

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 7991 of 2018

Ram Kumar Pathak S/o Late Shree Suraj Narayan Pathak Aged About 61 Years, By Occupation Lecturer Subject Agriculture, Government Model Higher Secondary School, Jashpur, Nagar, District Jashpur, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, School Education Department (T Cadre) Mantralaya, Naya Raipur, District Raipur, Chhattisgarh
2. The Commissioner, Department Of Tribal Welfare Department Chhattisgarh, District Raipur, Chhattisgarh
3. The Collector, Jashpur, District Jashpur, Chhattisgarh
4. State Of Madhya Pradesh, Through Its Secretary, Tribal Welfare Department, Vallabh Bhawan, Mantralaya, District Bhopal Madhya Pradesh
5. The Commissioner, Tribal Welfare Department, Vallabh Bhawan, Mantralaya, Bhopal, District Bhopal, Madhya Pradesh

---Respondents

For petitioner	:	Shri Parag Kotecha, Advocate.
For State	:	Shri Majid Ali, Dy. Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

05/12/2018

1. The petitioner has filed the present writ petition seeking quashment of the departmental enquiry initiated against him.
2. The facts relevant for adjudication of the present dispute are that the petitioner was initially appointed as a Lecturer on 29.06.1996 under the erstwhile state of Madhya Pradesh at District Dhindhori. In the year 2002,

by way of allocation in the light of creation of the new State, the petitioner was sent to the State of Chhattisgarh and he was relieved from the service of Madhya Pradesh and joined the office of the Commissioner, Tribal Welfare, Raipur on 24.10.2002. The petitioner was initially issued with a show cause notice on 14.06.2002 by the erstwhile state of MP. Subsequently, again on 27.12.2004, a second show cause notice was issued alleging that the petitioner had obtained the appointment order by playing fraud and therefore why his services should not be dismissed. Later on, the petitioner preferred a writ petition i.e. WP No. 408 of 2005 and pendency of the said writ petition before this Court, no further development took place and finally vide order dated 22.04.2018 the writ petition was dismissed as having rendered infructuous. Meanwhile, in the year 2015, the respondents issued the petitioner with a charge sheet and also appointed an Enquiry Officer to conduct an enquiry in respect of the charge that the appointment order was on the basis of a fraudulent document. The Enquiry Officer finally on 17.04.2018 submitted his enquiry report to the Disciplinary Authority where the matter is still pending consideration for a final order to be passed.

3. It is at this stage that the petitioner now challenges the departmental enquiry on a couple of grounds. Firstly the disciplinary proceeding has been initiated after about 20 years from the date of initial appointment and therefore the disciplinary proceeding suffers from delay and laches and should be dropped on this ground alone. Second ground is that during the course of departmental enquiry, the petitioner had sought for various documents from the department which were refused and in the absence of those documents, the petitioner could not effectively defend his case and much prejudice has been caused to his defence on this ground also, therefore, the departmental enquiry needs to be set aside/quashed. Third

ground raised by the petitioner is that the findings given by the Enquiry Officer in his enquiry report are also perverse and contrary to the evidence which has come before him and therefore the departmental enquiry and the enquiry report deserve to be quashed. In support of his contention counsel for the petitioner relied upon the following judgments:

- i) 2000 SCC (L&S) 906, Deepak Puri Vs. State of Haryana and others
- ii) 2004 (3) M.P.H.T. 210, Y. A. Bapat Vs. State of M.P. and others
- iii) (2008) 8 SCC 236, State of Uttaranchal and others Vs. Kharak Singh
- iv) 2011 AIR SCW 5327, Anil Gilurker v. Bilaspur-Raipur Kshetria Gramin Bank & Anr.

4. State counsel, however, opposing the petition submits that the writ petition at this stage is not maintainable for the reason that the petitioner was permitted to participate in the departmental enquiry and the enquiry officer also in due course of time submitted his enquiry report and the matter is pending consideration before the Disciplinary Authority. Hence, this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India may not interfere with the disciplinary proceedings at this juncture. He submits that the nature of allegation against the petitioner is quite serious in as much as a plain perusal of the charge itself would reveal that the petitioner had obtained employment by playing fraud. If the appointment at its inception is bad, lapse of time will not improve the case of the petitioner. The issue of delay cannot be questioned at this juncture for the reason that the pleadings would show that the respondent authorities as early as in the year 2002 itself had issued the petitioner with a show cause notice and since then the matter

is pending with the Department. It is not a case that the respondents have for the first time in the year 2015 or any time later initiated the disciplinary proceedings. Thus, prayed for dismissal of the writ petition.

5. Having heard the contentions put forth on either side and on perusal of the record what is undisputed is the fact that the petitioner was given an appointment in the year 1996. The first show cause notice in respect of the alleged illegal appointment was issued as early as on 14.06.2002. This show cause notice was issued while the petitioner was serving under the erstwhile state of MP. Even after the petitioner had been allocated to the state of CG, a show cause notice was issued to him as early as in December, 2004 (Annexure P-3). These two documents would sufficiently establish that there was no delay on the part of the respondents in initiating action against the petitioner.

6. Coming to the scope of interference or the scope of judicial review in disciplinary proceedings, this Court has no hesitation in holding the fact that given the stage at which the petitioner has approached this Court it would be impermissible for this Court at this juncture to interfere with the disciplinary proceedings when the matter is already seized by the disciplinary authority. The case reflects that the charge sheet was issued in 2015. The petitioner participated in the enquiry proceeding and the enquiry report was also submitted as early as on 17.04.2018 and since then the matter is pending consideration before the Disciplinary Authority.

7. The contention which the petitioner has raised in the present petition can be raised by him before the Disciplinary Authority. It is expected that the petitioner's contentions which he is raising and which he may raise before the Disciplinary Authority, the Disciplinary Authority would in turn consider these aspects and take a decision.

8. It is settled position of law that the High Court in exercise of its power under Article 226 of the Constitution of India would not substitute itself as an appellate body or as a disciplinary authority to scrutinize threadbare the evidences and the allegations which have been brought before the enquiry officer during the course of departmental enquiry. This Court also does not have the power to conduct a roving enquiry into the charges alleged which otherwise stands vested upon the disciplinary authority or the higher authority in the department. For these reasons, this Court is reluctant to entertain the writ petition at this juncture.

9. So far as the judgments which have been cited by the counsel for the petitioner are concerned, if we take into consideration the facts under which those judgments were decided, it would clearly reflect that each of the cases which have been referred to were decided under entirely different contextual background and the point of issue involved and the stage at which those petitions were entertained or decided or challenged before the Courts were also not at the stage when the present petitioner has tried to invoke the writ jurisdiction of this Court. For the said reasons, those judgments also would not come to the rescue of the petitioner.

10. Reserving the right of the petitioner to take all these grounds before the Disciplinary Authority who in turn is expected to take into consideration these grounds while taking a final decision, the present writ petition in its present form stands dismissed.

Sd/-

**(P. Sam Koshy)
JUDGE**