

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 869 of 2019

Kamlesh Kumar Bharti S/o Late Shri Santram Bharti, Aged About 42 Years, R/o Village And Post- Kesla, Tahsil Tilda, Police Station Kharora, District- Raipur, Chhattisgarh.

---Petitioner

Versus

1. State Of Chhattisgarh, Through Its Secretary, Department Of Health And Family Welfare, Mahanadi Bhawan, Mantralaya, Mahanadi Bhawan, Mantralaya, Police Station And Post- Rakhi, Atal Nagar, Raipur, District- Raipur, Chhattisgarh.
2. Director Office Of Directorate, Block No.1, Indravati Bhawan, 3rd Floor, Police Station And Post- Rakhi, Atal Nagar, Raipur, District- Raipur, Chhattisgarh.
3. Chief Medical And Health Officer, Office Of The Chief Medical And Health Officer, Balodabazar, District- Balodabazar-Bhatapara, Chhattisgarh.

---Respondents

For petitioner	:	Shri Abhishek Pandey, Advocate.
For State	:	Shri Rahul Mishra, Dy.G.A.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

11/02/2019

1. In view of the fact that identical Writ Petition has already been decided by this Court, the default pointed out by the registry as of now stands over-ruled.
2. With the consent of the parties, the matter has been heard finally at motion stage.
3. The impugned order under question in the instant Writ Petition is Annexure-P/6 dated 16/06/2016 whereby the services of the petitioner has been terminated by the respondents.

4. The counsel appearing for either side submits that, identical Writ Petitions of identically placed employees in the department have been decided by this Court on 06/10/2018 in a bunch of Writ Petitions leading of which being WPS No. 2559/2016 and other analogous Writ Petitions.

5. The counsel appearing for the parties further submits that, this Court had allowed all those Writ Petitions and held that, the impugned order of termination is bad in law. The petitioner prays that the present Writ Petition also be allowed in similar terms.

6. It was further contended by the petitioner that, the aforementioned bunch of Writ Petitions decided on 06/10/2018 itself was disposed of in the light of a division Bench order of this Court in Writ Appeal No. 448/2017 d/on 24/09/2018.

7. The aforesaid factual matrix is not disputed by the counsel for the opposite side except for the objection to the extent of the present petition has being filed at a belated stage i.e. after about 2 ½ – 3 years from the date of termination.

8. Given the aforesaid submission, this Court proceeds to decide the case at motion stage itself.

9. The facts of the case in brief is that, the petitioner along with a bunch of other employees were appointed on 11/09/2013 vide Annexure-P/2. They worked with the respondents for a period of about 3 years when abruptly their services were terminated vide Annexure-P/6 – the impugned order in the present case is the order passed by the respondent No.3.

10. Vide the said order dated 16/06/2016, there were large number of employees whose services were terminated.

11. Initially, a bunch of Writ Petitions were filed before this Court and the single bench of this Court initially had dismissed those Writ Petitions, but when this order of dismissal was challenged in the division bench by way of Writ Appeal, those Writ Appeal stood allowed on 24/09/2018, the leading Writ Appeal being Writ Appeal No. 448/2017.

12. The Writ Appellate Court in paragraphs No. 14-17 in its order has held as under:-

“14. The issue is not about the principle. The issue is the manner and mechanism under which the whole exercise has been done. If the employee who is substantively appointed and have been confirmed under services were terminated on the basis of an enquiry in which they were never given an opportunity to participate and only a formality of show cause was issued to them on the basis of the three members Committee report, then in our opinion, it does not satisfy requirements of the rules of the natural justice or requirement under the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966.

15. In the facts and circumstances, we therefore, hold the order of termination dated 16.06.2016 passed by the CMHO, Baloda Bazar as well as the order dated 27.09.2017 passed by the learned Single Judge upholding such decision of termination to be irrational and arbitrary and therefore, they deserve to be set aside and are set aside. It goes without saying that all these Appellants will be reinstated in their services forthwith.

16. The respondents, however, are given liberty that they will issue individual notices and hold enquiry in relation to the appointments on the post so made of all these terminated employees and this exercise cannot be a collective exercise because the authorities will have to identify as to which appointment was irregular and which appointment was illegal in the enquiry. In the departmental proceeding to be held and on the findings thereon, the law will take its course. The said enquiry will be concluded preferably within a period of six months.

17. Before disposing these appeals, the Court also directs all the appellants that on the notice so given to them by the Appointing Authority who is said to be CMHO, Baloda Bazar, they will co- perate in the enquiry and will not unnecessarily delay the same on one pretext or the other.”

13. Subsequently, another bunch of Writ Petitions came up before this Court on 06/10/2018 in WPS No. 2559/2016 and other analogous Writ Petitions. This Court again allowed those Writ Petitions on 06/10/2018 in the light of the order passed by the division Bench setting-aside the impugned order dated 16/06/2016.

14. In view of the fact that this Court has in a series of Writ Petitions have already held that the order dated 16/06/2016 - dismissing the services different employees to be bad in law this Court has no hesitation in reaching to the conclusion that, the case of the petitioner also falls in parity with the other petitioners in whose favour there is already an order passed by this Court.

15. So far as the petitioner is concerned there is undoubtedly some delay on his part in approaching this Court.

16. For the delay on his part, this Court is of the opinion that the period during which the petitioner has not assailed the order of termination though would be treated as period spent on duty but for the said period he would not be entitled for backwages.

17. The instant Writ Petition stands allowed to the aforesaid extent and the impugned order of terminated dated 16/06/2016 stands set-aside.

18. However, the State would have the same liberty to proceed further against the petitioner similar to the liberty granted to the State in Writ Appeal No. 448/2017.

19. With the aforesaid observation, the Writ Petition stands allowed and disposed off.

Sumit

Sd/-
(P. Sam Koshy)
JUDGE