

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No. 5250 of 2005**

- Rameshwar Ram Chouhan S/o Dilu Ram Chouhan, Aged About 35 years, R/o Village Bankombo, P.S. Narayanpur, District Jashpur (C.G.)

---- Petitioner**Versus**

1. State of Chhattisgarh through its Secretary Department of Panchayat and Social Welfare D.K.S. Bhawan Mantralya, Raipur (C.G.)
2. Gram Panchayat Bankombo Through: Sarpanch G.P. Bankombo, District Jashpur (C.G.)

---- Respondents

For Petitioner	:	Shri Bhaskar Payashi, Advocate
For State	:	Shri Majid Ali, Dy. Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****27.11.2018**

1. The challenge in the present writ petition is to the order Annexure-P/7 dated 25.09.2005 whereby the petitioner has been terminated from his service that of Panchayat Karmi at Gram Panchayat Bankombo, District Jashpur.

2. The fact which is led filing of the present writ petition is that the petitioner was appointed as a Panchayat Karmi in Gram Panchayat Bankombo in the year 1995. While working on the post of Panchayat Karmi, the petitioner got involved in a criminal case as Crime No. 56/2005, registered at Police Station Kunkuri, District Jashpur and he was also arrested on 27.05.2005 for the offence punishable under Sections 409 and 420 of the Indian Penal Code (for short 'IPC'). Later on, the petitioner was granted bail and till date he is on bail. According to the petitioner, the criminal case till date has not been finalized. Meanwhile, the respondent

authorities vide impugned order Annexure-P/7 terminated the services of the petitioner. While passing the said order on 25.09.2005, they only referred to Gram Shabha meeting that was held on 22.09.2005.

3. The contention of the petitioner while assailing the order is that the impugned order is bad in law for the reason that the same has been passed total violation of Rule 7 of the Chhattisgarh Panchayat Service (Discipline and Appeal) Rules, 1999 (for short 'Rules of 1999'). He further submits that the impugned order is also bad in law that for the reason that the petitioner was not even taken into confidence while the Gram Shabha meeting that was held on 22.09.2005 and he also not furnished with the resolution passed by the Gram Shabha on the said date and later on services of the petitioner has been abruptly terminated which as such is bad in law. Counsel for the petitioner relies upon the envisaged of this Court in case of **Beegan Ram Vs. State of Chhattisgarh and others, 2006 L.T. (CG) 41.**

4. According to the petitioner, the minimum that is required while terminating the service of Panchayat Karmi is the compliance that is envisaged under Rule 7 of the Rules of 1999. It is contention of the petitioner that in case the authority concerned intended to deviate from the provisions of Rule 7 of the Rules of 1999 even then the circumstances have to be what is otherwise provided under the Rule 10 of the Rules of 1999 which again missing in the present set of facts. Therefore, the impugned order is bad in law and is liable to be set aside or to be quashed.

5. Defending the action on the part of the respondents, State counsel drew the attention of this Court to the fact that since the petitioner was

implicated in a criminal case and where the petitioner is facing a criminal trial for the offence under Sections 409 and 420 IPC, the authorities concerned invoking the provision under Rule 10 of the Rules of 1999 passed the impugned order and therefore, it cannot be said to be bad in law.

6. There is no representation on behalf of respondent No.2 inspite of they being properly served.

7. Now coming on the merit and aspect and perusal of reply submitted by each of the respondents, it would clearly reflect that both respondents have not given any plausible reasons for non-compliance of the provisions of Rule 7 of the Rules of 1999 is concerned. The only ground which respondent No. 2 has taken is that before passing of the impugned order, a show cause notice was issued to the petitioner on 17.09.2005 and thereafter the Gram Shabha was convened on 22.09.2005 and only thereafter the impugned order has been passed.

8. It would be relevant at this juncture to refer to the procedure for imposing of major penalty which prescribed under Rule 7 of the Rules, 1999, reads as under :

“7. Procedure for imposing major penalties.- (1) No order, imposing on a member of the Panchayat Service, any of the penalties specified in clause (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) When an order for formal inquiry has been made, the disciplinary authority shall frame Definite charges on the basis of allegations and shall communicate such charges, alongwith the statement of the allegations, to the member of the Panchayat Service and also require him to submit, within such time as may be specified a written statement of defence and also to state whether he desires to be heard in person.

(3) The person against whom inquiry is to be held shall, for the purpose of preparing toe defence, be permitted to inspect and take extracts from such records as he may specify:

Provided that such permission may be refused if, for reasons to be recorded in writing, in the opinion of the Enquiry Officer such records are not relevant for the purpose or it is against the public interest to allow his access thereto.

(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) The disciplinary authority may nominate any person to present the case in support of the charges before the Enquiry Officer. The member of the Panchayat Service may present his case with the assistance of any other Panchayat Servant of the State Government Servant approved by the Enquiry Officer but may not engage a legal practitioner for the purpose, unless the person nominated by the disciplinary authority as aforesaid is a legal practitioner or unless the disciplinary authority having regard to the circumstances of the case so permits.

(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 wish:

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) The proceedings conducted against the persons charged shall contain a sufficient record of

- (i) the charges framed against such person and the statement of allegations;

- (ii) the written statement of defence if any;
- (iii) the oral evidence taken in the course of the inquiry;
- (iv) the documentary evidence considered in the course of the inquiry;
- (v) the orders, if any, made by the Enquiry Officer or the disciplinary authority as the case may be with regard to the inquiry;
- (vi) a report setting out the findings on each charge and the reasons therefor.

(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) The disciplinary authority shall consider the representation, if any, made by the person charged in response to the notice and determine the penalty if any, should be imposed and shall pass appropriate order on the case.

(11) The orders passed by the disciplinary authority shall be communicated to the member of the Panchayat Service, who shall also be supplied with a copy of the report of the Enquiry Officer and where, disciplinary authority is not the Enquiry Officer, a statement of its findings together with the brief reasons for disagreement, if any, with the findings of the Enquiry Officer, unless they have already been supplied to the person charged."

9. On going through the conditions which were envisaged under Rule 7 of the Rules, 1999, it would reveal that there is no such compliance by the

respondents before issuance of the impugned order.

10. Now coming to the aspect of Rule 10 of the Rules, 1999 which is special procedure that to which would be applicable in certain cases. It would be relevant to reproduce the provisions of Rule 10 of the Rules, 1999 also, reads as under :

“10. Special procedure in certain cases.- (1)
Notwithstanding any thing contained in rule 7, 8 and 9,-

(i) where a penalty is imposed on a Panchayat Servant on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) where the Disciplinary Authority is satisfied, for reasons to be recorded in writing, that it is not reasonably practicable to follow the procedure prescribed in the said rules.’

the Disciplinary Authority may consider the circumstances of the case of pass such orders thereon as it deems fit.”

11. The plain reading of the conditions stipulated in Rule 10 of the Rules, 1999 would reveal that both these situation was not present before passing of the impugned order or for punishing the petitioner. It is stated by the petitioner that the criminal case is still pending and it has not resulted in his conviction and unless he is convicted in the criminal case the provisions of Rule 10 of the Rules of 1999 could not have been invoked. Neither does the impugned order reveal it to have been passed under a situation where it was reasonably impracticable to conduct an inquiry so as to attract the provisions of Rule 10 (ii) of the 1999. It would be relevant at this juncture to refer to paragraph 7 of the judgment of this Court in *Beegan Ram* (supra), where this Court held as under :

“7. With regard to exercise of power by the High Court under Article 226 and 227 of the Constitution of India, the

Hon'ble Supreme Court in catena of decisions have laid down the principles of law that the High Court has jurisdiction and power to interfere if the Court is satisfied that the error is manifest and apparent on the face of the proceedings, clear ignorance and utter disregard of provisions of law and/or a grave injustice or gross violation of the justice has occasioned thereby. In the present case, Revenue Authorities/Tribunals have completely ignored the statutory provisions of Rule 7 of the Rules, 1999 and there is manifest error of the facts on the face of records, without requiring any investigation or enquiry."

12. This issue has further also been reiterated by many more decisions wherein it has been specifically held that before imposing a major penalty so far as a Panchayat Karmi is concerned, it is mandatorily required, compliance of the conditions which are stipulated under Rule 7 of the Rules of 1999.

13. Since in the present case there is an apparent non-compliance of the conditions stipulated under Rule 7 as well as Rule 10 of the Rules of 1999, the impugned order of termination Annexure-P/7 dated 25.09.2005 is not sustainable and the same deserves to be and is accordingly set aside. It has been brought to the notice that by virtue of an interim order granted by this Court, the petitioner still continues in service. Accordingly, the petition stands allowed and the impugned order Annexure-P/7 dated 25.09.2005 is set aside/quashed with consequences to follow.

14. No order as to cost.

Sd/-

(P. Sam Koshy)
Judge