

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.1405 of 2018**

- Hemshankar Deshlahra S/o Late Shri Dukodhiha Deshlahra Aged About 56 Years Caste Satnami R/o M. I. G. 2/229A Borsi Colony P. S. Padmanabhpur Durg District Durg Chhattisgarh.

---- **Petitioner****Versus**

1. Suresh Kumar Sundrani Joint Director Zonal Office, Urban Administration And Development Department, Raipur Presently Posted As Joint Director Zonal Office, Urban Administration And Development Department, Jagdalpur, Chhattisgarh
2. B. L. Soni Under Secretary Urban Administration And Development Department Raipur Chhattisgarh
3. G. R. Ransingh The Then Chief Municipal Officer Mahasamund Chhattisgarh
4. Smt. Jyotsna Toppo The Then Chief Municipal Officer, Mahasamund (CG) Presently posted as suspended chief municipal officer, Zonal Office Urban Administrative And Development Department Raipur Chhattisgarh

---- **Respondents**

For the Petitioner : Petitioner Hemshankar Deshlahra is present in person.

For the respondents : None

Hon'ble Shri Justice Ram Prasanna Sharma
Order On Board

26.11.2018.

1. Heard on application for grant of leave to appeal under Section 378(4) of CrPC.
2. This petition has been preferred against Order dated 08.5.2018 passed by Special Judge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act 1989'), Mahasamund (CG) in unregistered complaint case filed by the petitioner under Sections 120B, 109, 111, 166, 211 & 499 of the Indian Penal Code and under Section 3(1) (viii) (ix) & (x), Section 3 (2) (vi) (vii) of the Act 1989 wherein the said Court

dismissed the complaint under Section 203 of the Code of Criminal Procedure, 1973.

3. As per the version of the complainant before the said Court he was posted as Chief Municipal Officer at Mahasamund and transferred to Municipal Council Tilda Nevra, Distt. Raipur. He was suspended by the authorities and departmental enquiry was initiated against him. The enquiry was not conducted properly and the petitioner was punished after completion of the enquiry against which he filed an appeal before the appellate authority. As the respondents were not paying the salary of the petitioner for the suspension period and intentionally harassing him he filed a complaint before the said Court, but the court without appreciating the statement of the witnesses dismissed the complaint on the ground that there is no sufficient material for proceedings of the case.

4. Record of the trial Court goes to show that enquiry against the petitioner was not conducted on the basis of his caste, but it was conducted on the basis of his misconduct. Admittedly, the petitioner was posted as Chief Municipal Officer at Mahasamund and looking to the charges levelled against the petitioner it appears that there was sufficient material for initiating departmental proceedings against him. It is a presumption that official act is regularly performed. Therefore, it cannot be said that the proceedings was initiated against him with any malafide intention of any of the respondents. A number of hearings were provided to the petitioner during the enquiry and the enquiry

officer submitted the report on the basis of the material placed before him. The petitioner had the right to file appeal against the finding of the enquiry officer and he availed all the opportunities of the appeal, therefore, it cannot be said that any of the authorities has committed any criminal act.

5. Conduction of enquiry is a hazard of service and any public servant has to face it as per the Civil Services (Classification Control and Appeal) Rules, 1966 which can be questioned only before a proper forum. If any dues are pending the petitioner has all the rights to claim before the department or take legal recourse. But for that no criminal action can be taken on any of the respondents. The trial Court has properly evaluated the evidence adduced before it and recorded a finding that material for proceedings against the respondents are lacking and this Court has no reason to substitute a contrary finding. It is not a case where the respondents should be called for full consideration of the petition.

6. Accordingly, the application for leave to appeal is rejected. Consequently, the CrMP stands dismissed.

Sd/-
(Ram Prasanna Sharma)
JUDGE