

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION (S) NO. 5864 OF 2008**

Ramesh Kumar Sahu, aged about 49 years, S/o Chatur Singh, Assistant Teacher, Middle School, Vinayakpur, Tahsil and District Durg (CG)

... **Petitioner**

versus

1. State Government of Chhattisgarh, through the Secretary, School Education Department, D.K.S. Bhawan, Raipur (CG)
2. District Education Officer, Durg (CG)

... **Respondents**

For Petitioner	:	Mr. Ajay Shrivastava, Advocate.
For Respondent-State	:	Ms. Sunita Jain, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

28/09/2018

1. Challenge in the present writ petition is to the order dated 17.9.2008, Annexure P-1, whereby the earlier promotion granted to the petitioner on 18.8.2008 has been cancelled.
2. The petitioner who was working on the post of Assistant Teacher was promoted on the post of Upper Division Teacher on 18.8.2008. The petitioner immediately gave his joining also. Thereafter, the impugned order was passed cancelling the order of promotion.
3. Challenge to the impugned order is on the ground that the petitioner has not been taken into confidence before the impugned order of cancellation of promotion was passed. He submits that once when a right has been accrued, before taking away the right, the least that is expected is an opportunity of hearing, which in the instant case has been violated. He further submits that the authorities concerned if at all if they wanted to carry out any rectification part they could have granted the same after granting an opportunity of hearing to the petitioner. He next submits that the issue does not need much deliberation as the law in this regard by now

is well settled that in any action which has a civil consequences, an opportunity of hearing is necessary.

4. Learned counsel for the petitioner submits that the impugned order is also bad in law for the reason that the impugned order also does not reflect any reason assigned for the recalling of the impugned order of cancellation of promotion. No reasons whatsoever have been disclosed in the impugned order. For this reason also the same deserves to be interfered with.

5. Learned counsel for the State referring to the contents of the reply submits that reason has been specified in the reply that the petitioner was inadvertently granted promotion in District Durg whereas he was in fact an employee of District Bemetara and that was the reason which led to the issuance of the order dated 17.9.2008 and therefore for rectification of an error, granting of opportunity of hearing would not be mandatory and thus prayed for the dismissal of the writ petition.

6. Having heard the contentions put forth on either side and on perusal of record, undisputedly, before issuance of the impugned order of cancelling the promotion order of the petitioner, no opportunity of hearing has been granted. The respondents in their reply in paragraph 6 has also taken the said stand which for ready reference is reproduced herein under:

“6. That, it is respectfully and bonafidely submitted by the answering respondents that the matter can be disposed of in the light of the order passed by this Court in the matter of R.L. Rathore Vs. State of Chhattisgarh & Others. The copy of order dated 26.2.2009 passed by this Hon'ble Court is annexure herewith as **ANNEXURE R-1.**”

7. The said stand of the State Government was in the light of the decision of this Court in the case of R.L. Rathore v. State of Chhattisgarh & Another, decided on 25.2.2002 in W.P.S. No.6490/2008.

8. Given the aforesaid facts and circumstances of the case, the impugned order so far as the petitioner is concerned stands set aside/quashed, reserving the right of the State Government to take appropriate decision in the case of the petitioner of having wrongly granted promotion on 18.8.2008 after granting an opportunity of hearing to the petitioner.

9. With the aforesaid observation, the writ petition stands allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge

/sharad/