NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No 880 of 2019

Duresh Kumar Sahu S/o Kaushal Kumar Sahu Aged About 33 Years R/o Village Bijabhata, Post Bijabhata, Police Station Bemetara, District Bemetara, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Panchayat, Mahanadi Bhawan Mantralaya, Capital Complex, Naya Raipur, District Raipur, Chhattisgarh.
2. Collector Bemetara, District Bemetara, Chhattisgarh.
3. Janpad Panchayat, Bemetara, Through Chief Executive Officer, District Durg, Chhattisgarh.
4. Chairman, Administrative Standing, Committee, Office Of The Janpad Panchayat Bemetara, District Bemetara, Chhattisgarh.

----Respondents

For Petitioner	:	Mr. A. K. Patil, Advocate
For State	:	Ms. Sunita Jain, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

11/02/2019

1. The challenge in the present Writ Petition is to the order Annexure P/1 dated 09/07/2015 passed by the Collector, Bemetara whereby the appeal preferred by the petitioner against the order passed by the Chief Executive Officer, Bemetara on 19/06/2014 rejecting the case of the petitioner filed against the order of termination, has been dismissed.

2. The facts of the case is that, the petitioner was appointed as a Siksha Karmi Grade-III, at Primary School, Matka under Janpad Panchayat, Bemetara vide order dated 16/07/2007 Annexure P/2. The petitioner immediately assumed the office as a Siksha Karmi and continued to work till the services of the petitioner was abruptly terminated vide order dated 19/06/2014 passed by the Chief Executive Officer, Janpad Panchayat, Bemetara. The said order was questioned by the petitioner before the

learned Collector, Bemetara in an appeal under Section 91 and the Collector vide his order dated 09/07/2015 dismissed the said appeal, leading to the filing of the present Writ Petition.

3. The counsel for the petitioner submits that, the impugned order of termination as also the order passed by the Appellate Authority is bad in law for the reason that, the termination of the petitioner was in total violation of Rule 7 o the Chhattisgarh Panchayat Services (Discipline and Appeal) Rules, 1999. He further submits that, the law in this regard is by now well settled by a catena of decisions wherein it has been held that for the purpose of terminating an employee whose services are governed under the Rules of 1999, the respondent authorities are required to comply with the procedure prescribed under Rule 7. Having not done so, the impugned order is liable to be set-aside on this ground.

4. The State counsel however opposing the petition submits that, it is a case where there were large scale of irregularities detected at the time of appointment and on due verification since it was found that the petitioner also has got advantage of that irregularities, the services have been terminated. Therefore the action of the respondents cannot be said to be either malafides or in contravention to the provisions of law. He further submits that, since it was a question of appointment being obtained by playing fraud and mischief, the requirement of compliance of Rule 7 may not be required as it has been duly inquired into by the appointing authorities themselves and have found that there were certain lapses on part of the petitioner on account of which she was not entitled for appointment and thus prayed for rejection of the petition.

5. Recently on an identical set of facts arising out of the same District but from different Janpad Panchayat a bunch of Writ Petitions came up for hearing before this Court i.e. WPS No.1420/2016 d/on 31/10/2018 & Other

connected matters. This Court vide order dated 31/10/2018 decided the said petitions and while deciding the same had considered the same issues which have been raised by the parties in the present case.

6. It would be relevant at this juncture to refer to the findings of this Court in the said order. For ready reference, paragraphs 9 to 12 is reproduced herein under:-

> ***"9. Given the aforesaid admitted factual position of the case as also the judgment of this court in the case similarly situated persons belonging to the other Janpad Panchayat i.e. Janpad Panchayat Saja and also taking note that they were also terminated arising out of the same enquiry and in whose case there already is an order of setting aside of the termination order, this court in exercise of judicial discipline proprietary and precedence is inclined to apply the same analogy in deciding the case of the petitioners as well. In the said judgment of Rohini Jha (Supra), this court has observed in paragraphs 3 to 5 as under :***
>
> > ***(3) Admittedly, on certain allegations, show cause notice "was issued to the petitioners and when the respondent authority was not satisfied with the reply of present petitioners, their services have been terminated. A Division Bench of this Court in the matter of Rooplal Nayak vs. State of Chhattisgarh and others, 2006(4) M.P.H.T. 99 (C.G.) has held that any of the major penalty prescribed under Rule 5(b) (iv) of the Rules, 1999 cannot be imposed on a member of Panchayat service to whom the said Rules are applicable without conducting regular Departmental Enquiry as envisaged under Rule 7 of the Rules, 1999.***
> >
> > ***(4) In the case at hand, no departmental enquiry has been held as contemplated under Rule 7. The said provisions uses the words 'formal inquiry' with further stipulation that when an order for 'formal***

enquiry' has been made, the disciplinary authority shall frame Definite charges, communicate the same to the delinquent along with the statement of allegations, requiring him to submit within the specified time a written statement of defence and also to state whether he desires to be heard in person. Thereafter, the defence is required to to be permitted to inspect and take extracts from the records, which can be refused for reasons to be recorded in writing. On submission of reply by the delinquent, the disciplinary authority may himself enquire or appoint an enquiry officer. Appointment of Presenting Officer and seeking assistance of some other officers by the delinquent is also contemplated therein. The enquiry officer is also enabled to record evidence and thereafter, at the conclusion of the enquiry, the enquiry officer is supposed to prepare enquiry report, the copy of which is required to be furnished to the delinquent. Thus, the 'formal inquiry' envisaged under the Rules is akin to the procedure prescribed for a regular enquiry under Rule 14 of the C.G. Civil Services (Classification, Control and Appeal)Rules, 1966.

(5) The materials made available to this Court nowhere indicate that any enquiry as contemplated under Rule 7 has been initiated or conducted against the petitioner. Therefore, the impugned order of termination is ex facie not sustainable in law and the same deserves to be set aside.

10. In the instant case also learned counsel for the respondents fairly submits that so far as the present petitioners are concerned, admittedly there has not been any Departmental Enquiry as such conducted. It was only a preliminary enquiry conducted and on the basis of the report of the preliminary enquiry the petitioners were issued with show cause notices and thereafter terminated. But, what is admittedly clear is that in the course of conducting of preliminary enquiry also the petitioners

were not taken into confidence neither were they granted opportunity to disprove the contentions which had been raised by the department or which the department was investigating upon.

11. XXXXXXXXX

12. Accordingly, all the writ petitions stand allowed and disposed of in terms of Rohini Jha's case. The impugned orders of termination, rejection of their appeals by the appellate authority as well as revisional authority all stand set aside/quashed for similar reasons as had been held in Rohini Jha's case, reserving the right of the department to proceed further, if they intend to do so, in accordance with provisions of law."

7. Having considered the view of this Court in the aforesaid order and the fact that it has based upon the earlier decision of this Court wherein it has been specifically held that for terminating an employee from service whose services are governed under the Rules of 1999 it is incumbent upon the respondents to have initiated the proceedings as is required under Rule 7.

8. Non-compliance of the said rule vitiates the entire action on part of the respondents. The impugned order in the instant case dated 09/07/2015 is thus unsustainable and the same deserves to be and is accordingly set-aside/quashed with consequences to follow.

9. However, this Court is of the view that since the petitioner has not discharged his duties during the intervening period, he would not be entitled for the wages for the intervening period. However, the said period would be counted for the purpose of continuity in service.

10. Needless to mention that, since the Writ Petition is being allowed on the ground on non-compliance of Rule 7, the right of the department

would stand reserved if they feel so may initiate appropriate proceedings in accordance with the said rules.

11. With the aforesaid observations, the Writ Petition stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Jyoti