands redressed.
4. The only issue which remains to be adjudicated upon is whether the Divisional Commissioner is competent to initiate disciplinary proceeding against the Petitioner i.e. Class III employee or not.
5. A plain reading of the provisions of Rule 9 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 would reveal that a disciplinary authority is empowered to initiate disciplinary proceeding against any government servant. In the present case indisputably the disciplinary authority would be the director or commissioner in the Woman and Child Development Department, Durg. The Divisional Commissioner cannot exercise either of these powers and that Divisional Commissioner

is empowered to initiate proceeding only against the officers who are in the rank of Class I and II post not in the case of Class III employees.

6. The State Government vide its notification dated 04.08.2008 confers power the Divisional Commissioner in this regard. The said notification of the State Government is enclosed along with the return filed by the State as Annexure R/1 which specifically narrates the power of the Divisional Commissioner to impose penalty and disciplinary proceeding against Class I & II officers in the division in which the Commissioner is posted. It also implies that he does not have power so far as employees working under the class III and IV categories.
7. The Hon'ble Supreme Court in the case of **Marathwada University Vs. Seshrao Balwant Rao Chavan [1989 (3) SCC 132]** in Paragraph 20 states as under:

“20.It is a settled principle that when the Act prescribes a particular body to exercise a power, it must be exercised only by that body. It cannot be exercised by others unless it is delegated.....”

Statutory power must be exercised only by the body or the officer in whom it has been confided and unless there is an expressed power by way of sub-delegation it cannot be exercised by any other officer.

8. The Supervisory power that a Commissioner of a division enjoys is to the limited extent of execution and implementation of the Scheme in the department. The power of supervision of work does not in any manner bring home the power of Commissioner to disciplinary action against the employees of Class III and Class IV categories.

9. In the case of **Scientific Adviser to the Ministry of Defence and Others Vs. S. Daniel and Others [1990 SCC Supl. 374]**, the Hon'ble Supreme Court in very categorical terms has held that when the Act or Regulation envisage the power of appointment conferred by them on certain authorities being delegated, the power conferred on the delegates is circumscribed by the instrument of such delegation and cannot be extended beyond its ambit.
10. In view of the same the charge-sheet dated 30.05.2016 having been issued by an officer who is not competent, therefore, the same deserves to be and accordingly quashed.
11. The Respondent authority would be at liberty to initiate appropriate disciplinary proceeding against the Petitioner, if they so choose, through the competent disciplinary authority.
12. With the aforesaid observation the present Writ Petition stands allowed and disposed off.

Sd/-

(P. Sam Koshy)
JUDGE