

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 2308 of 2013**

1. K. K. Sharma S/o Shri Narayan Prasad Sharma, Aged About 56 Years, Head Master, Primary School, Tihupara, Simga/sankool Incharge, Simga, District Baloda Bazar-Bhatapara, Chhattisgarh
2. Narendra Dahariya S/o Shri Gend Ram Dahariya, Aged About 34 Years, Assistant Teacher Panchayat/Sankool Center Coordinator At Bansankra, Block Simga, Dist Baloda Bazar- Bhatapara, Chhattisgarh
3. Mohan Jangade S/o Shri Samaru Das Jangade, Aged About 38 Years Assistant Teacher Panchayat/ Snkool Center Coordinator At Kirwai, Block Simga, Dist Baloda Bazar-Bhatapara, Chhattisgarh
4. Manohar Lal Sonwani S/o Shri Mitthu Lal Sonwani, Aged About 47 Years, Head Master, Middle School, Kirwai/ Sankool Center Coordinator At Vishrampur, Block Simga, Dist Baloda Bazar-Bhatapara, Chhattisgarh
5. Domar Yadu S/o Shri Chhamman Lal Yadu, Aged About 39 Years, Assistant Teacher Panchayat/ Snkool Center Coordinator At Rohara, Block Simga, Dist Baloda Bazar-Bhatapara, Chhattisgarh
6. Sanju Ram Nirmalkar S/o Shri Ram Lal Nirmalkar Aged About 39 Years, Assistant Teacher Panchayat/ Sankool Center Coordinator At Hathband, Block Simga, Dist Baloda Bazar- Bhatapara, Chhattisgarh
7. Ganesh Ram Verma S/o Shri Kesho Ram Verma, Aged About 50 Years, Head Master, Middle School, Lawar / Sankool Center Coordinator At Mohbhattha, Block Simga, Dist Baloda Bazar-Bhatapara, Chhattisgarh
8. Santosh Kumar Verma S/o Shri Jaggar Singh Verma, Aged About 48 Years, Upper Division Teacher/ Sankool Center Coordinator At Navapara, Block Simga, Dist Baloda Bazar- Bhatapara, Chhattisgarh
9. Shrawan Kumar Verma S/o Shri Premnath Verma, Aged About 57 Years, Head Master, Middle School Budgahan/ Sankool Center

Coordinator At Suhela, Block Simga, Dist Baloda Bazar- Bhatapara, Chhattisgarh

10. Sonsai Verma S/o Shri Bisouha Ram Verma, Aged About 42 Years, Upper Division Teacher/ Sankool Center Coordinator At Rawan, Block Simga, Dist Baloda Bazar- Bhatapara, Chhattisgarh
11. Dharmendra Sarsiha S/o Shri L. R. Sarsiha, Aged About 43 Years, Assistant Teacher Panchayat/ Sankool Center Coordinator At Mohara, Block Simga, Dist Baloda Bazar- Bhatapara, Chhattisgarh
12. Sufal Ram S/o Shri Mangal Ram Ghitode, Aged About 47 Years, Head Master, Primary School, Sinodha/ Sankool Center Coordinator At Jaroud, Block Simga, Dist Baloda Bazar- Bhatapara, Chhattisgarh

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Versus

1. State Of Chhattisgarh Through Its Secretary, Department Of School Education, Mantralaya, Mahanadi Bhawan, Naya Raipur, Chhattisgarh
2. The Collector/Mission Director, District Balodabazar-Bhathapara, Chhattisgarh
3. Chief Executive Officer, District Panchayat, Raipur, Dist Raipur, Chhattisgarh
4. Chief Executive Officer, Janpad Panchayat, Simga, Dist Baloda Bazar- Bhatapara, Chhattisgarh
5. District Project Coordinator, Rajiv Gandhi Shiksha Mission, Baloda Bazar, Dist Baloda Bazar- Bhatapara, Chhattisgarh
6. District Education Officer, District Baloda Bazar-Bhatapara, Chhattisgarh
7. Block Education Officer, Block Simga, Distt Baloda Bazar-Bhatapara, Chhattisgarh

... Respondents

For Petitioner	:	Mr. Rajesh Kumar Kesharwani , Advocate.
For State	:	Mr. Arvind Dubey, P.L.

For Respondents 2 & 5 : Ms. Pushpa Dwivedi on behalf of Shri A. S. Kachhwaha, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

19/09/2018

The challenge in the present writ petition is to the order Annexure P-1 dated 12.02.2013 passed by the Collector, District Baloda Bazar i.e. respondent no.2 whereby the Collector has imposed a major penalty upon the petitioners of stoppage of one annual increment with cumulative effect.

2. The challenge to the said order is primarily on two grounds. Firstly the said order of major penalty has been passed without conducting any sort of enquiry and if at all if there has been an enquiry, the petitioners have not been taken into confidence. Therefore, the imposition of major penalty without an enquiry amounts to an order being passed in clear violation of the basic principles of natural justice. The second ground is that the order of punishment has not been issued by the Disciplinary authority but has been issued by the Collector who is not competent for the issuance of Punishment and on this ground also the impugned order is unsustainable.

3. Counsel appearing for the respective respondents, however, opposing the petition submit that the writ petition is not maintainable firstly on the technical ground of there being a common writ petition filed by a group of petitioners challenging an individual cause of action in respect of their individual grievance affecting their service conditions. The second ground is that the petitioners have an alternative remedy under the provisions of law i.e. by preferring an department appeal to the higher authority in the

department. That having not done so, the writ petition is liable to be dismissed on the ground of non availing the statutory alternative remedy.

4. So far as the merits of the case is concerned, the common stand taken by each of the respondents is that a complaint was received in respect of the purchase of school uniforms/dresses under Rajeev Gandhi Shiksha Mission in District Baloda Bazar, CG. On receipt of complaint, an enquiry was got conducted. According to the counsel for the respondents, in the enquiry, the statement of each of the petitioners were recorded and thereafter an enquiry report was submitted before the Chief Executive Officer, Zila Panchayat, Raipur. Based on the enquiry report, a show cause notice was issued to the petitioners. After receipt of reply submitted by the petitioners and finding them to be unsatisfactory, the Collector has passed the impugned order of punishment. According to the respondents, having recorded the statement of each of the petitioners, it cannot be said that the petitioners have not been heard before the punishment order was passed neither it can be said that the impugned order has been passed in violation of the principles of natural justice. Therefore prayed for rejection of the writ petition.

5. So far as the impugned order of punishment is concerned, undisputedly by now it is well settled position of law that any action which has a long term as well as adverse effect on the terminal/retiral dues including the pensionary benefits would amount to a major punishment under the service jurisprudence as has been held by the Supreme Court in the case of Kulwant Singh Gill Vs. State of Punjab reported in 1991 Supp (1) SCC 504 and more recently in a case reported in 2002 (3) MPHT 172 (State of M.P. Vs. S. R. Sonwani and another) whereby the Division Bench of Madhya Pradesh High court has held that stoppage of increment with

cumulative effect amounts to a major penalty and under such circumstances, before imposing of such penalty, a proper enquiry as is envisaged under the service rules governing the service conditions of each of the petitioners becomes mandatory.

6. The petitioners substantively are the employees of the School Education Department posted at the schools run under Rajeev Gandhi Shiksha Mission. Under the circumstances, the petitioners service conditions would be substantively the Chhattisgarh Civil Services (Classification, Control & Appeal) Rules, 1966. Even if it is considered that the services of the petitioners are under the Panchayat Department, the service conditions would be governed under the Chhattisgarh Panchayat Service (Discipline and Appeal) Rules, 1999. Under both the rules i.e. Rule-14 of the Rules, 1966 and Rule-7 of the Rules, 1999, a procedure has been prescribed so far as the imposition of a major penalty is concerned.

7. In the instant case, undoubtedly no departmental enquiry has been conducted in as much as there was no chargesheet issued, no enquiry officer appointed, no evidence led by the department to prove the charge and it appears that the impugned order has been passed only in the light of a preliminary investigation/enquiry that got conducted by the Department. Moreover, the preliminary investigation also is based only on the statement of the petitioners where the petitioners have specifically denied the allegations which all the more necessitated the Department to prove and establish the allegations by cogent evidence which in the present case is missing.

8. In the given facts and circumstances of the case, this Court has no hesitation in reaching to the conclusion that the impugned order first being

an order of major penalty and secondly the major penalty being imposed without a proper departmental enquiry is unsustainable and the same deserves to be and is accordingly set aside.

9. So far as the question of maintainability which has been raised by the respondents are concerned, since the petition is coming up after more than 5 years, it would not be proper for this Court to decide at this juncture the issue of maintainability. Moreover, it is also a settled position of law as has been laid down repeatedly by the Supreme Court that merely because there is an alternative remedy available by itself would not mean that the High Court in exercise of its power under Article 226 of the Constitution of India could not interfere with an order or exercise its power of judicial review in respect of an order which has been challenged primarily on the ground of being violative of the principles of natural justice. Further the objection so far as it being a joint writ petition is concerned, since this petition had been admitted as mentioned earlier more than 5 years ago and moreover the order being a common order for each of the petitioners, this Court does not approve of the objection so raised by the respondents at this juncture. For the aforesaid reasons, both the objections stand overruled.

10. The impugned order being set aside, on this ground alone, this Court does not intend to venture into other objections raised by the petitioners and leaving open it to be considered at an appropriate stage, the writ petition, for the aforesaid reasons, deserves to be and is accordingly allowed and the impugned order stands set aside/quashed.

Sd/-
(P. Sam Koshy)
Judge