

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO. 2029 OF 2009**

C.M. Mishra S/o S.M. Mishra, aged about 60 years, working as Lecturer, Government High School Limtara (Dhamdha) Distt. Durg (CG) R/o LIG-1, 690/753, Chhattisgarh Housing Board Bhilai, Distt. Durg (CG).

...Petitioner(s)**Versus**

1. State of Chhattisgarh through the Principal Secretary, School Education Department DKS Bhawan, Raipur (CG).
2. Commissioner, Public Instructions, Raipur (CG).
3. District Education Officer, Bemetara, Durg (CG).

... Respondent(s)

For Petitioner	:	Shri AS Rajput, Advocate.
For Respondent-State	:	Shri SP Kale, Dy, A.G.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****27.08.2018**

1. The challenge in this petition is to the order dated 29.10.208 (Annexure P/1) whereby the petitioner has been inflicted with punishment of stoppage of two annual increments with cumulative effect and also ordered for recovery of amount of Rs.41,764/-. So far as order of recovery is concerned, this court had vide order dated 30.04.2009 granted interim protection against the same.
2. The contention of the counsel for the petitioner is that the impugned order Annexure P/1 is bad in law for the reason that the alleged enquiry which was conducted against the petitioner was totally faulty and is not sustainable in the eyes of law. It is a case where the inquiry officer has not submitted any report so far as his findings are concerned. The alleged inquiry report submitted by the department for issuance of the impugned order is the inquiry report submitted by

the Principal who was not an inquiry officer. The inquiry officer in the instant case was the District Education Officer, District Bemetara and the inquiry report in this case has been submitted by the Principal and this is the primary fault of inquiry itself which would vitiate the entire inquiry proceedings.

3. It was also the contention of the petitioner that during the course of enquiry also there was no statements recorded on behalf of the any of the witnesses who could prove the alleged misconduct against the petitioner before the inquiry officer. Likewise, there has been no documents produced by the prosecution witnesses to establish the alleged charges against the petitioner. Neither was any document proved or inspected during the course of enquiry. It was further contention of the petitioner that even if there are documents which have been relied upon or statement of any witnesses recorded in the course of enquiry, those witnesses and documents have not been made available to the petitioner for effective cross examination of the material witnesses brought before the enquiry proceedings. Thus, the order impugned is bad in law and deserves set aside.
4. So far as punishment order is concerned, it is a punishment of stoppage of two annual increments with cumulative effect. Indisputably, by now it has been settled that any punishment order with cumulative effect has an adverse bearing on the retiral dues payable to the employee and therefore it has been brought within the ambit of a major punishment and the rules governing the service conditions prescribes the manner in which the department has to proceed before imposition of major punishment. Further, it is the

contention of the petitioner that the entire enquiry has been based on the statement made by the delinquent himself, which again is per se illegal for the reason that it is always the prosecution witnesses who have to be examined in the enquiry proceedings first and only thereafter will the delinquent be examined. This again does not seem to have been adopted by the inquiry officer in the course of conducting enquiry.

5. The aforesaid contentions of the petitioner has not been effectively opposed by the State counsel though he tried to justify the action on the part of the respondents alleging that the allegations against the petitioner were quite serious and that the petitioner himself has not co-operated in the course of conducting enquiry. Therefore, the petitioner now cannot raise all these grounds while assailing the impugned order of punishment.
6. Be that as it may, what is undisputed is the fact that the impugned order Annexure P/1 is an order of major punishment. The procedure to be adopted for imposition of a major penalty is prescribed under Rule 14 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966. Indisputably, the inquiry officer who was appointed by the respondents to enquire into the matter was the District Education Officer, Bemetara. The original enquiry proceedings were summoned by this court and in the inquiry proceedings the inquiry report of the District Education Officer Bemetara was not available. The enquiry report available on record was that of the Principal of the concerned School but who was not an inquiry officer. Thus, the said report may not have much

relevancy. Moreover, indisputably no witnesses were examined on behalf of the prosecution. No materials were proved or exhibited before the inquiry officer with which the charges levelled could be established.

7. Given the aforesaid factual matrix of the case, the entire enquiry report, enquiry proceedings, the alleged report and the punishment order (Annexure P/1) stand vitiated of being in blatant violation of the principles of natural justice as also in violation of the service rules governing the service conditions of the petitioner.
8. The impugned order of punishment dated 29.10.2008 (Annexure P/1) is therefore not sustainable. The same deserves to be and accordingly stands set aside/quashed with consequential benefits to be given to the petitioner as by efflux of time the petitioner has since retired.

Sd/-
(P. Sam Koshy
Judge