

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 461 of 2005**

Shyam Kumar Patel (Since dead) Through Legal Representatives:

1. Sita Bai Wd/o Late Shyam Kumar Patel, Aged about 50 years.
2. Naval Patel S/o Late Shyam Kumar Patel, Aged about 22 years.

Both are residents of village Navapali, Block Pussore, Gram Panchayat Bijkot, District Raigarh, Chhattisgarh.

---- Petitioners**Versus**

1. The State of Madhya Pradesh, Through Secretary, MP Panchayat and Social Welfare Department, Government of MP Vallabh Bhawan, Bhopal.
2. The Director, MP Panchayat and Social Welfare Development Department, Government of Madhya Pradesh, Vallabh Bhawan, Bhopal.
3. Joint Director, Panchayat and Social Welfare Department, Bilaspur Division, Bilaspur.
4. Divisional Deputy Director, Panchayat and Social Welfare Department, Bilaspur Division, Bilaspur.
5. Deputy Director, Panchayat and Social Welfare Department, Bilaspur Division, Bilaspur.
6. The State of Chhattisgarh, Through the Secretary, Department of Panchayat and Rural Development, Dau Kalyan Singh Bhawan, Raipur, Chhattisgarh.

---- Respondents

For Petitioner	: Shri Animesh Verma, Advocate.
For Respondents/State	: Shri Siddharth Dubey, Deputy Government Advocate

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice**Order on Board****15/03/2019**

1. Heard learned counsel for the Petitioner and the Respondents.
2. The original Petitioner, Shyam Kumar Patel is no more. A substitution application has been filed which is IA No. 3 of 2016. The names of the legal heirs are provided in paragraph 3 of the said IA. The same is allowed.

3. In the year 1991, the so-called employee filed an Original Application being OA No. 2319 of 1991 before the Madhya Pradesh State Administrative Tribunal, Jabalpur (for short, '*the Tribunal*') seeking quashment of the order of termination dated 11.06.1991 passed by the Incharge Joint Director, Panchayat and Social Welfare Department, Bilaspur Division. The said OA was neither heard nor decided. In the meantime, bifurcation of the State took place and the matter got transferred to this High Court and registered as Writ Petition (S) No. 461 of 2005.
4. The Court must record at the outset that only the basics of pleadings with many gaping holes with lack of corresponding annexures as evidence are missing in the writ application. However, broadly what can be culled out is that the employee in question was stated to be working as Gram Sahayak in Gram Panchayat Singibahar, Tahsil Kunkuri, District Raigarh. This appointment was supposed to have been made by the Collector, Raigarh on a particular pay-scale. The order of such appointment of the Petitioner with many other similarly selected persons is Annexure A/1, dated 15.01.1987.
5. While the erstwhile Petitioner was working, on 11.10.1989, a charge-sheet was served on him, primarily on two charges that though the Petitioner had produced a certificate showing him to have worked as part-time Secretary between 07.09.1979 to December, 1986 of Gram Panchayat Binjkot, the same was found to be forged. Another allegation made was that the audit report for the year 1985-86 did not disclose that the Petitioner was working in the Gram Panchayat in the part-time capacity. The appointment therefore was obtained by fraudulent means.
6. It is stated in the writ application that the Petitioner never got a copy of the order of termination. Unfortunately, it is not there on record even today. The said order of termination therefore is not available to the Court but this Court

has to go by the pleadings that there was an order of such kind by drawing inference because an order directing the Petitioner to hand over the charge of the responsibility to another person on the ground that his services have been terminated is borne out from Annexure A/11, which is dated 19.06.1991.

7. After much change of the Enquiry Officer etc., it seems that enquiry was held. The enquiry report is part of the return filed on behalf of the Respondent/State, and therefore, the Court will have to rely on the enquiry report as to what transpired in the departmental enquiry.
8. The sum essence of the enquiry report is that verification of the records and audit reports between the year 1978 to 1986, does not reflect the name of the Petitioner to be a part-time Secretary of the Panchayat. In fact, one Kishori Lal Nande was the Secretary in question and examination of those documents shows that effort had been made to erase the name of the said Secretary by using a blade and the name of the Petitioner was sort to be interpolated by overwriting thereon.
9. The enquiry report also talks about absence of any evidence or record to show the engagement or appointment of the Petitioner by the Gram Panchayat in question, however, it did find an effort made by some person to insert the name of the Petitioner in a resolution which had nothing to do with the engagement or hiring of the Petitioner as part-time Secretary but under yet another general resolution. All these materials and evidences of documentary kind prima facie established that the certificate which was used to show working of the Petitioner as part-time Secretary in the Gram Panchayat was a hoax since the materials and documents of the Gram Panchayat did not corroborate the hiring, the working or participation of the Petitioner in the functioning of the Gram Panchayat. In fact, to the contrary,

the records seem to have been interpolated and effort made to create the evidence by inserting the name of the Petitioner in some of those records.

10. The Petitioner did participate in the enquiry proceedings. He raised certain objection but for some strange reason, he chose not to question or cross-examine the evidence and witnesses but to file only a written submission before the Enquiry Officer as his defence. However, the enquiry Officer found the Petitioner guilty and from the assertion, it is evident that the finding of the enquiry report culminated into his termination.
11. All these issues have arisen more than three decades ago. The argument made on behalf of the Petitioner by his counsel on the question as to what documents were demanded or not provided and the question that he was not served with a copy of the order of termination or that he was not given a copy of the enquiry report are unfortunately not verifiable from kind of sketchy pleadings and assertions, therefore, it will be too hazardous for the Court to presume and jump to the conclusion as a final finding of fact to interfere with the order of termination, especially when the conduct of the enquiry is not a matter of dispute and the finding emerging from the enquiry report is also not a serious matter of contest.
12. The so-called procedural infirmities or irregularities could have been verified provided those records would have been available for perusal by the Court. But we can very well appreciate that the cause of action having emerged in the last century and for some reason, the issue not having been decided by the Tribunal and the matter remained pending in the High Court, we have to go by the fact which emerges from the enquiry and there was something amiss in the way the engagement of the Petitioner was sought to be shown as a part-time Secretary of Gram Panchayat. There is lack of authentic evidence and materials on behalf of the Petitioner on his engagement

otherwise and the whole case was sought to be built up on a certificate issued of his having worked as such between the period and that certificate by itself cannot lend credence in absence of a detailed enquiry to verify the actual engagement or working which could have formed the basis for issuance of such certificate.

13. In these circumstances, therefore, it is difficult for this Court to set aside the order or interfere with the decision of the Respondents to terminate the Petitioner from service. The Court dismisses the writ application with a heavy heart but then the time seems to have done its damage coupled with sketchy kind of evidence and pleadings in the Original Application which was filed before the Tribunal and not supplemented even before the writ Court over the years.

14. The writ application is dismissed.

Sd/-
(Ajay Kumar Tripathi)
CHIEF JUSTICE