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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 5536 of 2011

Rakesh Ghatate S/o Lt. Shri G.J. Ghatate, aged about 45 years, R/o Diprapara Near Jalaram Caterors Posted as Pump Operator Bilaspur, Chhattisgarh.

--- Petitioner(s)

Versus

1. State of Chhattisgarh through Secretary Department of Health and Family Welfare, DKS Bhawan, Mantralaya, Raipur (CG).
2. Director, Health Services, Raipur, District Raipur (CG).
3. Chief Medical and Health Officer, Bilaspur, District Bilaspur (CG).
4. Dr. KK Sao, son of not known to the petitioner, Surgeon, Community Health Centre, Masturi, District Bilaspur (CG).
5. Shri Ravindra Tiwari, son of not known to the petitioner, President, Chhattisgarh Pradesh Swasth Karmachari Sangh, Posted as Health Assistant/MPW at CIMS (Medical College), Bilaspur, District Bilaspur (CG).

---Respondents

Writ Petition (S) No. 5873 of 2011

Ashok Rahi S/o Ram Murti Rahi, aged about 45 years, R/o Dabripura, Bilaspur, Chhattisgarh.

--- Petitioner(s)

Versus

1. State of Chhattisgarh through Secretary Department of Health and Family Welfare, DKS Bhawan, Mantralaya, Raipur (CG).
2. Director, Health Services, Raipur, District Raipur (CG).
3. Chief Medical and Health Officer, Bilaspur, District Bilaspur (CG).
4. Dr. KK Sao, son of not known to the petitioner, Surgeon, Community Health Centre, Masturi, District Bilaspur (CG).

---Respondents

Writ Petition (S) No. 5872 of 2011

Purnima Sahu W/o Banshi Sahu, aged about 49 years, R/o Behind Nandu Garage, Telipara, Posted as Insect Collector At DMO, Bilaspur, Chhattisgarh

--- Petitioner(s)

Versus

1. State of Chhattisgarh through Secretary Department of Health and Family Welfare, DKS Bhawan, Mantralaya, Raipur (CG).
2. Director, Health Services, Raipur, District Raipur (CG).
3. Chief Medical and Health Officer, Bilaspur, District Bilaspur (CG).
4. Dr. KK Sao, son of not known to the petitioner, Surgeon, Community Health Centre, Masturi, District Bilaspur (CG).

---Respondents

For Petitioners	:	Shri Bhaskar Pyasi, Advocate
For State	:	Shri Chandresh Shrivastava, Dy. A.G.
For Respondent 5	:	Shri Saleem Kazi, Advocate (in WPS No. 5536 of 2011)

Hon'ble Shri Justice P. Sam Koshy
Order on Board

21.10.2019

1. The grounds of challenge to the impugned order in all these writ petitions being similar, these writ petitions are being disposed of by this common order.
2. In these three writ petitions, what is under challenge is the cancellation of order of promotion granted on 06.10.2008 vide impugned order dated 26.08.2011.
3. The facts of the case, in brief is that, the three petitioner Rakesh Ghatate, Ashok Rahi and Purnima Sahu were working as Superior Field Worker and Field Worker respectively. By recommendation of the DPC that was convened in the year, 2011, the petitioners were promoted to the post of Pump Mechanic, Superior Field Worker and Insect Collector respectively vide order dated 06.10.2008. The order of promotion immediately came into force and the petitioners continued to work on the promoted post till 26.08.2011. It is said that, in between, there was certain complaints lodged against the petitioners so far as promotion orders that were issued to them alleging it to have been passed contrary to the rules and

regulations governing the field. The said complaint was taken note of by the respondent authorities and initially show cause notices were issued to the petitioners by the respondents, to which, the petitioners immediately filed their reply and subsequently the department proceeded further by conducting a detailed enquiry in which the inquiry officer, the Presenting Officer were all appointed and specific charges were also framed. The petitioners were called upon to appear before the enquiry officer and to provide their respective defence. All the petitioners appeared before the enquiry officer and submitted their defence, as also made evidence and have also produced certain documents in support of their contentions.

4. The enquiry officer subsequently vide Annexure P/24 dated 09.08.2010 submitted his enquiry report in the department and based on the enquiry report, the impugned order dated 26.08.2011, Annexure P/30, Annexure P/16 and Annexure P/20 respectively in the three writ petitions were passed. It is this order which is under challenge in these writ petitions.
5. Initially there was an interim order granted by this court on 19.09.2011 in favour of the petitioners so far as staying of the impugned order dated 26.08.2011. Though, subsequently on 31.10.2017 the said interim order stood vacated, but the counsel for the petitioners submits that inspite of the interim order getting vacated, the respondents have till date permitted the petitioners to still discharge their duties on the promoted post and have till date not given effect to the impugned order dated 26.08.2011.
6. The foremost contention of the petitioners assailing the impugned order dated 26.08.2011 is that, the enquiry report based on which the impugned order was passed, has not been supplied to the petitioners and in the absence of being provided with the enquiry report, the petitioners were not aware of the findings given by the enquiry officer. Neither have the

petitioners got chance of verifying whether the findings have been given after proper appreciation of respective defence that the petitioners have raised.

7. The second ground of challenge is that, subsequent to the submission of enquiry report by the enquiry officer to the concerned authorities, the authorities concerned also has not issued any show cause notice to the petitioners in respect of his intention of cancelling the promotion order issued on 06.10.2008. Thus, the impugned order on this ground is bad in law as it has been issued without affording opportunity of hearing to the petitioners which again amounts to violation of principles of natural justice.
8. Further contention of the petitioners is that, it is a case where DPC which was convened in the year, 2008 had found the petitioners to be qualified, competent and experienced for being promoted to the respective posts to which they were promoted vide order dated 06.10.2008 and there was no shortcomings or illegalities prevailing by which the order dated 06.10.2008 was to be held bad in law or required cancellation.
9. The State counsel, opposing the petitions, submits that the very fact that show cause notices were issued to each of the petitioners, to which they have also responded and the State authorities also held an enquiry wherein the petitioners were again granted opportunity of hearing which the petitioners again had availed and had participated in the enquiry proceedings, would show that the petitioners have been given sufficient opportunity of defence and as such the same does not amount to any violation of the principles of natural justice.
10. Further contention of the State is that, the enquiry report has never been questioned by the petitioners at an appropriate stage and therefore they cannot question the veracity of the findings in the present writ petitiond

after a final order has been passed. It is further contended that in the enquiry which was conducted, it has been specifically found that the petitioners did not have the basic requirement for promotion, inasmuch as, they were not a regular employee on the date when they were considered by the DPC for promotion, and therefore, the order of promotion dated 06.10.2008 was per se illegal which has been since cancelled vide the impugned order.

11. Given the said facts and circumstances of the case, and the submissions put forth by the counsel on either side, some of the admitted facts as it stands is that;

- The petitioners had been promoted after a DPC was convened in the year, 2008. The promotion orders were issued on 06.10.2008. The promotion orders were acted upon and the petitioners assumed their duties on promoted post and worked on the said post for a period of approximately three years i.e. till the impugned order was passed on 26.08.2011.
- Another admitted facts of the case is that, the petitioners were issued with show cause notice at the first instance to which they submitted their respective reply and thereafter the department thought it fit to conduct an enquiry and enquiry was also convened.
- Each of the petitioners had participated in the enquiry proceedings and had submitted their defence, both oral as well as in writing and documents in support of their defence were also produced.
- Enquiry report was submitted on 09.08.2010 vide Annexure P/24, however, after the submissions of the enquiry report, there does not seem to be any evidence available in the records to show that the petitioners were served with enquiry report. It also does not reflect

that the petitioners were issued with subsequent show cause notices seeking their explanation before recalling of the promotion order.

- The petitioners were totally unaware of their submissions of the enquiry report and the findings of the enquiry report and they have not been able to give any sort of explanation to the authorities concerned so far as the findings of the enquiry officer is concerned.

12. It is relevant at this juncture to take note of the submissions of the petitioners that the documents which have been submitted by the petitioners in support of their defence before the enquiry officer, have not been discussed or dealt with by the enquiry officer or have not been properly appreciated. Abruptly the order of cancellation of promotion was passed on 26.08.2011.

13. The petitioners undoubtedly had put in about three years of service. After the enquiry report was submitted, the minimum that was expected from the respondents was to provide a copy of the enquiry report to the petitioners as the respondents intended to recall the benefits that was granted to the petitioners three years back based on the said enquiry report. The authorities concerned should have issued the petitioners with a show cause notice along with the enquiry report calling upon their explanations both on the findings of the enquiry officer as also on the proposed action that the respondents intended to take. In the absence of either of the two, this court has no hesitation in reaching to the conclusion that substantial prejudice to the interest of the petitioners has been caused.

14. Given the said facts and circumstances of the case, the impugned order dated 26.08.2011, Annexure P/30, Annexure P/16 and Annexure P/20

respectively in three writ petitions is not sustainable only on the aforesaid technical ground of the petitioners not being provided with a copy of enquiry report as also of not being issued with second show cause notice, the impugned order dated 26.08.2011 in all the three writ petitions stands set aside/quashed.

- 15.** Since the petitioners are already working on the promoted post by virtue of the interim order passed by this court on 19.09.2011, it is expected that if the respondents intend to take any action against the petitioners based on the enquiry report, Annexure P/24, they may do so after providing a copy of the enquiry report to the petitioners and also seeking for their explanation by way of show cause notice on the proposed action that the respondents intend to take, and thereafter a final order be passed.
- 16.** With the aforesaid observations, all the writ petitions stand allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

inder