

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 896 of 2012**

Radhacharan Tiwari S/o Late R.S. Tiwari aged about 39 years R/o Shanker Ward
Bhatapara District Baloda Bazare Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh through its Secretary Urban Administration and Development Department DKS Bhawan Raipur Chhattisgarh
2. President-in-Council through its President President-in-Council Municipal Council Jashpurnagar District Jashpurnagar Chhattisgarh
3. Chief Municipal Officer Municipal Council Jashpurnagar District Jashpurnagar Chhattisgarh
4. Dy. Director O/o Directorate Urban Administration and Development Department Raipur Chhattisgarh

---- Respondents

For Petitioner	:	Shri K.R. Nair, Ms. Veena Nair and Shri Vinod Deshmukh, Advocate.
For Respondent/State	:	Shri Jitendra Pali, Deputy Advocate General.
For Respondent/Municipal Council	:	Shri Sanjay Agrawal, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice**Order on Board****28/02/2019**

1. Heard counsel for the parties.
2. By Annexure P/1 dated 28.01.2012, Petitioner was dismissed from service from the post of Revenue Inspector. The impugned order indicates that since the Petitioner had obtained employment on the basis of fraud, therefore, such a decision was taken by the President-in-Council of the Nagar Parishad, Jashpur.
3. The facts which emerge from the pleadings are that on 30.11.1995, Petitioner was given an appointment on compassionate ground as Sub-Inspector (Revenue). He came to earn promotion on the post of Revenue Inspector on

06.10.2008 i.e. after almost 13 years. He was also made In-charge Chief Municipal Officer some time in the year 2009 and then, came to be transferred from Jashpur to Chikhallakasa in the same capacity as In-charge Chief Municipal Officer.

4. On 22.06.2011, the Deputy Director, Urban Administration and Development Department wrote a letter to the municipal authorities, a copy of which is Annexure R/10 informing them that the Petitioner has obtained compassionate appointment when the said advantage had already been drawn by his sister in the Municipality of Bhatapara. A direction was issued that he should be removed from service forthwith. A reminder thereafter came to be issued on 04.01.2012 and on the basis of that reminder, on 20.01.2012 the President-in-Council took a decision by way of a resolution to remove the Petitioner and within days, the impugned order (Annexure P/1) dated 28.01.2012 came to be passed, which is under challenge.

5. From the factual matrix, it is evident that the Petitioner was appointed against the sanctioned substantive vacant post. After almost 15 years of service and having earned even promotion over a period of time, on the basis of a directive issued by the Deputy Director, Urban Administration and Development Department on some inputs or complaints he may have received, the municipal authorities were directed to take action for removal. It is the directive that became the basis for resolution by President-in-Council and then issuance of a notification of the removal.

6. Submission of the counsel for the Petitioner is that since the Petitioner was substantively appointed and merely because an allegation of fraud was made against him, he did not lose his right of hearing and compliance of principle of natural justice, if not conduct of a regular departmental enquiry with due opportunity and following the process and procedure. Only on the outcome thereof, a decision having serious consequence for the Petitioner should have been taken.

Such requirement is mandated in Employee Recruitment and Conditions of Service Rules, 1968 framed under the Municipality Act, 1961 and adopted by the State of Chhattisgarh.

7. The above factual position is not seriously disputed except for the stand taken on behalf of the Respondents-State and the Municipality that since it is a case of fraud, therefore, the appointment was vitiated from the very threshold and therefore, no departmental enquiry is required as fraud vitiates everything. In the alternative, it is argued that in the fact finding enquiry, he was given an opportunity but he chose not to participate in the said enquiry and it was only on the basis of such evidence and material, action came to be taken.

8. In my opinion, merely because fraud is alleged, it does not take away the right of the person for hearing more so since he was holding a substantive post. Holding of a departmental enquiry and giving him opportunity of hearing is a must order of dismissal or removal could not have been passed that too against a person who was holding the post on substantive basis for more than 15 years on some inputs behind the back of the Petitioner.

9. Motivated applications or complaints are filed against the Government employees and therefore if certain inputs or complaints were received by the authorities, it was all the more reason that the holder of a permanent post be given an opportunity by drawing a charge-sheet against him and holding of a departmental enquiry and then on the basis of outcome thereof, appropriate punishment ought to have been imposed.

10. All the process and procedure seems to have been given a go by. The dictates from the superior authority is received. A reminder is sent and hardly thereafter, the President-in-Council took a resolution and that resolution converted into the order of dismissal from service contained in Annexure P/1.

11. I do not agree with the stand taken by the Respondents that since it is a case of fraud, the alleged action against the Petitioner was taken, therefore, there was no need for any enquiry or opportunity of hearing. The opportunity so given by way of information to the Petitioner for joining the fact finding enquiry will not meet the requirement of principle of natural justice since a full fledged departmental enquiry was required.

12. Since the Petitioner was holder of a civil post for a long long period of time, it is all the more necessary that the proper departmental enquiry should have been held and thereafter only some order of punishment should have emerged on finding of guilt on the said enquiry if it emerged.

13. Since the process and procedure was not adopted by the Respondents, therefore, the impugned order dated 28.01.2012 contained in Annexure P/1 is quashed. The writ application is allowed. The Petitioner is ordered to be restored back in service with full benefits. However, the Court still leaves it open to the authorities to hold a regular departmental enquiry and based on the outcome thereof, a fresh decision may be taken.

Sd/-
(Ajay Kumar Tripathi)
CHIEF JUSTICE