

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 4968 of 2009**

H. R. Baghel, aged 50 years, S/o Shri Dhansai, posted as Chief Executive Officer, at Janpad Panchayat, Saja, District Durg, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh, through its Secretary, Department of Panchayat & Rural Development Mantralaya, DKS Bhawan, Raipur, Chhattisgarh
2. The Commissioner, Raipur Division, Chhattisgarh
3. The Collector, District Raipur, Chhattisgarh
4. The Chief Executive Officer, Zila Panchayat, Durg, Chhattisgarh

----Respondents

For Petitioner	:	Mr. R. K. Kesharwani, Advocate
For State	:	Mr. Dhiraj Wankhede, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****10/08/2018**

1. Challenge in the present writ petition is Annexure P-1 dated 07.07.2009 whereby the respondents have imposed an order of recovery by way of punishment to the tune of Rs.1,01,655/- from the salary of the petitioner.
2. This Court vide its order dated 07.12.2009 had granted interim protection to the petitioner which is still in operation.
3. The facts leading to the present writ petition are that the petitioner while working as a Chief Executive Officer, Janpad Panchayat, Abhanpur is said to have granted appointment to 7 persons as Shiksha Karmis Grade-III. Later on it was found that the documents which were

produced by the said seven Shiksha Karmis for appointment were all false, fake and fraudulent. Thereafter, a committee was constituted to enquire and on the report of the Committee, the petitioner terminated the services of those 7 Shiksha Karmis vide order dated 23.05.2008. Subsequently, a show cause notice was issued on 22.05.2008 alleging the loss caused to the respondent State on account of the fraudulent appointment provided by the petitioner and the Block Education Officer, Abhanpur namely Ajit Singh and it was ordered that the salary which was paid to those 7 Shiksha Karmis from the date of appointment till the date of their termination to the tune of Rs.2,03,313/- had to be recovered in equal share of 50% each @ of Rs.1,01,655/- from the petitioner as well as the BEO, Abhanpur. It is this order or recovery which is under challenge in the present writ petition.

4. Counsel for the petitioner assails the impugned order on more than one ground. Firstly, the Collector was not the competent authority to issue minor punishment to the petitioner. Secondly, the respondents have not enumerated in their order as to the role played by the petitioner in the appointment of 7 Shiksha Karmis. Contention of the counsel for the petitioner is that the respondents have not shown as to how the petitioner was responsible in the issuance of appointment orders to those 7 Shiksha Karmis and what was the role played by the petitioner. He submits that unless the petitioner was primarily held responsible for the appointment being made fraudulently, the respondents could not have fastened the liability of recovery against the petitioner. Thus, prayed for setting aside of the impugned order.
5. Counsel for the respondent State submits that the impugned order itself is very speaking wherein it clearly reflects that the petitioner was in fact

responsible for the appointment of 7 Shiksha Karmis as it was the petitioner who was working as the CEO of the Janpad Panchayat at the relevant point of time and therefore, the petitioner cannot escape from the responsibility of not having played any role in the appointment order issued in favour of the 7 Shiksha Karmis.

6. So far as the competency of the Collector is concerned, State counsel submits that the Collector is the head of the institutions within the District and that Section 89 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 envisages a clause of recovering the loss of any money caused to the Panchayat from the erring officer. He submits that for a proceeding under Section 89 all that was required was for grant of reasonable hearing which in the instant case has been provided to the petitioner by issuing a show cause notice Annexure P-2 and to which reply was also filed by the petitioner and thereafter the impugned order was passed. Therefore, the impugned order cannot be held to be bad in law. It was further contended by the respondents that the Collector in the instant case is in fact an officer who has been shown as the appellate authority under the appendix to the CG Panchayat (Disciplinary and Appeal) Rules 1999 whereby the power for imposing of major penalty upon a Class-II rank officer has been given to the Collector. So far as the imposition of minor penalty is concerned, the power has been given even to the General Administration and the appellate authority is the general body. Thus, if the order of recovery has been issued by the Collector, the same cannot be faulted with. State counsel further submits that undisputedly during the tenure when the petitioner was working as a CEO of the Janpad Panchayat, Abhanpur, certain illegal appointments were made which after enquiry were cancelled.

Meanwhile, the said appointees had discharged duties for some period and for which State incurred loss of Rs.2,03,313/- by virtue of salary paid to those persons. Thus, prayed for rejection of the petition.

7. Having heard the counsel for the parties and on perusal of the record, the question is as to how the petitioner was responsible for the alleged fraudulent appointment if any. The respondents are totally silent in this regard in the impugned order. The impugned order does not reflect as to what was the actual role played by the petitioner in the fraudulent appointment. Further the respondents also have not been able to give a finding holding the petitioner to be guilty of having provided appointments to the 7 Shiksha Karmis fraudulently.
8. What is relevant at this juncture to take note is that in the reply to the show cause notice, the petitioner had denied the allegations which have been leveled against him and he has also given justification so far as the role played by him is concerned.
9. Under the circumstances, when there is a denial of facts by the delinquent employee, the least which was expected by the department was to conduct an inquiry in which the petitioner would have also got an opportunity to defend himself.
10. Though the order under challenge is an order of recovery, but imposition of recovery also has the effect of a minor punishment. The Hon'ble Supreme Court in the case of ***O.K. Bhardwaj v. Union of India & Ors., 2001 (9) SCC 180*** and ***State of Bihar & Anr. v. Lakshmi Shankar Prasad, 2002 (10) SCC 351***, has envisaged that even if the authorities concerned intend to impose minor punishment, there has to be reasons to be recorded. Moreover, when the charges levelled

against an employee being factual in nature and further there being a categorical denial on the part of the delinquent employee so far as these factual averments are concerned, an enquiry would be must before imposing the punishment. In the case of **O.K. Bhardwaj** (supra) in paragraph 3 of the judgment it has been held as under:

“(3) While we agree with the first proposition of the High Court having regard to the rule position which expressly says that “withholding increments of pay with or without cumulative effect” is a minor penalty, we find it not possible to agree with the second proposition. Even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with.”

11. In the case of “**Raj Kapoor Singh Parihar vs. State of Madhya Pradesh & Others, 2014 LawSuit (MP) 196**” WP No. 2760/2013, decided on 06.03.2014, in paragraph No.9 the Madhya Pradesh High Court has held as under:

“9. By the impugned punishment order, recovery of a huge amount is directed against the petitioner, which entails civil consequences. It was obligatory on the part of the respondents to assign reasons for the same. The reasons are held to be heartbeat of 'conclusion' by the Supreme Court. It is emphasized that in judicial, quasi-judicial and administrative orders, the authorities must assign reasons. This view is taken by Supreme Court in Kranti Associates Private Limited V. Masood Ahmed Kha, 2010 9 SCC 496.”

12. In view of the aforesaid legal position, this Court has no hesitation in reaching to the conclusion that the respondents have not been able to satisfactorily explain as to how the Collector was competent to pass an order of minor punishment against the CEO of a Janpad Panchayat. Likewise, this Court also finds it difficult to sustain the impugned order as the respondents have not been able to conclusively hold the petitioner guilty of the misconduct as it has not been reflected from the impugned order as regards the petitioner being held guilty. The impugned order also seems to be bad in law for the reason that the show cause notice has been issued by the CEO, Zila Panchayat, Raipur whereas the order of punishment has been imposed by the Collector which again is a different authority than the person who had issued the show cause notice.
13. Given the aforesaid facts and circumstances of the case, this Court is of the opinion that the impugned order is not sustainable and the same deserves to be and is accordingly set aside/quashed reserving the right of the respondents to conduct an enquiry and thereafter if the petitioner is found guilty, to recover the loss caused. While initiating fresh proceedings, the respondent authorities would also keep in mind the competency of the authority concerned under the Act and Rules for initiating proceedings against a CEO.
14. With the aforesaid observation the writ petition stands allowed.

Sd/-
(P. Sam Koshy)
Judge