

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 327 of 2019

Sanjay Kumar Sahu S/o Shri Panna Lal Sahu Aged About 30 Years R/o Street No. 07, Quarter No. 4 (A), Sector No. 4, Bhilai, P. S. Bhilai, Tahsil And District Durg, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Its Secretary, Department Of Home/ Police Mahanadi Bhawan, Mantralaya, P. S. And Post Rakhi, Atal Nagar, Raipur, District Raipur, Chhattisgarh.
2. Director General Of Police (DGP) Police Head Quarter (PHQ), Near Mahanadi Bhawan, Mantralaya, P. S. And Post Rakhi, Atal Nagar, Raipur, District Raipur, Chhattisgarh.
3. Inspector General Of Police (IGP) Office Of Inspector General Of Police 32 Bungalow Bhilai, District CT- Durg, Chhattisgarh.
4. Superintendent Of Police (SP) Office Of Superintendent Of Police Durg, District Durg, Chhattisgarh.
5. Additional Superintendent Of Police (ASP) City / Enquiry Officer, Office Of Superintendent Of Police Durg, District Durg, Chhattisgarh.
6. Deputy Superintendent Of Police (Dy. S.P) SIU Officer Of Special Investigation Crime Unit, Durg, Range District Durg, Chhattisgarh
7. City Superintendent Of Police/ Primary Enquiry Officer Office Of CSP, Chhavni, Bhilai, District Durg, Chhattisgarh.

---Respondents

For Petitioner	:	Mr. Abhishek Padey, Advocate and Mr. Santosh Kumar Pandey, Advocate
For State	:	Mr. Jitendra Pali, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

17/01/2019

1. The counsel for the petitioner after arguing for sometimes confines this writ petition to the extent of challenging the order Annexure P/15 dated 19.12.2018. Vide the said order the Inquiry officer has rejected the application of the petitioner seeking permission to engage a retired police employee namely Mr. Hargovind Sharma as a Defence Assistant.
2. The rejection of the said application was on the ground that the ex-police personal Hargovind Sharma, to whom the petitioner intended to appoint as

a Defence Assistant, was involved in a criminal case under Section 3 of the ***Police (Incitement to Disaffection) Act, 1922***. The ground for rejection of the said application does not seem to be proper, legal and justified for the simple reason that it is nobody's case that the Rule does not provide for engagement of a Defence Assistant. The Rule also admittedly permits a person to appoint a retired employee of the department as the Defence Assistant. It is also an admitted position that the said person Hargovind Sharma was a retired police personal.

3. In the given circumstances, only because the said person namely Hargovind Sharma is an accused in some criminal case, by itself would not be a disqualification for him to appear as a Defence Assistant for some other police personal. Moreover, what is more relevant at this juncture is the fact that Rule does not debar a person with a criminal background or against whom a criminal case has been registered from being appointed as a Defence Assistant.
4. What is all the more relevant to take note of is the fact that, no prejudice whatsoever would be caused to the interest of the department, in case if the said Hargovind Sharma, a retired police personal is permitted to be engaged as a Defence Assistant.
5. For the aforesaid reason, the impugned order dated 19.12.2018 (Annexure P/15) is bad in law and the same deserves to be and is accordingly set-aside/quashed. As a consequence it is ordered that Inquiry officer shall permit the petitioner to engage Mr. Hargovind Sharma as a Defence Assistant.
6. It has been informed by the petitioner that pursuant to the rejection of the application for appointment of Defence Assistant, the department has proceeded further with the departmental enquiry. If that be so, the Inquiry

officer is directed firstly to permit the petitioner to avail the assistance of Mr. Hargovind Sharma as a Defence Assistant and thereafter the petitioner and the Defence Assistant should be granted time to cross-examine the witnesses, who have been examined in absentia on account of there being no Defence Assistant.

7. At this juncture, the counsel for the petitioner further submits that the petitioner also has been denied of certain material documents in support of his defence in the departmental enquiry. This Court, at this juncture, would not like to entertain the writ petition on that count, however, it is expected that the Inquiry officer, in the course of conducting the departmental enquiry, shall act in a fair, reasonable & justified manner and the inquiry would be conducted in due compliance of the principles of natural justice.
8. It is also expected that all those documents and evidences, which the department would be using against the petitioner in the course of departmental enquiry, would be made available to the petitioner, so that he can effectively defend his case.
9. So far as the challenge to the SIU report is concerned, this Court is not entering in to that arena, exercising the jurisdiction under Article 226 of the Constitution of India in a writ petition service matter. Reserving the right of the petitioner to avail other remedies available to him in an appropriate proceeding.
10. With the aforesaid observations, the writ petition stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge