

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 6726 of 2011**

Parshu Ram Choudhari, S/o. Late Shri Nanku Ram Choudhari, Aged about 46 years, Working as Headmaster, Middle School, Rewapur, Block Ambikapur, District Surguja Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh, through: the Secretary, Tribal Welfare Department, D.K.S. Bhawan, Mantralaya, Raipur, District Raipur, Chhattisgarh.
2. The Commissioner, Surguja division, Ambikapur, District Surguja Chhattisgarh
3. The Collector, Ambikapur, District Surguja Chhattisgarh
4. The Assistant Commissioner, Tribal Welfare, Ambikapur, District Surguja Chhattisgarh

----Respondents

For Petitioner	:	Mr. V.K. Pandey, Advocate
For State	:	Mr. Shashank Thakur, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****19/07/2018**

1. The challenge in the present writ petition is to the order dated 05.06.2010 (Annexure P/4), passed by the Collector, Surguja and also the order dated 30.05.2011 (Annexure P/1), passed by the Commissioner, Surguja division. Though the petitioner has challenged the orders on two grounds, firstly the order of punishment having being inflicted by an incompetent officer and secondly that since the petitioner was inflicted with a minor punishment, the petitioner would be entitled for all monetary benefits for the period under suspension.
2. So far as the second ground is concerned, the same may not have sufficient force of law for the reason that the circular, to which petitioner is relying for the same would be applicable in those cases where the

charge sheet is issued for a major misconduct and ultimately the disciplinary authority imposes a minor punishment.

3. In the instant case the petitioner was proceeded for a minor misconduct and he has been inflicted also with a minor punishment, therefore the said ground does not have sufficient force.
4. So far as the first ground i.e. competency of the disciplinary authority is concerned, the counsel for the petitioner submitted that on the date when the punishment order was inflicted i.e. on 05.06.2010, the petitioner was working as an Headmaster of a Government Middle School and the said post was a class-II rank post and it was also a gazetted post.
5. In support of his contention, the counsel for the petitioner referred to the order dated 11.08.2008 issued by the State Government in this regard wherein the Headmaster, Middle School have also been brought within the category of class-II gazetted officers.
6. The counsel for the petitioner also referred to the notification of the State Government dated 04.08.2008 where the State Government has empowered the Commissioner for imposition of punishment upon officers who are holding the class-II gazetted post.
7. Counsel for the petitioner referring to Annexure P/7 and P/8 sought for the quashment of the punishment order. The State Government relying on the detailed reply filed alleging that the petitioner was subjected to a departmental inquiry and has been granted all opportunities of hearing and it is only on the findings of the inquiry officer that the punishment order has been inflicted. The State Government however has not controverted the petitioner on the aspect whether the Collector is a competent officer to impose punishment or not.

8. Given the aforesaid facts all that this Court now requires to consider is whether the Collector who has issued Annexure P/4 was the competent officer under the Rules to inflict minor punishment upon the petitioner.
9. The fact that the petitioner was a Middle School Headmaster at the relevant point of time is not in dispute. It was also not in dispute that the said post of Headmaster, Middle School as per Annexure P/8 dated 11.08.2008 has been declared to be a class-II gazetted post. Likewise it is also not in dispute that vide notification (Annexure P/7) dated 04.08.2008 the State Government has empowered only the Commissioner to impose punishment upon the officers of the class-II gazetted rank.
10. Given the aforesaid specific order issued by the State Government vide Annexure P/8 and P/7 respectively, this Court finds it difficult to sustain the order (Annexure P/4) dated 05.06.2010 which has been issued by the Collector in respect of a class-II gazetted post holder.
11. The said order therefore is not sustainable and the same deserves to be and is accordingly set-aside. As a consequence the order passed by the Appellate authority Annexure P/1 dated 30.06.2011 also would not be sustainable and the same deserves to be and accordingly set-aside.
12. Reserving the right of the respondents to proceed in accordance with law, the present writ petition stands allowed with consequential benefits.

Sd/-
(P. Sam Koshy)
Judge