

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 4731 of 2008

B.L.Ganjir S/o Late Shri Gautam Ganjir, aged about 68 years, Retired Assistant Engineer, R/o House No.27/1050, Farshi Gali, New Shanti Nagar, Raipur (C.G.).

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary Water Resources Department, D.K.S. Bhawan, Raipur (C.G).
2. State of Madhya Pradesh, Through Secretary Water Resources Department, Vallabha Bhawan, Bhopal (M.P.).
3. Chief Engineer (Electrical/Mechanical), Water Resources Department, Bhopal (M.P.).
4. Executive Engineer, Light Machinery & Tube well Division, Office of Chief Engineer, Mahanadi Kachhar, Near Raipur (C.G.).

---Respondents

For petitioner	:	Shri N.K.Vyas, Advocate.
For respondents No. 1 & 4	:	Shri B.Gopa Kumar, Dy.A.G.
For respondents No. 2 & 3	:	Shri S.S.Rajput, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

10/04/2018

1. The challenge in the present Writ Petition is to three orders - Annexures-P/1, P/2 & P/3.
2. Annexure-P/3 is an order of punishment dated 27/11/1997 communicated to the petitioner vide letter dated 03/12/1997.
3. Vide the said order, the respondent authority after an enquiry conducted against the petitioner found that the petitioner was responsible for certain loss caused to the department and have ordered for recovering an amount of

Rs.2,63,242.10/- from the petitioner. The said order was passed by the Chief Engineer (E/M), Water Resources Department, Bhopal (M.P.).

4. Against the said order of punishment, the petitioner preferred an appeal (Annexure-P/14) on 20/03/1998. The said appeal was pending consideration before the appellate authority at Bhopal by virtue of the Madhya Pradesh Reorganisation Act, 2000 (In short "the Act, 2000").

5. The new State of Chhattisgarh was carved out with effect from 01/11/2000. On the date of creation of new State, the appeal of the present petitioner was pending consideration before the appellate authority in the erstwhile State of Madhya Pradesh.

6. At this juncture, it would be relevant to refer to Section 83 of the Act, 2000 - transfer of pending proceedings. For ready reference, it is reproduced herein under:-

"83. Transfer of pending proceedings.-

(1) Every proceeding pending immediately before the appointed day before a court (including High Court), tribunal, authority or officer in any area which on that day falls within the State of Madhya Pradesh shall, if it is a proceeding relating exclusively to the territory, which as from that day are the territories of Chhattisgarh State, stand transferred to the corresponding court, tribunal, authority or officer of the State of Chhattisgarh.

(2) If any question arises as to whether any proceeding should stand transferred under sub-section (1), it shall be referred to the High Court of Madhya Pradesh and the decision of that High Court shall be final.

(3) In this Section -

(a) "proceeding" includes any suit, case or appeal; and

(b) “corresponding court, tribunal, authority or officer” in the State of Chhattisgarh means-

(i) the court, tribunal, authority or officer in which, or before whom, the proceeding would have laid if it had been instituted after the appointed day;

(ii) in case of doubt, such court, tribunal, authority, or officer in the State of Chhattisgarh, as may be determined after the appointed day by the Government of that State or the Central Government, as the case may be, or before the appointed day by the Government of the existing State of Madhya Pradesh to be the corresponding court, tribunal, authority or officer.”

7. Subsequently, the respondent No.2 decided the appeal of the petitioner vide order dated 31/05/2004. While deciding the appeal, the respondent No.2 had rejected the same by one line order which reads as under:-

“श्री गंजीर ने अपनी अपील में जो आधार व्यक्त किये हैं, वे मान्य योग्य नहीं हैं, वरन् अपने हित में भ्रामक रूप से प्रस्तुत किये गये हैं, साथ ही अपील में कोई ठोस कारण नहीं होने के कारण श्री गंजीर की अपील को अमान्य करने का शासन ने प्रावधानिक निर्णय लिया।”

8. Subsequently, after rejection of the said appeal, Annexure-P/1 dated 19/02/2007 was passed whereby the State of Chhattisgarh had ordered for recovery of amount of Rs.2,68,467/- from the dues payable to the petitioner on his retirement. That the petitioner in between stood retired on 31/12/1997. What is relevant to be considered is that the petitioner on the date of passing of the order of punishment on 27/11/1997 was posted at Raipur. The order of punishment was also communicated to the petitioner by the Executive

Engineer posted at Raipur. The appeal was also preferred by the petitioner from Raipur and he also is a permanent resident of Raipur.

9. The contention of the counsel for the petitioner is that the order Annexure-P/2 is bad in law on two grounds. Firstly, the State of Madhya Pradesh did not have the power to decide the appeal of the petitioner beyond 01/11/2000 and the same ought to have been transferred to the corresponding officer of the State of Chhattisgarh who should have decided the appeal. The second ground of challenge is that the impugned order Annexure-P/2 is a non-speaking order in as much as the grounds raised by the petitioner in the appeal have not been discussed or decided by the respondent No.2. Thus, the order of appellate authority is bad in law and the same is also in contravention to the requirement of rule 27 of Madhya Pradesh Civil Services (Classification, Control and Appeals) Rules, 1966.

10. So far as the first ground raised by the counsel for the petitioner that of the competency of the respondent No.2 in deciding the appeal of the petitioner beyond 01/11/2000 is concerned, it would be relevant to refer to the provision of Section 83 as has been enumerated in the preceding paragraph. Sub-Section 3 of Section 83 clearly discussed the word “proceeding” by which the legislature meant was in respect of any suit, case or appeal which in other words means any suit, any case or any appeal pending before any court, any tribunal, any authority or officer. Likewise, sub-section 3(b) also discusses the term “corresponding court, tribunal, authority or officer” and the legislature means that the corresponding court, tribunal, authority or officer in which, or before whom, the proceeding would

have laid if it had been instituted after the appointed day which is 01/11/2000 on which date the State of Chhattisgarh was carved out.

11. The counsel for the respondents raised an objection in respect of the competency of the matter being transferred to the State of Chhattisgarh in the light of the fact that the petitioner stood retired from services before creation of the State of Chhattisgarh. According to the counsel for the respondents, since the petitioner had retired on 31/12/1997, the provision of the Act of 2000 would not come to the aid of the petitioner and the appellate authority so far as the retired employees who stood retired prior to 01/11/2000 would remain the appellate authority as notified in the State of Madhya Pradesh. He further submits that since the Annexures – P/3 & P/2 have both been issued by the officer of the erstwhile State of Madhya Pradesh, it would have been the High Court of Madhya Pradesh which would have the jurisdiction to hear the matter and not the High Court of Chhattisgarh.

12. Both these grounds raised by the counsel for the respondents would not be sustainable for the simple reason that, Section 83 clearly envisages in respect of pending any appeal before any of the officer in the State of Madhya Pradesh. So far as the jurisdiction of this Court is concerned, since the petitioner firstly being a permanent resident of State of Chhattisgarh, secondly on the date when the punishment order was issued he was posted within the territory of State of Chhattisgarh, the order of punishment being communicated by the officer of the State of Chhattisgarh posted in the State of Chhattisgarh so also an appeal also being preferred from Raipur whereby

the petitioner was posted after the punishment order was issued, it would be the State of Chhattisgarh which would also have the concurrent jurisdiction.

13. In view of the aforesaid clear and unambiguous provision of law laid down in the Act, 2000 this Court has no hesitation in reaching to the conclusion that since on 01/11/2000 the appeal preferred by the petitioner was pending and it was not decided by the appellate authority in the erstwhile State of Madhya Pradesh, the appeal ought to have been automatically transferred to the appellate authority in the State of Chhattisgarh. Having not done so, the authorities in the State of Madhya Pradesh were denuded of their powers to decide the same beyond 01/11/2000.

14. Thus, the order – Annexure-P/2 passed by the respondent No.2 is not sustainable and the same deserve to be and is accordingly set aside.

15. Since, we are already setting aside the order Annexure-P/2, we are not considering the other grounds raised by the counsel for the petitioner in this case and the appeal preferred by the petitioner stands transferred to the State of Chhattisgarh. The corresponding appellate authority in the State of Chhattisgarh as per Section 83 of the Act, 2000 shall consider and decide the appeal of the petitioner in accordance with rule 27 of Chhattisgarh Civil Services (Classification, Control and Appeals) Rules, 1966.

16. It is expected that the appellate authority in the State of Chhattisgarh would decide the appeal in an objective manner.

17. Considering the seniority of the dispute it is expected that the appellate authority shall decide the appeal of the petitioner as expeditiously as possible preferably within a period of 90 days from the date of presentation of the certified copy of this order.

18. Meanwhile, it is also directed that the respondent No.2 in turn shall ensure that all the records pertaining to the petitioner available with the respondent No.2 and 3 be forthwith transferred to the State of Chhattisgarh including the appeal preferred by the petitioner.

19. The Writ Petition accordingly stands allowed and disposed off.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit