

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO.2075 OF 2013**

Khirood Soni S/o Shri Lambodar Soni Aged About 45 Years R/o Sidharth Chowk, PS City Kotwali, Nagar Nigam Colony, Tikrapara, Raipur, Distt. Raipur, Chhattisgarh.

...Petitioner(s)

Versus

1. State of Chhattisgarh Through Urban Development Department, Naya Raipur, Mantralaya, Dist Raipur, Chhattisgarh.
2. Chief Executive Officer, Raipur Development Authority, Raipur, Distt. Raipur, Chhattisgarh.

... Respondent(s)

For Petitioner	:	Shri SP Kale, Advocate.
For Respondent-State	:	Shri Ishan Verma, Panel Lawyer.
For Respondent No.2	:	Shri Kishore Bhaduri and Ms. Juhi Jaiswal, Advocates.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

15.04.2019

1. Challenge in this petition is to the order dated 01.10.2012 (Annexure P/1) whereby the respondent No.2 has inflicted the petitioner with punishment of termination from service.
2. The facts of the case is that, the petitioner was working as daily wage employee under the respondent No.2 and was subsequently regularized under the work charged contingency paid establishment. The petitioner was issued with a charge sheet dated 26.05.2012 for continuous unauthorized long period of absence from duty. The petitioner did not submit reply within the stipulated period. Thereafter, the petitioner was again issued with a show cause notice on 20.06.2012 to submit his reply within 7 days to the charge sheet. To this also, the petitioner did not submit his reply. On the contrary, the petitioner submitted a three line letter to the respondent No.2 (Annexure R/2) in reply to the charge sheet dated 26.05.2012 which for ready reference is reproduced as under:

“सनम्र निवेदन है कि उपरोक्त पत्र के विषय में मुझसे गलती हुई है पारिवारिक परेशानियों एवं स्वयं का स्वास्थ्य ठीक नहीं होने के कारण मैं पत्र का उत्तर समय पर नहीं दे सका हूँ।

मैं क्षमाप्रार्थी हूँ मैं भविष्य में कार्य पर नियमित उपस्थित रहूँगा।
कृपया मेरी प्रार्थना स्वीकार कीजिए।”

3. Thereafter, the respondent No.2 straightway passed the impugned order date 01.10.2012 terminating the petitioner from service.
4. The contention of the petitioner is that, the impugned order is bad in law for the reason that firstly the order has been passed without conducting any sort of enquiry by the respondents. Secondly, the document Annexure P/5 collectively enclosed with the writ petition would show that most of the period of absence was regularized by the department by either treating it as leave without pay or the leave was adjusted against the leave that was available to his credit. As such according to the petitioner the said period of absence which stands regularized could not have been taken as a misconduct any further.
5. It is further the contention of the petitioner that since the respondents had issued the petitioner with a charge sheet on 26.05.2012, the respondents were required to conduct a Departmental Enquiry and thereafter should have reached to the conclusion whether the misconduct stands proved or not before passing of the impugned order of termination.
6. The counsel for the respondent No.2 on the contrary submits that the contents of the charge sheet itself is self explanatory to the extent that annexure to the charge sheet would give the details of the period of absence from service so far as petitioner is concerned.

Referring to the annexures to the charge sheet, the counsel for the respondent No.2 submit that in all there were around 706 days of unauthorized absence on the part of the petitioner and thus he was not entitled to remain in service. That, he was also not interested in his service and therefore the order cannot be said to be bad in law. The counsel for respondent No.2 further referring to the show cause notice Annexure R/1 submits that, to the charge sheet as well as to the subsequent show cause notice since the petitioner did not give reply, it amounts to the petitioner being not interested in either contesting the case on merits nor interested in working under the respondents and for this reason also the impugned order is sustainable and cannot be said to be bad in law.

7. It was the further contention of the respondent No.2 that, vide Annexure R/2 dated 30.08.2012 the petitioner has submitted his admission so far as unauthorized absence is concerned and therefore conducting departmental enquiry thereafter would be only an empty formality to be complied with, and which would not improve upon the case of the petitioner in any manner as he has accepted of remaining an unauthorized absence.
8. Having heard the contentions put forth on either side and on perusal of records, true it is that annexures to the charge sheet show that there is an unauthorized absence of around 706 days so far as petitioner is concerned spreading over a period of roughly six years. However, if the collective documents enclosed along with Annexure P/5 is taken into consideration, it would clearly reveal that so far as most of the unauthorized absence of the petitioner in the past is

concerned, the department has already taken action against the petitioner and the said period has been either treated as unauthorized absence or has been adjusted against the leave that was there in the credit of the petitioner.

9. This being the factual position, it was incumbent upon the respondent No.2 to have conducted a departmental enquiry so far as unauthorized absence is concerned and then reached to the conclusion whether misconduct has been proved or not. Moreover, mere issuance of a charge sheet itself would not suffice. The department also ought to have taken the charge sheet to a logical conclusion by establishing the charges in departmental enquiry. In the absence of any enquiry conducted in the light of the charges levelled against the petitioner, this court is of the opinion that the impugned order of termination passed is not sustainable as the same would amount to an order passed in contravention to the basic principles of natural justice. The impugned order dated 01.10.2012 (Annexure P/1) to that extent is not sustainable and the same is set aside/quashed.
10. Since the order of termination is being set aside/quashed on the ground of not conducting departmental enquiry, this court reserves the right of the respondent No.2, if they so wants, to conduct a departmental enquiry against the petitioner for the charges levelled.
11. As a consequence of Annexure P/1 getting set aside/quashed, the petitioner would be entitled for reinstatement in service. But, during the intervening period the petitioner would not be entitled for any back wages applying the principles of "No Work No Pay" and also

taking note of the past conduct of the petitioner as is reflected from annexures attached to the charge sheet. However, the said period shall be treated as continues service for all other practical purposes.

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

Sd/-
(P. Sam Koshy)
Judge