

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (S) No. 2112 of 2015**

Ram Gopal Sahu S/o Shri Keshav Ram Sahu, Aged About 37 Years  
R/o Village Karachili, Post Ranipartewa, P.S. And Tahsil Chhurra,  
District Gariyaband, Chhattisgarh

**---- Petitioner****Versus**

1. State Of Chhattisgarh Through The Secretary, Panchayat And Social Welfare, Mahanadi Bhawan, Mantralaya, Naya Raipur, Tahsil & District Raipur, Chhattisgarh
2. Chief Executive Officer, Jila Panchayat Riapur, Tahsil And District Raipur, Chhattisgarh
3. The Chief Executive Officer, Janpad Panchayat Chhura, Tahsil Chhura, District Gariyaband, Chhattisgarh

**---- Respondents**


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| For Petitioner        | : | Mr. R. S. Patel Advocate.                                                                         |
| For State             | : | Mr. Jitendra Pali, Dy. A.G., Mr. Chandresh Shrivastava, Dy. A.G. & Mr. Anshuman Shrivastava, P.L. |
| For Respondents 2 & 3 | : | Shri Satish Gupta, Advocate                                                                       |

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**Hon'ble Shri Justice P. Sam Koshy****Order On Board****12.07.2019**

1. The challenge in the present writ petition is to the order of termination from the post of Panchayat Secretary dated 31.05.2011 and the order dated 30.03.2015 passed by the Commissioner affirming the order of

termination in an appeal.

2. The facts of the case are that the petitioner was appointed on the post of Panchayat Secretary by an order dated 02.11.1995 by Gram Panchayat, Dwartara, Janpad Panchayat Chhura, District Raipur (now under District Gariyaband). The respondent no.3 passed an order on 28.08.2011 directing the Sub Divisional Officer, Revenue, Gariyaband to initiate appropriate action against the Sarpanch and the Secretary of the said Gram Panchayat in respect of embezzlement of the amount meant for releasing of pension to the old and destitute for the month between August, 2010 to December, 2010. It is said that subsequently the service of the petitioner in the capacity of Panchayat Secretary was terminated by respondent no.2 vide order dated 31.05.2011. The petitioner immediately filed an appeal before the Commissioner under Section 91 of the Chhattisgarh Panchayat Raj Adhinium and the appeal also stood rejected vide impugned order Annexure P-1 dated 30.03.2015 leading to the filing of the present writ petition.
3. Contention of the counsel for the petitioner at the outset is that the order passed by the respondent no.2 dated 31.05.2011 as also by the Commissioner dated 30.03.2015 both are per se illegal for the simple reason that there is a clear non compliance of the statutory rules as is provided under the provisions of the Chhattisgarh Panchayat Service (Discipline & Appeal) Rules, 1999 (hereinafter referred as "the Rules of 1999"). Counsel for the petitioner relied upon a catena of decisions rendered by this High Court in respect of the termination of service of a Panchayat Secretary where this Court has quashed the order of

termination only on the ground of non compliance of Rule 7 of the Rules of 1999 and has also held the same to be violative of the provisions of 311(2) of the Constitution of India.

4. Counsel appearing for respondents 2 & 3 initially raised an objection that the provisions of the Rules of 1999 would not be applicable upon the petitioner's service in the light of the Division Bench decision of this High Court in Writ Appeal No. 821 of 2018 and other connected writ appeals decided on 13.03.2019. Further contention of the counsel for the contesting respondents is that even otherwise the petitioner does not deserve any relief for the reason that there is a clear admission on the part of the petitioner so far as the commission of misconduct is concerned. Therefore, in the light of the admission, the order of termination or the rejection of appeal cannot be said to be in any manner bad in law nor can it be said to be in any manner harsh and disproportionate. Thus, counsel for respondents 2 & 3 prayed for rejection of the writ petition.
5. Having heard the contentions put forth on either side and on perusal of the record, there is no dispute of the fact that the petitioner was appointed as a Panchayat Secretary under the respondents. The petitioner was in service since 1995. The petitioner was removed from service vide order dated 31.05.2011 passed by respondent no.2. The order of dismissal has further been affirmed in an appeal by the Commissioner, Raipur Division on 30.03.2015. It is also not in dispute that before passing of the order of termination the procedure as prescribed under Rule-7 of the Rules of 1999 has not been followed. No enquiry was conducted as is required under Rule-7 of the Rules of

1999.

6. Now coming to the question whether the Rules of 1999 would be applicable or not, it would be relevant to take note of the fact that the State Govt. itself had published guidelines so far as the service conditions of the Panchayat Karmis/Panchayat Secretaries are concerned. The said guidelines were published on 29<sup>th</sup> August, 2008. Clause-13 of the said guidelines clearly deals with the disciplinary proceedings. For ready reference Clause-13 is reproduced hereinunder:

“ अनुशासनात्मक कार्यवाही :-

पंचायतकर्मियों के विरुद्ध अनुशासनात्मक कार्यवाही, छत्तीसगढ़ पंचायत सेवा (अनुशासन तथा अपील )नियम,1999 के प्रावधानों के अधीन की जा सकेगी।”

7. So far as the judgment of the Division Bench of this Court referred by the counsel for respondents 2 & 3 are concerned, what is necessary to take note of is that the said judgment was primarily dealing with the provisions of the Chhattisgarh Panchayat Service (Recruitment and General Conditions of Services) Rules, 1999 (for short “the Recruitment and General Conditions Rules, 1999”). Another fact which needs to be considered is that the said judgment was dealing exclusively the issue of the transfer of Panchayat Secretaries from one Janpad Panchayat to another Janpad Panchayat within the same district, more particularly Rule 27 of the Recruitment and General Condition Rules, 1999.
8. There is yet another decision of the Division Bench of this Court in the case of Rooplal Nayak Vs. State of Chhattisgarh and others reported

in 2006 (4) MPHT 99 (CG) dealing with a similar issue of initiation of disciplinary action against a Panchayat Karmi wherein the Division Bench has categorical held that it is the Chhattisgarh Panchayat Service (Discipline & Appeal) Rules, 1999 which would govern the field. As such the judgment passed in Writ Appeal No. 821 of 2018 becomes per incuriam and the objection raised by the counsel for the respondents 2 & 3 is held to be not sustainable so far as the non applicability of the Chhattisgarh Panchayat Services (Discipline & Appeal) Rules, 1999 is concerned.

9. Coming to the issue of non compliance of the statutory provisions of the Chhattisgarh Panchayat Service (Discipline & Appeal) Rules, 1999, it would be relevant at this juncture to refer to Rule-7 of the Rules of 1999 which deals with the procedure imposing major penalty. The relevant portion of the said Rule is quoted hereinunder:

“7. Procedure for imposing major penalties – (1) No order, imposing on a member of the Panchayat Service, any of the penalties specified in clause (iv) to (via) of rule 5 shall be passed except after a formal inquiry is held as far as may be, in the manner hereinafter provided.

(2) When an order for formal inquiry has been made, the disciplinary authority shall frame Definite charges on the basis of allegations and shall communicate such charges, along with the statement of the allegations, to the member of the Panchayat Service and also require him to submit, within such time as may be specified a written statement of defence and also to state whether he desires to be heard in person.”

10. From the admitted position as has been narrated in the preceding paragraphs it would evidently be clear that before issuing

the order of termination dated 31.05.2011 the respondents had not complied with the requirement as is stipulated in Sub Rule-1 & 2 of Rule 7 of the Rules, 1999. There have been a catena of decisions which have been rendered by this High Court dealing with the said issue. In order to avoid repetition of all those judgments pronounced by this High Court, this Court intends to refer only a couple of them on the issue:

- i) WP No. 5250 of 2005 decided on 27.11.2018 in the case of Rameshwar Ram Chouhan Vs. State of Chhattisgarh & another
- ii) WPS No. 264 of 2010 decided on 04.09.2015 in the case of Suresh Kumar Vs. State of Chhattisgarh & others
- iii) WPS No. 3553 of 2007 decided on 08.12.2015 in the case of Parikshit Sahu Vs. State of Chhattisgarh & others

**11.** In view of the aforesaid legal position as it stands, this Court has no hesitation in reaching to the conclusion that the order of termination of the petitioner, since it is in violation of the statutory requirement, is not sustainable and the same deserves to be and is accordingly set aside/quashed so also the order passed by the Commissioner, Raipur Division in the appeal preferred by the petitioner decided vide order dated 30.03.2015 gets quashed.

**12.** However, since this Court is setting aside the order of termination on the technical ground of the statutory provisions not being complied with, as a natural consequence, the matter would stand remitted back to respondents 2 & 3 for taking appropriate step in accordance with the provisions of the Chhattisgarh Panchayat

Services (Discipline & Appeal) Rules, 1999, if they feel so.

- 13.** So far as the consequential relief is concerned, since the order is getting set aside, this Court at this juncture does not find it proper to grant any monetary benefit for the intervening period particularly for the reason that the petitioner had been terminated on the ground of embezzlement. However, he would be entitled to reinstatement in service forth with continuity of service reserving the right of the respondents to take appropriate steps both on administrative as well as on disciplinary side.

**Sd/-  
P. Sam Koshy  
Judge**