

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO. 3316 OF 2010**

Lal Mohar Singh S/o Ganga Vishnu Singh, aged about 49 years, occupation service as Head Master, Govt. Primary School, Kumharata Block Development Ambikapur, Distt. Surguja (CG).

...**Petitioner(s)**

Versus

1. State of Chhattisgarh through Secretary, School Education Department, Mantralaya, DKS Bhawan, Raipur (CG).
2. The Collector, Surguja, Ambikapur, Distt. Surguja (CG).
3. The Distt. Education Officer, Ambikapur, Distt. Surguja (CG).

... **Respondent(s)**

For Petitioner	:	Shri Shakti Raj Sinha, Advocate.
For Respondent-State	:	Shri Ashutosh Pandey, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

17.05.2018

1. The challenge in the present writ petition is to the order dated 25.06.2010 (Annexure P/1) whereby the order of promotion which has been granted to the petitioner on 08.10.2008 has been cancelled.
2. The facts of the case is that, the petitioner while working as Assistant Teacher at Govt. Primary School, Kumharata, Ambikapur, has been promoted as Head Master on the same school vide order dated 08.10.2008. The name of the petitioner in the said order of promotion stands reflected at serial number 553. Immediately from the said date the petitioner has assumed the office of Head Master and was discharging his duties till the impugned order dated 25.06.2010 (Annexure P/1) was passed whereby the promotion order of the petitioner has been cancelled.

3. The counsel for the petitioner, on instructions, submits that petitioner as on date is still working as Assistant Teacher and has not been promoted till now. He assails the order of cancellation of promotion on the ground that the same has been issued in total violation of principles of natural justice. No opportunity of hearing whatsoever was given to the petitioner before issuance of the impugned order. Neither preliminary enquiry nor a departmental enquiry was conducted against the petitioner at any point of time before issuance of the order impugned. Likewise, it was also the contention of the petitioner that the petitioner has not been inflicted with any punishment whatsoever before the order of promotion was issued or subsequently before the impugned order was passed with which the respondents could have said that the petitioner was not eligible for promotion. Thus, prayed for setting aside of the impugned order.
4. The respondents counsel on the contrary opposing the petition submits that the reasons which necessitated issuance of the impugned order was the continuous unauthorized absence of the petitioner from duty while working as Assistant Teacher between 04.10.2005 to 24.10.2005 and again between 28.11.2005 to 30.08.2008. The period of absence is considerable and therefore the petitioner would not be entitled for the benefit during the said period. This aspect has not been taken note of by the respondents while issuing order of promotion on 08.10.2008. When this mistake was detected, the Collector, the same authority who had issued the promotion order, has cancelled the promotion order so far as the present petitioner is concerned.

5. Having heard the counsel for the parties and on perusal of records, the admitted facts are that, the petitioner was working as Assistant Teacher at Govt. Primary School Kumharata, Block Ambikapur, Distt. Surguja. While working on the said post, he was found fit and eligible for promotion and the order of promotion was issued vide Annexure P/2 dated 08.10.2008. The petitioner immediately assumed the duty on the post of Head Master. He continued to work on the said post till the impugned order dated 25.06.2010 was passed whereby his promotion has been cancelled by the Collector.
6. It is by now well settled principle of law that before affecting any order which has an adverse consequence upon the employee, the minimum requirement that is required by the employer is granting opportunity of hearing to the concerned. In the instant case, no explanation whatsoever was sought for from the petitioner. Neither enquiry much less preliminary enquiry was conducted. It is also a case where the respondents have not come out with a case of the petitioner undergoing any sort of punishment at the time of issuance of the order of promotion on the basis of which it could be said that the promotion order was erroneously and wrongly passed.
7. The respondents also neither in their reply or at a later stage have been able to substantiate the contentions raised by the petitioner in the preceding paragraphs nor have they come out with a stand that the petitioner has been punished for the alleged unauthorized absence. No order whatsoever is also reflected as to how this unauthorized period of absence has been treated by the respondents.

8. Given the aforesaid facts and circumstances of the case, the impugned order (Annexure P/1, dated 25.06.2010) of cancellation of promotion is totally in violation firstly of the principle of natural justice and secondly has been issued without any basis whatsoever. The same deserves to be and is accordingly set aside. As a consequence, the petitioner would be entitled for all consequential benefits as if the order of cancellation never existed.

Sd/-
(P. Sam Koshy)
Judge