

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WP No. 5674 of 2005**

Beni Madhav, Aged about 32 years, S/o. Shiv Charan Gupta, By occupation Panchayat Karmi, Gram Panchayat, Kamalpur, Block Wadrafnagar, Tahsil Wadrafnagar, District Surguja, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh, Through Secretary, Panchayat Welfare Department, Mantralaya, Raipur, District Raipur, Chhattisgarh.
2. Collector, Surguja, Ambikapur, Chhattisgarh
3. Sub-Divisional Officer (R), Wadrafnagar, District Surguja Chhattisgarh
4. Chief Executive Officer, Janpad Panchayat, Wadrafnagar, District Surguja Chhattisgarh
5. Sarpanch, Gram Panchayat, Kamalpur, Block & Tahsil Wadrafnagar, District Surguja Chhattisgarh
6. Brahamdev Singh, S/o. Narayan Singh, Panchayat Karmi, Secretary Gram Panchayat Kamalpur, Tahsil and Block Wadrafnagar, District Surguja Chhattisgarh

----Respondents

For Petitioner	:	Mr. D.N. Prajapati, Advocate
For State	:	Ms. M. Asha, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order on Board****23/03/2018**

1. The present petition has been filed seeking for a relief of a direction to the respondents to take work of the post of Panchayat Secretary from the petitioner and also to pay salary to him from April, 2001 onwards.
2. The brief fact of the case is that the petitioner was appointed as a Panchayat Karmi/Secretary on 20.11.1955 by the respondent No.5. Later on, on account of certain allegations of misappropriation, the services of the petitioner was placed under suspension w.e.f. 23.02.1999 (Annex.P/4). The order stood subsequently revoked by

order dated 05.03.1999 (Annex.P/5). Subsequently, the petitioner has been approaching the authorities for permitting him to discharge his duties as Panchayat Karmi/Secretary, but till date the petitioner has not been given the charge nor has he being paid any salary for the intervening period.

3. The grievance of the petitioner in the instant case is that till date the services of the petition has not been terminated by an order which has been communicated to the petitioner. He further submits that even otherwise the procedure which is prescribed for issuance of a major penalty i.e. under Rule 7 of the Panchayat Service Discipline and Appeal Rules, 1999 has not been followed and even if there is an alleged termination order, the same may not be sustainable. He further submits that once when the order of suspension has been revoked, the automatic consequence is that the petitioner should have been reinstated in service with immediate effect and prayed for a suitable relief to be granted.
4. A perusal of the record would show that the stand which has been taken by the contesting respondents is that against the order of suspension, the petitioner had challenged the proceedings before the prescribed authority, which stood rejected vide order dated 13.02.2001. It is further the contention of the contesting respondents that the Gram Panchayat by a resolution passed in the majority had resolved to remove the petitioner from the post of Panchayat Karmi as is revealed from the resolution dated 13.01.1999 and therefore the services of the petitioner stands removed from 13.01.1999 and as such the petitioner would not be

entitled for any relief whatsoever. It was also contended by the contesting respondents that since the petitioner had been removed by the resolution of the Gram Panchayat and subsequently the same Gram Panchayat has also appointed the respondent No.6 as the subsequent Panchayat Karmi/Secretary therefore, the post of Panchayat Secretary does not remain vacant any further and thus prayed for the rejection of the petition.

5. Perusal of the record would show that undisputedly which also stand accepted by the respondents from the pleadings is that the petitioner in fact was appointed as a Panchayat Karmi on 20.11.1995. He continued to work continuously till he was suspended on 23.02.1999. The order of suspension stood revoked on 05.03.1999. Subsequently, though as per the return by the respondent No.4 it reflects that a resolution was passed on 13.01.1999 to remove the petitioner from service, but what is clearly further reflected from the pleadings is that the Gram Panchayat did not resort to the procedure envisaged under Rule 7 of the Panchayat Service Discipline and Appeal Rules, 1999. Rule 7 of the said Rules of 1999 clearly stipulates a detail procedure to be adopted before imposing a major penalty. For ready reference Rule 7 is reproduced herein under:-

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) 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 to 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 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.

6. Bare perusal of the pleadings of the respondents would clearly reveal that the aforementioned procedures have not been adopted by the Gram Panchayat for removing the petitioner from the post of Panchayat Karmi.

7. What is also relevant and which cannot be lost sight of is a document Exhibit P/10 filed along with the rejoinder to the petition dated 06.03.2002, which seems to have been issued from the office of the Collector (Panchayat Branch), district Surguja. The said order reads as under:-

“श्री बेनी माधव गुप्ता पंचायत कर्मी ग्राम पंचायत कमलपुर जनपद पंचायत वाड्ढफनगर पंचायत कर्मी के कार्यों का सम्पादन करें किन्तु पंचायत सचिव के कार्यों का सम्पादन नहीं करेंगे। यह आदेश तत्काल प्रभावशील होगा।”

8. The plain reading of the aforesaid document also would clearly reveal that it does not appear that the services of the petitioner have been terminated completely. All that it reflects is that the petitioner has been removed from the post of Panchayat Secretary and not from the post of Panchayat Karmi and he would continue to remain as a Panchayat Karmi.
9. Moreover the allegation against the petitioner was that he was involved in a criminal case. The petitioner by way of rejoinder has now produced a judgment wherein it has been reflected that he stands acquitted from all the charges that were leveled against him. This judgment of acquittal all the more goes in favour of the petitioner for claiming the reinstatement on the post of Panchayat Karmi. It is reflected from the record that no order has been issued removing the petitioner from the post of Panchayat Karmi/Secretary except for the resolution which was passed. The resolution by itself may not be an order. There has to be a specific order based on the resolution also to have been issued by the respondents.
10. Under the given facts and circumstances of the case, this Court is of the opinion that the petitioner has been able to make out a strong

case for issuance of a direction to the respondents to immediately take back the petitioner on the post of Panchayat Karmi, Gram Panchayat, Kamalpur, Block Wadrafnagar, District Surguja (at present under District Balrampur).

11. The writ petition thus deserves to be and is accordingly allowed. The respondents No. 4 & 5 shall take immediate step ensuring that the petitioner is taken back in employment forthwith. For the intervening period, the petitioner would not be entitled for any monetary benefit i.e. from the date of suspension till the date of reinstatement, though the said period would be counted to be treated as qualifying service for counting the length of service.
12. The writ petition thus stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Ved