

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (S) No. 2715 of 2008**

Bhagirathi Joshi S/o late Shri M. D. Joshi, aged about 45 years,
presently posted as Chief Executive Officer, Janpad Panchayat,
Durg, District Durg (CG)

---- Petitioner**Versus**

1. State of Chhattisgarh through Department of Panchayat and Rural Development, Mantralaya, DKS Bhawan, Raipur (CG)
2. Development Commissioner, Vikas Bhawan, Civil Line Raipur (CG)
3. Collector, District Durg (CG)
4. Chief Executive Officer, Jila Panchayat, District Durg (CG)

---- Respondents

For Petitioner	:	Shri Jitendra Pali, Advocate
For Respondent 1 to 3	:	Shri S. P. Kale, Dy. Advocate General
For Respondent no.4	:	Shri Pawan Shrivastava, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****25/07/2018**

Challenge in the present writ petition is to the order Annexure P-12 dated 15.04.2008 whereby the respondent no.4 has passed an order of recovery against the petitioner to the tune of Rs.7,88,114/- with interest totaling Rs.12,94,896/-.

2. Brief facts of the case are that the petitioner in the year 2005 was working as a Chief Executive Officer at Janpad Panchayat, Bemetara. On 21.06.2005 the petitioner was given additional charge of CEO, Janpad Panchayat, Nawagarh. The petitioner assumed the additional charge on 23.06.2005 and had the additional charge with him till 29.07.2005.

Subsequently, it is said that a complaint was lodged by one Manohar Lal Rajput alleging certain irregularities on the part of the petitioner while executing certain works under Janpad Pnachayat, Nawagarh when the petitioner was having the additional charge of CEO. On the complaint received by the Collector, an enquiry was ordered to be conducted and the enquiry was conducted by the Deputy Director Panchayat. Based on the enquiry report of the Dy. Director, Panchayat, the Collector, Durg initially issued a show cause notice to the petitioner on 26.08.2006 seeking explanation on the alleged complaint and the irregularities so committed by the petitioner. The petitioner filed a detail reply to the same categorically denying all the allegations made to it. Thereafter the Collector, did not proceed with the show cause notice. Subsequently the CEO, Zila Panchayat, Durg vide notice dated 14.03.2008 again issued a show cause notice to the petitioner in respect of the same allegation of irregularities for which the petitioner on an earlier occasion was issued with a show cause notice by the Collector. The petitioner was granted 3 days time for filing reply to the show cause notice. Thereafter an order was passed on 28.03.2008 by the CEO, Zila Panchayat imposing recovery of an amount of rupees more than 12 lakhs against the petitioner. The petitioner immediately raised an objection/representation to the concerned authority vide letter dated 31.03.2008. After consideration of the said representation of the petitioner, the CEO, Zila Panchayat again issued the impugned order dated 15.04.2008 maintaining the order of recover to the tune of Rs.7,88,114/- with interest totaling Rs. 12,94,896/-.

3. Contention of the counsel for the petitioner is that the impugned order is bad for more than one grounds; firstly the order has been passed by an officer who is incompetent to impose an order of punishment upon the petitioner. Secondly it is only the State Govt. which could have passed the order against the petitioner and it is not vested upon the Chief Executive Officer of Zila Panchayat. Thirdly the impugned order is per se illegal for the reason that no opportunity of hearing has been granted to the petitioner in the course of the alleged preliminary enquiry which was conducted by the respondents and which is the basis of the issuance of the order of recovery.

4. Counsel appearing for respondent no.4 opposing the petition submits that it is a case where the authority concerned had got an enquiry conducted from the Project Officer who had submitted an enquiry report and based upon which the show cause notice was issued. When the petitioner did not reply to the show cause notice, the order of recovery was passed on 28.03.2008 to which the petitioner made a representation on 31.03.2008 which again was considered by the officials and based upon which the final order was passed on 15.04.2008. According to the counsel for respondent no.4, it is not a case where the petitioner has not been granted an opportunity of hearing rather he has been issued a show cause notice and explanation was also called which was considered and only thereafter the impugned order was passed. Therefore, there is no scope for interference left for the impugned order of recovery.

5. Having heard the contentions put forth on either side and on perusal of the record, undisputedly the petitioner had discharged the duties of a CEO in the capacity of having the additional charge of Janpad Panchayat,

Navagarh between 23.06.2005 to 29.07.2005. Though there was certain complaint made and two inquiries were conducted; one by the Collector through the Dy. Director and the other by the Chief Executive Officer, Zila Panchayat through the Project Officer yet in both the inquiries the petitioner was not granted an opportunity of hearing nor was he taken into confidence while the enquiry was being conducted. The petitioner was not even called upon for physical verification which was carried out by the Dy. Director so also by the Project Officer while conducting the two inquiries.

6. Another fact which is not in dispute is that the show cause notices issued by the Collector so also by the CEO, Zila Panchayat, both have been based upon the two enquiry reports submitted by the officers. Once when the petitioner has not been taken into confidence in the enquiry conducted by the two Officers i.e. firstly by the Dy. Director and secondly by the Project Officer, the enquiry so conducted loses all its sanctity.

7. It is well settled that any enquiry which is ordered or conducted by the Department in respect of a misconduct or an irregularity against an employee, the least that is expected is that the employee is taken into confidence at the time of enquiry. In the instant case, none of the respondents have given an opportunity of defence to the petitioner in the enquiry which was conducted and the impugned order passed in the instant case is primarily based on the enquiry report. Once when the enquiry report itself loses its sanctity, the decision taken on the said faulty enquiry is also equally bad and is not sustainable.

8. Thus, this Court is of the opinion that the impugned order Annexure P-12 dated 15.04.2008 passed by respondent no.4 is not sustainable and the same deserves to be and is accordingly quashed. Reserving the right

of the respondents to initiate fresh proceedings in accordance with law after granting opportunity of hearing to the petitioner, the present writ petition stands allowed with consequences to follow.

**Sd/-
(P. Sam Koshy)
JUDGE**