

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 5541 of 2018**

Krishna Das Vaishnav S/o Shri T.D. Vaishnav Aged About 56 Years Working As Upper Division Teacher And Posted At Govt. Middle School Nigarband, Block Takhatpur, District Bilaspur Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of School Education Mahanadi Bhawan, Mantralaya New Raipur, District Raipur Chhattisgarh.
2. Director, Directorate Public Instruction Raipur, District Raipur Chhattisgarh.
3. District Education Officer, Bilaspur, District Bilaspur Chhattisgarh.

----Respondents

For Petitioner	:	Mr. Ajay Shrivastava, Advocate
For State	:	Ms. Astha Shukla, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order on Board****28/08/2018**

1. With the consent of the parties, the matter is heard and is being finally disposed off.
2. The challenge in the present writ petition is to the order Annexure P/1 dated 13.09.2017, whereby the petitioner has been inflicted with an order of punishment of stoppage of one increment with non-cumulative effect.
3. The said order has been passed under Rule 10 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966. The said order is an appealable order. The said order has been filed after about atleast one year from the date of passing the impugned order.
4. However perusal of the record would show that the impugned order has been passed by the respondent No.2, who otherwise is the

Appellate authority himself and the appointing authority of the petitioner is the District Education Officer and hence no fruitful purpose would be served in directing the petitioner to now prefer an appeal.

5. The challenge to the impugned order is firstly that the order has not been passed by the Disciplinary authority and that it has been passed by the Appellate authority, and therefore the petitioner has lost the right of preferring an appeal against the impugned order.
6. The second ground was that initially the petitioner was issued with a charge sheet for a major misconduct vide charge sheet dated 05.07.2015 and the departmental enquiry was also proposed, however after sometimes the respondents dropped the departmental enquiry and the charge sheet and straight away issued the impugned order Annexure P/1 inflicting with a minor punishment of stoppage of one increment with without cumulative effect.
7. The counsel for the petitioner submits that the said decision of the respondents is bad in law and that this Court in an identical set of facts vide WPS No. 1720/2008 has allowed the writ petition under similar circumstances and prays for a similar order in the present case also.
8. So far as the fact, which has been narrated herein above has not been disputed by the State counsel. Though the counsel for the respondents tried to justify the order on the ground that the reading of the impugned order by itself is a self explanatory as regards the nature of misconduct which the petitioner has committed and

therefore the imposition of the minor punishment cannot be faulted with and prayed for rejection of the writ petition.

9. Having heard the contentions put forth on either side and on perusal of record, undoubtedly the petitioner vide Annexure P/2 dated 05.07.2015 was issued with a charge sheet for a major misconduct contemplating a departmental enquiry, to which the petitioner had filed a detailed reply denying all the charges. Thereafter the respondents did not take any action against the petitioner all this period and suddenly vide Annexure P/1 the impugned order has been passed on 13.09.2017.
10. The counsel for the petitioner submits that the impugned order is in violation to Rule 16 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 in as much as the Rule provisions envisages that in the event if the charge sheet has been issued and the charges have been denied by the delinquent, it is incumbent upon the authorities to conduct a detailed departmental enquiry so as to prove all the charges leveled against the petitioner.
11. The plain perusal of the Annexure P/2 by itself would reveal that the charge sheet which has been issued was under Rule 14 bringing the nature of misconduct to be one that of major misconduct and if that be so, it was required by the respondents to comply with the provisions as has been envisaged under Rule 14 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966. In the instant case, there does not appear to have been any such procedure adopted by the respondents except for

the issuance of the charge sheet and to which the petitioner had filed a reply with categorical denial of all the allegations.

12. At this juncture, it would be relevant to refer to the decision of the Hon'ble Supreme Court in the case of ***"O.K. Bhardwaj v. Union of India & Ors."*** (2001) 9 SCC 180, wherein in paragraph No.3 of the judgment it has been held as under:-

"(3) While we agree with the first proposition of the High Court having regard to the rule position which expressly says that "withholding increments of pay with or without cumulative effect" is a minor penalty, we find it not possible to agree with the second proposition. Even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with."

13. Likewise again in the case of ***"State of Bihar & Anr. v. Lakshmi Shankar Prasad"*** (2002) 10 SCC 351, the Hon'ble Supreme Court under similar circumstances in paragraph No.3 of its judgment has held as under:-

"3. ...After the initiation of the fresh proceeding, though an explanation was called for from the delinquent, but the impugned order of punishment indicates that the disciplinary authority has not recorded a finding about the guilt of the delinquent of different charges which were levelled against him as well as the consideration of the explanation given by the delinquent to the charges levelled against. In such circumstances,

the High Court was fully justified in interfering with the order of punishment on a conclusion that the disciplinary authority did not record a finding about the guilt of the delinquent nor has it recorded any reasoning for arriving at such conclusion.”

14. Given the aforesaid legal positions as it stands, if we peruse the facts of the present case, it stands establish that the petitioner in the instant case was prosecuted in a departmental proceedings for an act of major misconduct, but the departmental enquiry was not concluded and half way through the enquiry was dropped and the petitioner was inflicted with a minor punishment.
15. In the light of the judgment quoted herein above, this Court is of the opinion that unless and until the respondents would reach to the conclusion of holding that the petitioner guilty of the misconduct either in a preliminary enquiry or in a departmental enquiry, he could not have been inflicted with a punishment. The impugned order Annexure P/1 therefore is not sustainable and the same deserves to be and is accordingly set-aside/quashed, consequences to follow.
16. The writ petition accordingly stands allowed. The impugned order Annexure P/1 deserves to be and is accordingly set-aside reserving the right of the respondents to act in accordance with the Rule provisions, if they so deem.

Sd/-
(P. Sam Koshy)
Judge