

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO.2710 OF 2009**

Durga Shankar S/o Shri Gahsi Ram, 49 years, Peon Terminated,
Higher Secondary School Adawal, Distt- Bastar (CG) R/o Village-
Cholnaar, Tahsil- Bakawand, Distt. Bastar (CG).

...Petitioner(s)

Versus

1. State of Chhattisgarh through the Secretary, Tribal Welfare Department, Mantralaya Raipur (CG).
2. The Collector, Jagdalpur, Distt. Bastar (CG).
3. The Assistant Commissioner Tribal Welfare, Jagdalpur Distt.-Bastar (CG).

... Respondent(s)

WRIT PETITION (S) NO.2714 OF 2009

Kunwar Singh S/o late Lachhu Ram, 48 years, Peon Terminated,
Post Metric Girls Hostel, Dharampura, Jagdalpur, Distt. Bastar (CG)
R/o Village Chotedewara, Tahsil Jagdalpur, Distt. Bastar (CG).

...Petitioner(s)

Versus

1. State of Chhattisgarh through the Secretary, Tribal Welfare Department, Mantralaya Raipur (CG).
2. The Collector, Jagdalpur, Distt. Bastar (CG).
3. The Assistant Commissioner Tribal Welfare, Jagdalpur Distt.-Bastar (CG).

... Respondent(s)

For Petitioners	:	Shri Akash Pandey, Advocate.
For Respondent-State	:	Shri Adhiraj Surana, Dy. G.A.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

28.09.2018

1. The challenge in these two petitions is order Annexure P/1, dated 11.05.2009 whereby the services of the petitioners for the second time had been terminated.
2. These are two writ petitions with identical set of facts. Since the averment and the pleadings of either side being same, this court proceeds to decide these petitions by this common order.
3. The petitioners were appointed on 08.06.1983 and 07.05.1990 on the post of Peon and Chowkidar respectively. They were placed

under suspension on 21.05.1991 on the allegation of misconduct. Charge sheet was issued on 06.06.1991 and departmental enquiry was also initiated against the petitioners and since inspite of notice they did not participate in the departmental enquiry, the enquiry officer proceeded exparte and submitted a report and finally vide order dated 25.04.1992 the services of the petitioners stood terminated.

4. Meanwhile, the petitioners were also prosecuted in criminal case for the offence under Sections 468,471 and 420 IPC and finally the criminal case resulted into an acquittal vide judgment dated 29.01.2008. Subsequent to the judgment of acquittal, the petitioners had been reinstated by the respondents vide order dated 31.07.2008. The petitioners by virtue of reinstatement continued in employment for a period of roughly 10 months and thereafter abruptly the impugned order dated 11.05.2009, Annexure P/1, has been issued terminating the services of the petitioners for the second time on 11.05.2009. The second termination order has been issued by the same authority who had reinstated the petitioners on 31.07.2008. It is said that the second termination order has been passed in the light of the legal opinion which the authority has obtained from the government pleader.
5. The contention of the petitioners assailing the impugned order is that, though the petitioners were terminated way back in the year, 1992, the petitioners case got strengthened on their acquittal in the criminal case on 29.01.2008 and since then the petitioner had been pursuing their claim for reinstatement. According to the petitioners,

once when there was already a decision taken by the authorities concerned for reinstating the petitioners in the light of the order of acquittal, there was no further scope for the same officer to have reviewed his own earlier decision after 10 months of the petitioners having been reinstated. There has been no instructions or orders from any of the higher authorities in the department directing the Assistant Commissioner who had issued the order of reinstatement to recall it or to reconsider it, in the absence of which, the authority was functus officio and could not have reviewed his own decision.

6. It was also the contention of the petitioners that even on the merit aspect, the respondents have not conclusively established the charges against the petitioners and that the findings of the enquiry officer also is bad in law as *ex parte* enquiry proceeding had been drawn and therefore the findings of the criminal court granting acquittal to the petitioners has to be given its due weightage and had to be taken into account for the purpose of reconsidering the earlier order of termination. Since the respondents had on reconsideration reinstated the petitioners, there was no further occasion for again reviewing the earlier decision and it amounts to the petitioners being subsequently terminated for the same misconduct for which they were earlier terminated way back in the year, 1992.
7. Before issuance of the impugned order, the respondents had not called upon the petitioners seeking for an explanation, nor was any show cause notice issued. Neither was any intimation in this regard provided by the respondents so far as any review being made and

for this reason also the impugned order deserves to be held to be bad in law and in violation of the principles of natural justice.

8. Per contra, the State counsel opposing the petitions submits that the judgment of criminal case would not come to the rescue of the petitioners on account of fact that the first termination inflicted upon the petitioners was after duly constituted departmental enquiry and enquiry report. Therefore the order of termination was based on a specific findings of enquiry officer and which cannot be interfered with. It is further submitted that the nature of allegations which have been levelled against the petitioners also are quite serious and that the fact that they were involved in the said commission of the offence stands established on the ground that inspite of sufficient opportunity being granted to the petitioners for appearing before the inquiry officer, they chose not to appear and the inquiry officer thus was left with no other option, but to proceed exparte against the petitioners and there is no scope of interference.
9. It was the further contention of the State counsel that the order of reinstatement passed by the Assistant Commissioner at the first instance was subsequently realized to be an error by the same officer particularly when he had obtained a legal opinion from the government pleader. If on the basis of the legal opinion the authorities had recalled its earlier order, it is nothing but a correction of error on the part of the authority and therefore there was no requirement of any orders from the higher authorities for review of the same and it was within the powers and competence of the authority.

- 10.** From a bare perusal of records and considering the contents on either side, the facts which are undisputed is, the appointment of the petitioners on the post of Peon and Chowkidar respectively; they being issued with charge sheet on 06.06.1991; the services of both the petitioners stood terminated on an exparte enquiry vide termination order dated 25.04.1992. It is also not in dispute that both the petitioners were also prosecuted in criminal case for the offences under Sections 468, 471 and 420 IPC. Further, it is also not in dispute that the petitioners were prosecuted in criminal case before the court of Chief Judicial Magistrate, Bastar. The criminal court finally vide judgment dated 29.01.2008 acquitted both the petitioners from the charges levelled against them. There is also no dispute on the fact that subsequent to the order of acquittal the Assistant Commissioner, Tribal Welfare Department, Jagdalpur vide his order dated 31.07.2008 (Annexure P/6) reinstated both the petitioners. They continuously worked on the said post for a period of roughly 10 months till 11.05.2009 on which date the second termination order is issued (Annexure P/1).
- 11.** From the findings given in the preceding paragraphs, what is also reflected is that the enquiry which was conducted against the petitioner was an exparte enquiry. The respondents in their reply have not produced any material with which it can be established that the petitioners had been sufficiently served well in advance for participating in the enquiry proceedings. Since it was an exparte enquiry, prima facie it appears that the petitioners have not got an opportunity of defence before the inquiry officer to prove their

innocence. At the same time, what is also admitted position is that for the same set of charges the petitioners were subjected to trial before the court law and after recording of the evidence the criminal court had given a judgment in favour of the petitioners holding them to be not guilty of the offence for which they have been charged and have got an order of acquittal in their favour.

- 12.** The Supreme Court in landmark judgment in Cap. M.Paul Anthony Vs. Bharat Gold Mines Ltd., 1993 (3) SCC 679 in paragraph 34 held as under :

“34.....The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings to stand."

- 13.** Given the aforesaid legal position as it stands and also considering the fact that there is judgment of acquittal in favour of the petitioners and the so called departmental enquiry which was conducted at the first instance was an exparte enquiry, this court is of the view that the case of the petitioner in the light of the judgment of acquittal thus required reconsideration and the impugned order dated 11.05.2009 (Annexure P/1) to the aforesaid extent would not be sustainable and the same stands set aside restoring the order of reinstatement dated 31.07.2008. However, applying the principle of “No Work No Pay” the petitioners would not be entitled for back wages, but would be entitled for notional fixation.
- 14.** However, it shall be open for the respondents who would have liberty for conducting fresh enquiry de-novo against the petitioners

for the same charges from the stage of appointing enquiry officer and after giving notice to the petitioners and thereafter appropriate orders can be passed on the basis of the findings given by the inquiry officer.

- 15.** Both the writ petitions accordingly stands allowed. No order as to costs.

Sd/-
(P. Sam Koshy
Judge