

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 8088 of 2018

Smt. Bhumika Sahu W/o Shri Lokesh Kumar Sahu Aged About 26 Years
R/o Old Thana Para, Ward No. 3, Dangadipra, Bagbahara, District-
Mahasamund, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Health And Family Welfare Department Mahanadi Bhawan, Mantralaya Capital Complex, New Raipur, District- Raipur, Chhattisgarh.
2. Commissioner-Cum-Director, Directorate, Health Services, Chhattisgarh Raipur, District- Raipur, Chhattisgarh.
3. Joint Director Health Services Raipur, Indrawati Bhawan, 3rd Floor, Atal Nagar, District- Raipur, Chhattisgarh.
4. Divisional Joint Director Health Services, Raipur Division, Health Services, Raipur Division, Raipur District- Raipur, Chhattisgarh.

---Respondents

WPS No. 8100 of 2018

Ruchi Sharma W/o Angira Sharma Aged About 31 Years R/o B. M. Y.
Charoda, District Durg, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Health And Family Welfare Department Mahanadi Bhawan, Mantralaya Capital Complex, New Raipur, District- Raipur, Chhattisgarh.
2. Commissioner-Cum-Director, Directorate, Health Services, Chhattisgarh Raipur, District- Raipur, Chhattisgarh.
3. Joint Director Health Services Raipur, Indrawati Bhawan, 3rd Floor, Atal Nagar, District- Raipur, Chhattisgarh.
4. Divisional Joint Director Health Services, Raipur Division, Health Services, Raipur Division, Raipur District- Raipur, Chhattisgarh.

---Respondents

WPS No. 8103 of 2018

Mahendra Rao Pawar S/o Late Shri Ramlal Rao Pawar Aged About 42
Years R/o Ward No. 3, Imli Bhata, Mahasamund, District Mahasamund,
Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Health And Family Welfare Department Mahanadi Bhawan, Mantralaya Capital Complex, New Raipur, District- Raipur, Chhattisgarh.

2. Commissioner-Cum-Director, Directorate, Health Services, Chhattisgarh Raipur, District- Raipur, Chhattisgarh.
3. Joint Director Health Services Raipur, Indrawati Bhawan, 3rd Floor, Atal Nagar, District- Raipur, Chhattisgarh.
4. Divisional Joint Director Health Services, Raipur Division, Health Services, Raipur Division, Raipur District- Raipur, Chhattisgarh.

---Respondents

For Petitioners	:	Mr. Manoj Paranjpe, Advocate
For State	:	Mr. Dheeraj Wankhede, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

07/12/2018

1. The facts in these three writ petitions being identical and the orders under challenge also being identical, the three writ petitions are being disposed off by a common order.
2. The challenge in these writ petitions are the order Annexure P/1 and P/2 dated 24.11.2018 passed by the Commissioner-cum-Director, Directorate, Health Services and also the order dated 26.11.2018, passed by the Divisional Joint Director, Health Services, Raipur.
3. The brief facts relevant for the adjudication of the present writ petitions is that, all these three writ petitioners were initially appointed as Assistant Grade-III in the year 2013. The next promotion, which the petitioners were entitled for, was on the post of Assistant Grade-II. The minimum length of service required for the said post, was 5 years. All the petitioners have completed 5 years of service in the year 2018.
4. According to the petitioners, a Departmental Promotion Committee was constituted and due selection process was held and the petitioners were found suitable and an order of promotion was also passed vide

Annexure P/4 dated 10.08.2018 promoting the petitioners from the post of Assistant Grade-III to Assistant Grade-II. All the petitioners also immediately took charge within a couple of days from the date of issuance of the promotion order.

5. The petitioners, however while discharging the duties as an Assistant Grade-II abruptly were issued with a show cause notice dated 26.11.2018 Annexure P/2, whereby the Divisional Joint Director, Health Services, Raipur division calling upon the explanation from the petitioners, as to why the promotion order granted earlier to them should not be canceled. The order Annexure P/2 was based on a correspondence made by the Commissioner-cum-Director, Health Services, State of Chhattisgarh dated 24.11.2018 Annexure P/1. It is these two orders, which are under challenge.
6. The contention of the counsel for the petitioners is that primarily the order Annexure P/1, passed by the Commissioner-cum-Director, Health Services, State of Chhattisgarh to be by an incompetent person to the order for canceling the promotion order given to the petitioners. It is further the contention of the petitioners that the plain reading of the two orders would reflect as if both the authorities have already taken a decision for canceling the promotion order, which the petitioners have been issued holding it to be either illegal or erroneous.
7. It was thirdly the contention of the petitioners that the proceedings drawn by issuance of the notice Annexure P/1 is nothing, but an empty formality, as the authorities concerned would be sitting with a closed mind and with predetermined decision of canceling the promotion order. The petitioners relied upon the decisions of the Hon'ble Supreme Court

in the case of ***“The Joint Action Committee of Airlines Pilots Associations of India and Ors. v. The Director General of Civil Aviation and Ors.”*** (2011) 5 SCC 435, ***“Siemens Ltd. v. State of Maharashtra and Ors.”*** (2006) 12 SCC 33 and ***“Oryx Fisheries Private Limited v. Union of India & Others”*** (2010) 13 SCC 427.

8. Per contra, the counsel for the State opposing the petitions submits that the orders passed by the authorities concerned, do not warrant interference for the reason that the present writ petitions are at a show cause stage, where the contentions, which the petitioners are raised, are all based on apprehension and that they should not be apprehensive on any of these contentions, which they have raised, so far as the authorities being predetermined of their decision.
9. The contention of the State counsel is that before the Commissioner-cum-Director, Health Services having passed Annexure P/1 on 24.11.2018, there was a preliminary enquiry conducted and only on the basis of the findings in the preliminary enquiry was it found that the promotion orders were not in accordance with law and hence the Commissioner has instructed the competent authority to initiate proceedings for cancellation of the promotion orders on the ground of it being illegal. The counsel for the State relied upon the decision of the Hon'ble Supreme Court in the case of ***“Union of India & Another v. Narendra Singh”*** (2008) 2 SCC 750.
10. Considering the entire facts and circumstances of the case, the admitted position as it stands being that the appointment of the petitioners were made in the year 2013. They have completed 5 years of service in the year 2018. Thereafter it is said that a Departmental Promotion

Committee had been constituted, who have scrutinized the claim of the petitioners before passing the order of promotion on 10.08.2018. However, subsequently, it is learnt that there were some complaints lodged by some persons in the department to the higher authorities, who thereafter is said to have examined the complaints and held a preliminary enquiry and found that there were some alleged illegalities or irregularities in the promotion order, which was being issued on 10.08.2018.

11. Be that as it may, what is undisputed and a settled position of law that in the event of the State Government or for that matter, any employer receiving information that certain appointments or promotions have been illegally or erroneously made, the authorities have all the powers to examine the veracity of such a decision. The only requirement, primarily which is required is that, an opportunity of hearing to the beneficiary should be extended, before the same is withdrawn.
12. So far as the contention of the counsel for the petitioners is concerned, that the authorities have drawn the show cause notice with a closed mind and are predetermined, it would be relevant at this juncture to refer to the observations made by the Hon'ble Supreme Court in the case of **“Oryx Fisheries Private Limited”** (supra), wherein in paragraphs No. 31 to 33, it has been held as under:

“31. It is of course true that the show cause notice cannot be read hyper-technically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in

the show cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show cause notice does not commence a fair procedure especially when it is issued in a quasijudicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.

32. Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show cause notice.

33. The principle that justice must not only be done but it must eminently appear to be done as well is equally applicable to quasi judicial proceeding if such a proceeding has to inspire confidence in the mind of those who are subject to it.”

13. In this regard, it is also relevant to refer to the decision of the Hon'ble Supreme Court in the case of “**Siemens Limited**” (supra), wherein again the Hon'ble Supreme Court in very categorical terms has held as under:-

“9. Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including State of Uttar Pradesh v. Brahm Datt Sharma and Anr. [1987]2SCR444, Special Director and Anr. v. Mohd. Ghulam Ghouse and Anr. 2004(164)ELT141(SC) and

Union of India and Anr. v. Kunisetty Satyanarayana AIR2007SC906 , but the question herein has to be considered from a different angle, viz, when a notice is issued with pre-meditation, a writ petition would be maintainable. In such an event, even if the courts directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose [See K.I. Shephard and Ors. v. Union of India and Ors. (1988)ILLJ162SC]. It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter affidavit as also in its purported show cause.”

14. It would also be fruitful at this juncture to refer to the observations of the Hon'ble Supreme Court in the case “**Narendra Singh**” (supra), wherein in paragraphs No. 32 & 34, it has been held as under:

“32. It is true that the mistake was of the Department and the respondent was promoted though he was not eligible and qualified. But, we cannot countenance the submission of the respondent that the mistake cannot be corrected. Mistakes are mistakes and they can always be corrected by following due process of law. In Indian Council of Agricultural Research and Anr. v. T.K. Suryanarayan and Ors. : (1997)6SCC766 , it was held that if erroneous promotion is given by wrongly interpreting the rules, the employer cannot be prevented from applying the rules rightly and in correcting the mistake. It may cause hardship to the employees but a court of law cannot ignore Statutory Rules.

34. True it is that before such an action is taken and a person is actually reverted, he must be given an opportunity to show cause why the proposed action should not be taken. He may be able to satisfy the Authorities that there was no such mistake. But even otherwise, principles of natural justice and fair play

require giving of such opportunity to him. But as observed earlier, in the instance case, in accordance with Rule 31-A of the Fundamental Rules, notice was issued to the respondent- employee, explanation was sought and thereafter the order was passed. The said order, in our considered view, was just, proper and in consonance with law and it ought not to have been set aside by the Tribunal or by the High Court. To that extent, therefore, the orders impugned in this appeal deserve to be set aside.”

15. Given the aforesaid legal positions, as it stand, this Court is of the opinion that since the present writ petitions are at the stage of show cause notice, ends of justice would serve if the respondents are permitted to continue with the proceedings, however all due cares shall be borne in mind by the respondents before taking a final call on the show cause notice.
16. It is made clear that the authorities, in the course of examining the reply of the respondents to the show cause proceedings, would not be in any manner influenced by any of the observations made by the Commissioner-cum-Director vide Annexure P/1, nor would the authorities sit with a closed eye or with a predetermined mind of canceling the promotion order. The authorities, while deciding the same would take into consideration all the contentions and the submissions, which each of the petitioners would be submitting before the authorities, to justify the fact, that the promotions earlier granted vide order dated 10.08.2018 were not in any manner either illegal or erroneous or contrary to Rules.

17. It is further contended that while taking a final decision, the respondent authorities are expected to pass a speaking order giving reasons on their conclusions, that they would be arriving at.
18. Needless to mention that in the course of the proceedings, the respondents are also directed to inform the petitioners as to what is the alleged illegality, that they have detected in the promotion orders issued on 10.08.2018. It is expected that the each of the petitioners would be rendering all cooperations during the show cause proceedings.
19. With the aforesaid observations, these writ petitions stand disposed off.

Sd/-
(P. Sam Koshy)
Judge

Ved