

HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION (S) NO. 3118 OF 2018**

- Mohar Sai Patel (M.S. Patel) S/o Kripasindhu Patel, Aged About 58 Years, Presently Posted as Vice- Principal (Lecturer- Class), Eklavya Model Residential School, Chhote Mudpar, Block Kharsia, District- Raigarh (C.G.). Original Posted as Lecturer at Govt. High School Telikot, Block Kharsia, District- Raigarh (C.G.)

... Petitioner**versus**

1. State of Chhattisgarh, through the Secretary, Tribal Department, Mahanadi Bhawan, Mantralaya, New Raipur, P.S. Rakhi, Raipur (C.G.)
2. The Commissioner, Schedule Caste & Schedule Tribe Welfare, Cum- Secretary of State Label (C.G.) Schedule Caste Welfare Residential & Ashram Educational Institution Committee, Indravati Bhawan, New Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
3. Commissioner, Bilaspur Division, Bilaspur (C.G.)
4. Assistant Commissioner, Tribal Welfare Department Raigarh, District Raigarh (C.G.)
5. The Director, Directorate of Public Instruction Chhattisgarh, Indravati Bhawan, New Raipur (C.G.)
6. The District Education Officer, Raigarh, District- Raigarh (C.G.)
7. The Block Education Officer, Kharsia, District- Raigarh (C.G.)

... Respondents

For Petitioner	:	Mr. Jeet Patel, Advocate.
For Respondent-State	:	Mr. Shashank Thakur, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****18/04/2018**

1. Challenge in the present writ petition is to the order of suspension dated 31.1.2018 (Annexure P-1) and the disciplinary proceeding initiated vide charge-sheet dated 1.3.2018 (Annexure P-2).
2. At the outset, learned Counsel for the Petitioner submits that the order of suspension issued against the Petitioner is by an incompetent officer. He further submits that the Petitioner is posted as Lecturer at the High School since 2009 and the post of Lecturer is a Class-2 post. He next submits that as on date the Petitioner is discharging the duties as Vice-Principal at Eklavya Model Residential School, Chhotemudpar, Block Kharsia, District Raigarh. According to the Petitioner, the order of suspension has been issued by the Assistant Commissioner, Tribal Welfare

Department, with the approval of the Collector, whereas both authorities were not competent to place the service of the Petitioner under suspension. The order of suspension can only be issued by an officer of the rank of appointing authority or a person notified under Rule 9 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules.

3. Undisputedly, there is a circular of the State Government which has been issued under Rule 9 whereby the power to place an employee under suspension has been further delegated to the Collector in respect of employees in the category of Class-4 and Class-3 and the Divisional Commissioner has been delegated the additional power of placing an employee/officer in the rank of Class-2 and Class-1 under suspension within the Division. Undisputedly, the Petitioner in the instant case is a Class-2 officer. He could have been placed under suspension only by an appointing authority or by Divisional Commissioner. The order of suspension (Annexure P-1) has not been issued by either of the designated officers.

4. The aforesaid legal position as it stands has not been disputed by the learned State Counsel.

5. This Court in a recent past in WPS No. 2214 of 2018, decided on 5.4.2018, has considered this aspect and held that the order of suspension is not sustainable since it has been issued by an incompetent officer.

6. Given the aforesaid facts and circumstances of the case, reserving the liberty of the State Government for issuance of suspension order by a competent officer in accordance with the rules governing the field, if they still feel so, the impugned order (Annexure P-1) stands quashed.

7. However, this Court has not expressed any opinion so far as the issuance of charge-sheet (Annexure P-2) is concerned.

- 8.** The writ petition stands allowed in part and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge

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