

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 5624 of 2008**

Gunja D/o Nanakdas, aged about 22 years, presently posted at
Primary School, Tura Semariya, Tahsil Navagarh, District Durg (CG)

---- Petitioner**Versus**

1. State of Chhattisgarh, through the Secretary, Department of Panchayat & Rural Development, D.K.S. Bhawan, Raipur (CG)
2. The Collector, Durg, District Durg (CG)
3. The Chief Executive Officer, Janpad Panchayat Navagarh, District Durg (CG)

---- Respondents

For Petitioner	:	Mr. Shantam Awasthi, Advocate
For State	:	Mr. Rahul Mishra, Dy. Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****25.06.2019**

1. The challenge in the present writ petition is to the order Annexure P-1 dated 25.08.2008 whereby the earlier order of appointment dated 20.07.2007 has been cancelled.
2. Counsel for the petitioner assailing the impugned order submits that the impugned order is firstly bad for the reason that the same has been passed by an officer who is not competent. According to the petitioner, since the services of the petitioner were attached to

Janpad Panchayat, Nawagarh, the disciplinary authority, for all practical purposes, would have been the Chief Executive Officer, Nawagarh and also the General Administrative Committee of the said Janpad Panchayat. He submits that ignoring this aspect, it is the Collector who has passed the impugned order canceling the appointment and as such, it is without jurisdiction and deserves to be rejected.

3. Further contention of the counsel for the petitioner is that the order is also a cryptic order in as much as the same has been passed without properly appreciating the entire ground realities. According to the petitioner, she had specifically pleaded before the Collector that she had never submitted a sports certificate along with her application for appointment. The petitioner substantiated her contention referring to the check list of the documents which were required to be filed and against the sports certificate the petitioner has not put any tick mark which indicates that she had not filed it along with her application. In addition, it was also pointed out by the petitioner that the sports certificate was also not enclosed along with the main application. Both theses aspects have been duly taken note of by the Collector but has not discussed on this aspect neither has he given any justification or reason for not accepting the said contention of the petitioner and straightway proceeded to cancel the order of appointment.
4. Another ground which the petitioner has raised is that since the Collector has passed the impugned order, it deprives the petitioner her right of appeal in as much as the disciplinary authority is the

General Administrative Committee of the Janpad Panchayat and the Chief Executive Officer of the said Janpad Panchayat and it is the Collector who is the appellate authority. In the instant case, since the impugned order has been passed by the Collector himself, the petitioner stands denied her right to prefer an appeal which again is detrimental to the interest of the petitioner and on this ground also the same deserves to be set aside/quashed.

5. State counsel, however, referring to the impugned order submits that since it is a case of cancellation of appointment, the authorities do not require to conduct a thorough departmental enquiry as it is not a case of an enquiry in respect of a misconduct but it is only an enquiry in respect of the document enclosed along with the application seeking appointment. Thus, according to the State counsel, the Collector has not committed any error.
6. Having heard the counsel appearing on either side it would be relevant at this juncture to refer to the Chhattisgarh Panchayat Services (Discipline and Appeal) Rules, 1999 (for short 'the Rules of 1999'). Rule-6 of the Rules of 1999 prescribes the authorities for imposing penalty. It envisages that in case of major penalty, the prescribed authority is the General Administrative Committee of Janpad Panchayat or District Panchayat, as the case may be. Rule-7 of the Rules of 1999 further envisages that no order of major penalty could be passed without a formal enquiry giving an opportunity of hearing to the concerned employee. Moreover, Rule 10 of the Chhattisgarh Teacher (Panchayat) Cadre (Recruitment and Condition Service) Rules, 2012 (for short 'the Rule of 2012') provides the

authority who would be the competent to impose penalty. For ready reference Rule-10 of the Rules of 2012 is reproduced hereinunder:

“Rule-10. Discipline and Control – The Teacher (Panchayat) cadre shall be under the administrative control of Zila Panchayat or Janpad Panchayat, as the case may be. The General Administrative Standing Committee of Zila Panchayat or Janpad Panchayat, as the case may be, shall be disciplinary authority for major punishment and for minor punishment the Chief Executive Officer of concerned Panchayat shall be disciplinary authority;

Note – definition of major punishment and minor punishment is defined in Rule 5 of the Chhattisgarh Panchayat Service (Disciplinary and Appeal) Rules, 1999.”

7. Taking into consideration the aforesaid statutory provisions as it stands if we look into the appointment order Annexure P-5 dated 20.07.2007, it clearly reveals that the order of appointment has been issued by the Chief Executive Officer, Janpad Panchayat, Nawagarh i.e. respondent no.3. The impugned order Annexure P-1 dated 25.08.2008 reveals that the order has been passed by the Collector. Rule-3 of the Chhattisgarh Panchayat (Appeal and Revision) Rules, 1995 prescribes the appeal and the appellate authority. Against an order passed by the Janpad Panchayat, the appellate authority prescribed is the Collector. Since the order of appointment of the petitioner was issued by the Chief Executive Officer, Janpad Panchayat, Navagarh, for all practical purposes the disciplinary authority would have been the Chief Executive Officer, Janpad

Panchayat, Navagarh and the General Administrative Committee of the said Janpad Panchayat and the Collector as such would have been the appellate authority. Thus, prima facie, it appears that by the impugned order, the petitioner has been denied a right to appeal.

8. So far as the merit of the case is concerned, again the stand of the petitioner all along is that the petitioner had not been appointed against sports quota. Further stand of the petitioner is that the petitioner along with her application for appointment and the check list in respect of the documents filed did not submit the sports certificate. The aspect whether the sports certificate if at all in the service record of the petitioner was attached by the petitioner or by some extraneous force, ought to have been inquired into. The Collector vide the impugned order also seems to be in doubt so far as the contention of the petitioner is concerned as is reflected from the contents of the impugned order itself wherein there is a finding of the Collector that it cannot be conclusively held that the petitioner had enclosed the sports certificate along with her main application for appointment or along with the check list of documents required. In the absence of which, the duty was casted upon the Collector to have directed the disciplinary authority to conduct an enquiry and then reach to a specific finding in this regard.
9. Moreover, another aspect which needs consideration is whether there was evidence available to verify that the appointment of the petitioner was made against any sports quota for which the requirement of sports certificate would have been necessary. If the petitioner has been appointed against general vacancy, the need for this sports

certificate would not have arisen. All these are facts which ought to have been looked into in an enquiry by giving the petitioner due opportunity of hearing and defence. In the absence of all these, this Court is of the opinion that the impugned order to the aforesaid extent is not sustainable and the same stands set aside/quashed.

10. Reserving the right of the competent authority to conduct an enquiry if at all if they intend to do so in accordance with law, the impugned order stands set aside/quashed with consequences to follow.

11. The writ petition accordingly stands allowed and disposed of.

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