

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No.984 of 2018**

1. Rohini Jha D/o Shri Bharat Lal Aged About 41 Years Shikchha Karmi,
Govt. Primary School, Kewtara, Tahsil Saja, District- Bemetara,
Chhattisgarh., District : Bemetara, Chhattisgarh
2. Dameshwari, D/o Shri Raj Kumar, Aged About 25 Years Shikchha Karmi,
Govt. Primary School Suwartala, Tahsil Saja, District- Bemetara,
Chhattisgarh., District : Bemetara, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Panchayat
And Rural Development Ministry, Mahanadi Bhawan, P. S. Rakhi, New
Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
2. The Chief Executive Officer, Janpad Panchayat, Saja Tahsil And Block
Saja, District- Bemetara, Chhattisgarh., District : Bemetara, Chhattisgarh

-- Respondents

For Petitioner : Shri Ajay Shrivastava, Advocate
For Respondent/State: Shri S. Majid Ali, Dy.GA
None For Respondent No.2.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****20/04/2018**

Heard finally with the consent of learned counsel for the parties.

(1) The petitioner has assailed the legality and validity of the order dated 19-05-2014 passed by the Chief Executive Officer, Janpad Panchayat, Saja, by which, the petitioner has been terminated from service, against which, the petitioner preferred an appeal before the Collector, which was dismissed vide order dated 03-11-2016. The appellate order was affirmed in revision vide order dated 27-07-2017 passed by the Commissioner, Durg.

(2) The short issue arisen for determination is- whether services of a

permanent Panchayat employee can be dispensed with or terminated on the allegations of misconduct without conducting any departmental enquiry as envisaged under Rule 7 of of the C.G. Panchayat Service (Discipline and Appeal) Rules, 1999 (in short “the Rules, 1999”)?

(3) Admittedly, on certain allegations, show cause notice was issued to the petitioners and when the respondent authority was not satisfied with the reply of present petitioners, their services have been terminated. A Division Bench of this Court in the matter of **Rooplal Nayak vs. State of Chhattisgarh and others**, 2006(4) M.P.H.T. 99 (C.G.) has held that any of the major penalty prescribed under Rule 5(b) (iv) of the Rules, 1999 cannot be imposed on a member of Panchayat service to whom the said Rules are applicable without conducting regular Departmental Enquiry as envisaged under Rule 7 of the Rules, 1999.

(4) In the case at hand, no departmental enquiry has been held as contemplated under Rule 7. The said provisions uses the words 'formal inquiry' with further stipulation that when an order for 'formal enquiry' has been made, the disciplinary authority shall frame Definite charges, communicate the same to the delinquent along with the statement of allegations, requiring him to submit within the specified time a written statement of defence and also to state whether he desires to be heard in person. Thereafter, the defence is required to to be permitted to inspect and take extracts from the records, which can be refused for reasons to be recorded in writing. On submission of reply by the delinquent, the disciplinary authority may himself enquire or appoint an enquiry officer. Appointment of Presenting Officer and seeking assistance of some other officers by the delinquent is also contemplated therein. The enquiry officer is also enabled to record evidence and thereafter, at the conclusion of the enquiry, the enquiry officer is supposed to prepare enquiry report, the copy of which is

required to be furnished to the delinquent. Thus, the 'formal inquiry' envisaged under the Rules is akin to the procedure prescribed for a regular enquiry under Rule 14 of the C.G. Civil Services (Classification, Control and Appeal) Rules, 1966.

(5) The materials made available to this Court nowhere indicate that any enquiry as contemplated under Rule 7 has been initiated or conducted against the petitioner. Therefore, the impugned order of termination is ex facie not sustainable in law and the same deserves to be set aside.

(6) Before parting with the case, this Court has observed that despite clear legal position that the permanent employee cannot be dismissed from service on allegations of misconduct without holding departmental enquiry in the manner prescribed under Rule 7 of the Rules of 1999, it is found that in number of cases, the Panchayat Officers are frequently passing orders of dismissal of permanent Shiksha Karmi on allegations of misconduct.

(7) Let the Secretary, Department of Panchayat and Rural Development take notice of this aspect and issue necessary directions to all the Panchayats in the State to respect the rule of law that a permanent Panchayat Employee cannot be dismissed from service on the allegations of misconduct without holding departmental enquiry in accordance with Rule 7 of the Rules of 1999 and also for taking disciplinary action against those Officers who are involved in this illegal action contrary to the provisions of law.

SD/-
(**Manindra Mohan Shrivastava**)
J U D G E