

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 857 of 2007

Manglu Ram Thakur S/o Mansharam Thakur aged about 35 years, resident of Village Pendri (Gobra), Post Devari, P.S. and Tahsil-Dhamdha, District-Durg, (Chhattisgarh).

---- Petitioner

Versus

1. State Of Chhattisgarh, Through Secretary, Panchayat and Rural Development Department, Mantralaya, D. K. S. Bhawan, Raipur (Chhattisgarh)
2. Sarpanch, Gram Panchayat Pendri (Gobra), Block Office Dhamdha, Tahsil Dhamdha, District Durg (Chhattisgarh),
3. Chief Executive Officer, Janpad Panchayat Dhamdha, District Durg (Chhattisgarh).

---- Respondents

For Petitioner : Mr. Abhyuday Singh, Advocate.

For State : Mr. Dhiraj Wankhede, GA

For Respondent No. 2 & 3 : Mr. Pawan Kesharwani & Ms. Shriya Mishra

Hon'ble Shri Justice Manindran Mohan Shrivastava

Order on Board

06/03/2018

1. In this petition the only legal issue arising for consideration is whether the petitioner, Panchayat Karmi, could be dismissed from service on the allegations of misconduct without holding any enquiry as prescribed in Rule 7 of the Chhattisgarh Panchayat Service (Discipline and Appeal) Rules, 1999 (for short, "the Rules of 1999").

2. Relevant facts necessary for decision of the case are that the petitioner was initially appointed as Panchayat Karmi on 17-01-1995 under resolution of the Gram Panchayat, Pendri (Gobra) Block Dhamdha, Tahsil Dhamdha, District Durg. Later on, the petitioner was also given the charge

of Panchayat Secretary of Gram Panchayat, Pendri (Gobra), Tahsil Dhamdha, District Durg vide order dated 16-01-1996.

3. On certain allegations of misconduct, a notice was issued to the petitioner on 28-05-2007. It also appears that a criminal case was also registered against the petitioner by police station Dhamdha. After giving show cause notice to the petitioner to which he did not submit any reply, the Gram Panchayat proceeded to pass a resolution and service of the petitioner dismissed vide impugned order dated 08-09-2007, giving rise to this petition.

4. The only submission made by learned counsel for the petitioner is that the petitioner was working as Panchayat Karmi, his services could not be dismissed on the allegations of misconduct without holding regular Departmental enquiry as envisaged in Rule 7 of the Rules of 1999 and this issue is no longer restraint in view of decision of this Court in the case of **Dhaluram Kosaria Vs. State of C.G. and Others, 2006 (2) C.G.L.J. 186** followed thereafter including the case of **Brijl Lal Shyam (Gond) Vs. State of Chattisgarh and Others in WP No. 4985/2005 vide order dated 07-11-2017.**

5. Per contra, learned counsel for the State opposes by arguing that the petitioner was appointed as Panchayat Karmi only on honorarium basis, therefore, the said rules were not applicable to him. The other submission is that the petitioner was given a show cause notice to which the petitioner did not respond, therefore, the petitioner cannot complain of violation of procedure prescribed in the Rules in the matter of imposition of penalty of dismissal from service. It is also submitted that in any case, opportunity of hearing was afforded to the petitioner, therefore, the petitioner may not have any legitimate grievance. The material on record shows that vide order dated 08-09-2004 petitioner was dismissed from the service of the Panchayat Karmi. A copy of memo of revision filed by the petitioner before the Secretary, Department of Panchayat Development shows that the petitioner had filed an appeal against the order of dismissal before the Director, panchayat, Chattisgarh and against interim order dated 19-10-2004 revision was preferred before the State Government. A perusal of the memo of revision shows that after the order was passed by the Gram Panchayat on 27-09-2004, the show cause notice was given to the petitioner by Deputy Director on 12-10-2004. Further the petitioner has placed on record the copy of order dated 10-12-2004 passed by the State Government in the revision filed by the petitioner which shows that the

revision has been dismissed observing that petition is pending before the Director, panchayat.

6. Neither the petitioner nor the respondent have disclosed in their respective pleadings as to what happened to the appeal filed by the petitioner before the Director.

However, there is nothing on record to show that there was any order passed in the appeal which means, during the pendency of the said appeal the petitioner filed this petition before this Court assailing the legality and validity of the order of dismissal from service passed by Gram Panchayat, order dated 09-11-2004 passed by Janpad Panchayat requiring the petitioner to hand over the charge and order dated 10-12-2004 passed by the State Government in revision.

7. While no ground is made out to interfere by the State Government in revision because that appears to have been filed against the interim order details of which are not on record. This Court finds that the petitioner was removed from the office of Panchayat Karmi on certain allegations of misconduct, therefore, it amounts to dismissal from service.

In view of the decision of the High Court of Madhya Pradesh in the case of **Kunjan Singh Vs. State of M.P. and others, 2003(3) M.P.H.T. 370**, and the definition of 'Panchayat Service' as incorporated in rule 7 of Panchayat Appeal and Discipline Rules, 1999. There is no doubt that panchayat Karmi is also member of Panchayat Service.

8. In case of Panchayat Karmis, this Court in the case of Dhaluram Kosaria (Supra) clearly held that Panchayat Karmis appointed from Gram Panchayat are entitled to protection of Rule 7 of Panchayat Appeal And Discipline Rules of 1999. Rule 7 of the Rules of 1999 is extracted herein below :-

7. "Procedure for imposing major penalties :- (1) No order, imposing on a member of the Panchayat Service, any of the penalties specified in clause (iv) to (via) of rule 5 shall be passed except after a formal inquiry is held as far as may be, in the manner hereinafter provided.

(2) When an order for formal inquiry has been made, the disciplinary authority shall frame Definite charges on the basis of allegations and shall communicate such charges, along with the statement of the allegations, to the member of Panchayat Service and also require him to submit, within such time as may be specified a written statement of defence and also to state whether he desires to be heard in person.

(3) The person against whom inquiry is to be held shall, for the purpose of preparing toe defence, be permitted to inspect and take extracts from such records as he may specify:

Provided that such permission may be refused if, for reasons to be recorded in writing, in the opinion of the Enquiry Officer such records are not relevant for the purpose or it is against the public interest to allow his access thereto.

(4) On the receipt of the written statement of defence or if any such statement is not received within the time specified, the disciplinary authority may himself enquire into sucit of the charges as are not admitted or appoint an Enquiry Officer to hold the inquiry and forward to him his report and, if advised, his recommendation alongwith all the inquiry papers.

(5) The disciplinary authority may nominate any person to present the case in support of the charges before the Enquiry Officer. The member of the Panchayat Service may present his case with the assistance of any other Panchayat Servant of State Government Servant approved by the Enquiry Officer but may not engage a legal practitioner for the purpose, unless the person nominated by the disciplinary authority as aforesaid is a legal practitioner or unless the disciplinary authority having regard to the circumstances of the case so permits.

(6) If the servant of the Panchayat Service desires to be heard in person, he shall be so heard. If he so desires or if the disciplinary authority so directs, an oral enquiry shall be held by the Enquiry Officer. At such inquiry evidence shall be heard as to such of the allegations as are not admitted and the person charged shall be entitled to cross examine the witness, to give evidence in person, to produce documentary evidence, if any, and to have such witness called as he may wish :

Provided that the Enquiry Officer may, for reasons to be recorded in writing , refuse to call a witness.

(7) At the conclusion of the inquiry, the Enquiry Officer shall prepare a report of the inquiry, recording his findings on each of the charges together with reasons therefor.

(8) The proceedings conducted against the persons charged shall contain a sufficient record of

(i) the charges framed against such person and the statement of allegations ;

(ii) the written statement of defence if any ;

(iii) the oral evidence taken in the course of the inquiry ;

(iv) the documentary evidence considered in the course of the inquiry~

(v) the orders, if any, made by the Enquiry Officer or

the disciplinary authority as the case may be with regard to the inquiry ;

(vi) a report setting out the findings on each charge and the reasons therefor.

(9) the Enquiry Officer, if he is other than the disciplinary authority, shall submit the records of proceedings mentioned in Clause (8) above to the disciplinary authority without recommendation relating to the penalty to be imposed. The disciplinary authority shall consider the record of the enquiry and its findings on each charge, having regard to the findings on the charges and the record (if the proceedings) if he is of the opinion that any of the penalties specified in clauses (iv) to (vii) of rule 5 should be imposed, it shall be furnish to the person charged a copy of the report of the Enquiry Officer a statement of its findings together with brief reasons for disagreement, if any, with the findings of the Enquiry Officer.

(10) The disciplinary authority shall consider the representation, if any, made by the person charged in response to the notice and determine the penalty, if any, should be imposed and shall pass appropriate order on the case.

(11) The orders passed by the disciplinary authority shall be communicated to the member of the Panchayat Service, who shall also be supplied with a copy of the report of the Enquiry Officer and where, disciplinary authority is not the Enquiry Officer, a statement of its findings together with the brief reasons for disagreement, if any, with the findings of the Enquiry Officer, unless they have already been supplied to the person charged."

It is thus clear that whenever there is an allegation of misconduct against member of Panchayat Service and panchayat intends to take disciplinary action, it has to invariably follow the mandate of law by holding enquiry in the manner prescribed under Rule 7 as aforesaid. It is not a case where, in the matter of disciplinary action, no rules have been framed so as to say that issuance of notice would be sufficient complaint of principle of natural justice. Where power to take disciplinary action against a member of Panchayat service is conferred on Panchayat under the Rules, such statutory power can be exercised only in the manner prescribed under the rules and not otherwise. Therefore, whenever there is an allegation of commission of misconduct by a member of Panchayat Service, the Panchayat is obliged under the law to issue charge sheet in the manner required under rule 7 of the Rules of 1999, holding enquiry and then pass an order. If that is not done, mere giving to show cause notice would not legalise the action because the order would be in the teeth of rule 7 of the Rules of 1999 that is what has been held in the case of Dhaluram Kosaria (supra). Subsequent decision this Court in the case of Brijlal (Gond) the

statutory mandate to hold detailed departmental enquiry in accordance with the rule 7 of 1999, this Court would also place implicit reliance upon the decision in the case of **Prakash Chand Soni Vs. State of Chhattisgarh and others** in WPS 1846/2011 decided on 15-07-2015.

9. In that view of the matter, only on the ground of non compliance of Rule 7 of the Rules of 1999, dismissal from service on the allegations of misconduct, is declared illegal and set aside. The petitioner would be entitled to consequential benefits of reinstatement with back wages in view of the decision of the Supreme Court in the case of **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and others**, 2013 (10) SCC 324.

The petition is accordingly allowed. The case is remitted for holding enquiry by respondent No. 2 & 3, as per in Rule 7 Panchayat Appeal and Discipline Rules, 1999. It is made clear that pendency of enquiry will not affect the back wages as directed by the Court.

Sd/-

(Manindra Mohan Shrivastava)
Judge