

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION NO. 2193 OF 2006**

Secretary, Gram Sewa Samiti Kutchari Chowk, Raipur (CG)

... Petitioner**versus**

1. Assistant Labour Commissioner & Appellate Authority, Chhattisgarh Shop & Establishment Act, Raipur (CG)
2. Shri Narayan Daulat Adhau, R/o near Chanakya College, Khadi Bhandar Parisar, Pandari, Raipur (CG)
3. Shri Govind Lal Vora, S/o Late Mohan Lal Vora, aged about 71 years, Chief Editor Amrit Sandesh Press, G.E. Road, Raipur (CG)
4. Shri Subhash Sharma, S/o Shri Chandra Prakash Sharma, aged about 52 years, R/o Sunder Nagar, Raipur, District Raipur (CG)
5. Director, State Office, Khadi & Village Industries Commission, 14-15 Dani House, Govind Nagar, Raipur (CG)

... Respondents

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- Mr. Ashok Patil, Advocate, for the Petitioner.
 - Ms. Sunita Jain, Panel Lawyer, for Respondent-State.
 - Mr. N.K. Vyas, Advocate, for Respondent No.2.
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Hon'ble Shri Justice P. Sam Koshy**Order on Board****26/10/2018**

1. Challenge in the present writ petition is to the order passed by the Assistant Labour Commissioner, Raipur in the capacity of the appellate authority under the Chhattisgarh Shops and Establishment Act, 1958, ("the Act of 1958", in short) dated 20.3.2006, whereby the appeal preferred by respondent no.2 against his termination dated 22.2.2000 was allowed and the impugned order of termination has been set aside granting the benefit of wages with allowances for the period between the date of termination till the date of attaining superannuation i.e. in December, 2004.
2. It is this order which has been put to challenge by the petitioner in the present writ petition.
3. Primarily, the learned counsel for the petitioner opposes the petition on the ground that the proceeding before the appellate authority under the Act of 1958 was not maintainable for the reason that since the petitioner-establishment is registered under the Societies Act, the remedy available to

the petitioner was for approaching the authority under the Cooperative Societies Act for redressal of their grievance and the proceeding before the authority under the Act of 1958 was without jurisdiction in the light of the decision of the Hon'ble Supreme Court in the case of *R.C. Tiwari v. M.P State Co-operative Marketing Federation Limited and Others*, 1997 (5) SCC 125 and also the judgement of the Madhya Pradesh High Court in the case of *Gramin Vidyut Sahakari Samiti Maryadit v. Devideen Patel and Another*, 2003 RN 203.

4. It was further the contention of the learned counsel for the petitioner that, respondent no.2 was involved in an act of financial misappropriation and he was called upon to explain his misconduct, but in spite of giving repeated opportunity of hearing he did not avail the opportunity to respond to the notice issued by the petitioner and the authorities finally vide order dated 22.2.2000 (Annexure P-10) passed an order of removal from service. According to the petitioner, since respondent no.2 did not avail the opportunity granted there was no other option left to the petitioner except for passing an order of removal from service and therefore the finding of the authority under the Act of 1958 was not proper, legal and justified and the same deserves to be set aside/quashed.

5. Per contra, learned counsel for respondent no.2, Shri Vyas, submits that respondent no.2 apart from being removed from service also was charged in a criminal case for the same offence and he was subjected to trial in a criminal case before the Judicial Magistrate First Class, Raipur, vide Criminal Case No. 427/2013 (re-numbered case) and the Magistrate finally vide order dated 5.11.2010 found that the charges levelled against respondent no.2 have not been proved or established and acquitted the respondent no.2 of the charges levelled against him of financial misappropriation. Shri Vyas, further submits that in the light of the judgment

of the Magistrate acquitting respondent no.2, the allegation of the financial misappropriation gets totally wiped of. It was further the contention of Shri Vyas that, even before the authority under the Act of 1958, the petitioner was granted ample opportunity to lead evidence to prove the misconduct which the petitioner has failed miserably. According to Shri Vyas, the petitioner has led evidence of one witness and which too they did not complete and immediately after the examination-in-chief the witness left and thereafter number of opportunities were granted for cross-examining the witness but the witness deliberately did not appear or made available for cross-examination and as such the petitioner has not been able to establish their case before the authority and therefore the finding by the authority does not warrant any interference.

6. Having heard the contentions put forth on either side and on perusal of record, particularly taking note of the facts and circumstances of the case, what admittedly reflects from the proceeding is that respondent no.2 was appointed by the petitioner way back on 13.8.1981 as a Lower Division Clerk. He continued to work continuously and uninterruptedly with the petitioner till 22.2.2000 when the impugned order was passed. Admittedly also the impugned order of removal/termination from service was passed without conducting any sort of an enquiry much less a departmental enquiry. The petitioner also has not led sufficient evidence before the authority under the Act of 1958 in appellate proceeding to establish the misconduct which is alleged to have been committed by respondent no.2.

7. In the light of the aforesaid factual matrix of the case, if we take into consideration the finding arrived at by the appellate authority under the Act of 1958, it cannot be said in any manner that the finding is contrary to the evidence or a perverse finding.

8. This Court in exercise of its powers under Article 226 of the Constitution of India would not substitute itself as a further appellate authority over the decision of the appellate authority under the Act of 1958. The power of judicial review under Article 226 is only the decision making process which was taken by the employer while passing the order of termination as also the appellate authority while deciding an appeal. This Court would not sit over the finding of the statutory authority as a second appellate authority to further conduct a roving enquiry to determine the alleged misconduct against respondent no.2.

9. So far as the judgments cited by the petitioner are concerned the same would not be applicable in the given set of facts, as the petitioner-establishment is not a co-operative society neither does the provision of the Co-operative Societies Act is applicable upon the petitioner-establishment and therefore it cannot be said that the two judgments would be applicable or the proceeding by the appellate authority under the Act of 1958 would be hit by the said Act.

10. This Court therefore in the given facts and circumstances of the case does not find any merit so far as the present writ petition is concerned calling for an interference with the impugned order and affirming the same, the writ petition stands dismissed.

Sd/-
(P. Sam Koshy)
Judge