

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 3229 of 2008**

Set Ram Sahu S/o Shri Dharmu Sahu, aged – 43 years, working as –
Mechanic Fitter, at Municipal Council, Mahasamund, District
Mahasamund (CG) R/o Raman Tola, Machewa, Mahasamund (CG)

---- Petitioner**Versus**

1. State of Chhattisgarh through its Secretary, Department of Urban
Administration Mantralaya, D.K.S. Bhawan, Raipur
2. The Municipal Council, Mahasamund through its President, Main Road,
Mahasamund, District Mahasamund (CG)
3. The Chief Municipal Officer, Municipal Council, Mahasamund, District
Mahasamund (CG)

---- Respondents

For Petitioner	:	Shri R. K. Kesharwani, Advocate
For Respondent/State	:	Shri Ashutosh Pandey, Panel Lawyer
For Respondents 2 & 3	:	Shri Sudip Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****10.05.2018**

The petitioner while working as a mechanical fitter with respondent no.2 was imposed with a punishment of stoppage of one increment with cumulative effect vide order dated 30.01.2008. The said punishment was in respect of an alleged misconduct in the course of his employment. The said punishment had the effect of a major punishment on account of cumulative effect. Realizing the mistake that the petitioner has not been granted an opportunity of hearing and an enquiry not having been conducted, the respondents without implementing the said order of punishment, issued a charge sheet dated 26.02.2008 Annexure P-6 to the petitioner. To the said charge sheet,

the petitioner submitted a detail reply vide Annexure P-7 categorically denying all the allegations levelled in the charge sheet. Subsequently, the impugned order Annexure P-8 dated 14.05.2008 has been passed. The punishment imposed on second time was that of stoppage of one increment with cumulative effect and the period of suspension was declared as “no work no pay”.

2. Counsel for the petitioner challenges the impugned order dated 14.05.2008 stating that the same is bad in law for the reason that it amounts to a second punishment imposed by the respondents when they had already issued the same order of punishment on an earlier occasion i.e. on 30.01.2008. It was contended that both the orders are not sustainable for the reason that the same have been issued without conducting a departmental enquiry. Since the effect of punishment is that of a major punishment, the requirement of Rule 14 of Chhattisgarh Civil Services (Classification, Control & Appeal) Rules, 1966 (for short 'the Rules') should have mandatorily been followed by the respondents before passing such a punishment order. He submits that in the absence of any such compliance as is required under Rule 14 of the Rules, the order of punishment dated 14.05.2008 so also the order dated 30.01.2008 both are liable to be set aside/quashed.

3. Counsel for the respondents, however, trying to justify the impugned order submits that it is a case where the charge sheet was issued to the petitioner giving details of the allegations made against him. He submits that the petitioner had also given a detail reply to the said charge sheet which was found to be totally unsatisfactory leading to the issuance of punishment of stoppage of one increment. Thus it cannot be said that the petitioner was not granted any opportunity of hearing before passing of the impugned order.

4. So far as the issue whether in a case where there is a punishment of

stoppage of increment with cumulative effect, the departmental enquiry is mandatorily required or not is concerned, it has by now been settled in a couple of decisions of the Supreme Court wherein it has been held that since the implication of a punishment of stoppage of increment with cumulative effect has a life long bearing as it would also have an adverse bearing so far as the pension and pensionary benefits payable to the petitioner are concerned, it would fall within the ambit of a major punishment and before imposing of major punishment, the statutory requirement as is prescribed under Rule 14 of the Rules is required to be followed by the respondents.

5. The order of punishment thus would be firstly contrary to the rules so also without jurisdiction and authority of law and the same would be per se void. The view of this Court stands fortified by the decision of the Supreme Court in the case of **Kulwant Singh Gill Vs. State of Punjab** reported in **1991 Supp (1) SCC 504**.

6. In view of the aforesaid admitted factual matrix of the case where the order of punishment which is a major punishment and the fact that there is a non compliance of Rule 14 of the Rules to the extent of not conducting a departmental enquiry as is envisaged under Rule 14, the impugned order is not sustainable and the same is accordingly set aside with consequences to follow.

7. The writ petition accordingly stands allowed.

**Sd/-
P. Sam Koshy
Judge**