

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 623 of 2014

- Suratiya Khare W/o Bhuneshwar Khare, Aged About 36 Years, R/o Tekahardi, Tahsil Dongargaon, Post Bakal, District Rajnandgaon, C.G., Chhattisgarh

---- Petitioner

Versus

1. Project Officer Integrated Child Development Project, Dongargaon, District Rajnandgaon, C.G., Chhattisgarh
2. Chief Executive Officer, Janpad Panchayat, Dongargaon, District Rajnandgaon, C.G., District : Rajnandgaon, Chhattisgarh

----Respondents

For Petitioner – Ms. Avit Lakra, Advocate.

For State/Respondent No.1 – Mr. Adil Minhaj, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

14-11-2019

1. This petition has been brought being aggrieved by the order dated 17-07-2014 passed by the Commissioner, Durg Division in Revision Case No.578 A-89 of year 2013-14.

2. It is submitted by learned counsel for the petitioner that the petitioner was appointed as Aanganbadi worker by the respondents on 09-07-1999. The petitioner was dutifully giving services, however, because of some illness and physical indisposition she had to proceed on leave. The petitioner submitted leave application on 14-01-2013. She remained on leave as long as she was not fully fit to join the duties. The petitioner appeared to attend the duties on 03-07-2013 when she was informed that she has been removed from the service vide order dated 21-06-2013 (Annexure-P/3).

It is submitted that the petitioner was never disobedient or has derelicted in performance of her duties. The leave she availed was for the compelling reasons that the petitioner was physically indisposed. It is also submitted that the petitioner as an appointee of Janpad Panchayat, the matter of her leave

was taken into consideration by it and it was resolved that she should be given one more opportunity and reinstated. Respondent No.1 totally disregarded the resolution so made by the Janpad Panchayat. As the Janpad Panchayat, appointing authority itself is interested to reinstate the petitioner in service, hence, her dismissal is unsustainable. Her order of dismissal was passed by respondent No.2, against which she filed appeal before the Collector, District Rajnandgaon, which was dismissed vide order dated 15-01-2014 (Annexure-P/2) for the reason that the appeal was time barred and the same order was challenged before the Commissioner, Durg Division, by way of revision which has also been dismissed. Hence, it is prayed that the petitioner be reinstated on the basis of the resolution of the Janpad Panchayat by setting aside the orders passed by the authorities below it.

3. Learned counsel for the respondent No.1/State opposes the petition and the submission made. It is submitted that it is a case of proceeding on unauthorized leave by the petitioner. Without any sanction of leave the petitioner enjoyed the leave of more than six months. The petitioner never filed any medical document in support of her claim and she has not given any explanation regarding her long absence. The respondent made every effort to make the petitioner join her duties. First notice was issued on 18-02-2013 (Annexure-R/1) asking the petitioner to join duties within three days. The petitioner refused to accept the notice, regarding which a report was submitted on 20-02-2013 by the person authorized to effect service vide Annexure R/2. Subsequent to which another notice was issued 01-03-2013 vide Annexure R/3 and another notice was issued to her on 22-04-2013 (Annexure – P/4). The respondent again issued notice to the petitioner on 02-05-2013 very clearly mentioning regarding service affected by the absence of the petitioner and regarding her refusal to take notice with caution to initiate proceeding against her. It is submitted that the petitioner deliberately did not receive any notice

and continued with her absence on duty in a deliberate and willful manner, therefore, she has been rightly removed from service.

It is also argued that this petition is not maintainable under Article 227 of the Constitution of India for the reason that the orders under challenge are not orders passed by any Court. The Panchayat Raj authorities are neither a Court nor a Tribunal, hence, it is prayed that the petition be dismissed.

4. Heard learned counsel for the parties and perused the documents.

5. The objection raised by the respondent is substantial. Exercise of power under Article 227 of the Constitution of India is very clearly for the supervision of the Courts which includes Tribunals. The order of dismissal or removal from service passed by respondents No.1 is very clearly an administrative order. Simply for the reason that the appeal is provided against such order before the Collector and revision is provided before the Commissioner, it cannot be said that the Collector and the Commissioner have acted in capacity of a Court.

6. The circular issued by C.G. Government No.728/1098/2008/मबावि/50 dated 02-04-2008 provides for the scheme of appointment and removal of Aanganbadi workers. Alleged insubordination of the petitioner is covered under Clause 13.2 and 13.3 of the circular. According to this clause the officer has power to remove Aanganbadi worker from services. Therefore, it is not a case where any motion was to be initiated through Janpad Panchayat.

7. The date of removal from service of the petitioner is 21-06-2013. subsequent to her removal, the said motion was brought before the meeting of Janpad Panchayat on 13-09-2013, on which emphasis has been given by the petitioner. The scheme in the circular dated 02-04-2008 does not provide for any such initiation of proceeding before Janpad Panchayat or any other proceeding on notice, on the contrary this provides appeal and the petitioner had availed all the remedy of appeal accordingly. The satisfaction has been

recorded by the respondent with respect to the reason for removal of the petitioner from service on the basis of her act of indiscipline by proceeding on leave without proper sanction of leave from the authorities regarding which no fault can be found. Apart from that, it has been observed earlier that this petition cannot be entertained under Article 227 of the Constitution of India. Therefore, I do not find any substance in this petition and the same is dismissed accordingly.

Sd/-

(Rajendra Chandra Singh Samant)
Judge