

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3938 of 2015

Smt. Priya Yadav W/o Rohit Kumar Yadav, Aged About 36 Years
R/o Village And Post Samaruma, Tahsil Tamnar, District Raigarh,
Chhattisgarh **---- Petitioner**

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Women And Child Development, Mantralaya, New Raipur, District Raipur, Chhattisgarh
2. The Commissioner, Bilaspur Division, Bilaspur, Office Of Commissioner, Bilaspur, District Bilaspur, Chhattisgarh
3. The Collector, Raigarh, Collectorate Office, Raigarh, Chhattisgarh
4. The Chief Executive Officer, Janpad Panchayat, Tamnar, District Raigarh, Chhattisgarh

----Respondents

For petitioner – Shri Vineet Kumar Pandey, Advocate.
For State- Shri Avinash Singh, PL.

Hon'ble Shri Justice Goutam Bhaduri

Order

21/11/2019

1. Instant petition is against the order dated 15/09/2015 passed by the Additional Commissioner, Bilaspur whereby the order passed by the Collector in appeal under the Chhattisgarh Panchayat Raj Adhiniyam, 1993 and the Rules made therein was affirmed.
2. The case pertains to termination of the petitioner. The facts of this case are that the petitioner was selected as Aanganbadi worker and as per Annexure P-2 on 26/08/2006 the Aanganbadi centre was village Samaruma, Gram Panchayat Aamaghat on the honorary basis. Subsequent to it she joined her post and was discharging her duty. On 12/01/2015 Additional Collector, Raigarh visited the Aanganbadi Centre at 10:12 am and during such inspection the petitioner was found absent and according to the written reply it was informed that she had gone to get signature on certain receipts of Sarpanch and Up-Sarpanch. The order of dismissal thereafter was passed and at the relevant time with an

explanation that since election were going on, as such there was no occasion would arise to get the signature of the Sarpanch or Up-Sarpanch of the village and accordingly based on those ground that petitioner has not made correct statement she was dismissed from the service by the order of the Chief Executive Officer, Tamnar.

3. Despite service of the summons no representation is made on behalf of respondent No.4. Return has been filed on behalf of respondents No.1 to 3.

4. Learned counsel for the petitioner submits that termination of the service was affected without affording any opportunity of hearing and only on the reply filed by the petitioner services were dispensed with. It is further contended that government have laid down the guidelines for appointment and for termination of the service of Aanganbadi workers which is filed as Annexure P-2 and before termination of the service those guidelines and procedure were not followed. It is stated that when order of termination was subject of challenge both the Collector and Commissioner affirmed the order of termination thereby illegality was perpetuated which requires to be set aside.

5. Per contra, learned State counsel opposes the argument and submits that when inspection was made at Aanganbadi centre the petitioner was consciously found absent and subsequent to it explanation was called for and having not satisfied with the explanation that she had gone to get signature on the certain receipts of the Sarpanch and Up-Sarpanch her services were terminated. It is stated that order of both Collector and Commissioner are well merited which do not call for any interference.

6. Perused the document. The incident started when the inspection was made by the Additional Collector, Raigarh on 12/01/2015 and on inspection at about 10:12 am the petitioner who was posted as Aanganbadi worker was found absent. Note sheet filed by the State

Annexure R-1 shows that explanation and reply was filed wherein petitioner stated that she had gone to take certain signature on the receipts from the Sarpanch and Up-sarpanch and had gone to arrange water for the center. Further note sheet purports that she was unauthorizedly absent, therefore her termination of service was recommended. Note sheet is of 12/01/2015 is on the same day of inspection and the reply filed by the petitioner. In the explanation to absence, petitioner had stated that she opened the Aanganbadi centre at 9:30 and cleaned the premises and thereafter had went to fetch water and at such time Additional Collector reached there for inspection and found petitioner absent. During such time petitioner had went to obtain signature on the receipts from the Sarpanch and Upsarpanch and since Sarpanch was not available she went to Upsarpanch and reached back to Aanganbadi at 10:30 am.

7. In respect of the appointment letter issued by the State same is filed as Annexure P-2. It was issued on 2/04/2008 by the State under the caption that appointment of Aanganbadi worker, Assistant and Mini Aanganbadi worker. At serial No.13 of such direction procedure has been prescribed to remove the Aanganbadi worker. Primary contents of para 13.1 and 13.2 of such direction purports that when the complaint is received, preliminary enquiry would be made and after preliminary enquiry if it is found that complaint is proper and any major misconduct or misappropriation is alleged then the worker would be given 15 days time to file reply and after the explanation is received it would be further considered and after due enquiry papers would be submitted to the higher ups. Para 13.2 specifically purports that when major misconduct or misappropriation is not been alleged in such case initially for two times punishment of warning would be inflicted and in the third time if the worker do not improve her conduct then she would be given a hearing and after hearing and if it is decided that he is to be removed then entire document

to be further forwarded to the higher ups.

8. There is nothing on record to show that separate rules have been framed for appointment and removal of Aanganbadi worker. It is the government instruction which appears to have been issued by Annexure P-2 and appears to have been passed under Article 162 of the Constitution of India which empowers State that subject to the provisions of the Constitution the executive power of the State shall extend to the matter with respect to which the legislature of the State has power to make laws. Separate laws have been framed under the name and style Chhattisgarh Panchayat Raj Adhiniyam, 1993 and also appointment of Aanganbadi worker are made in the panchayats. Therefore as per the ratio down in case of **Joint Action Committee of Air Line Pilots' Association of India (ALPAI) and others Vs. Director General of Civil Aviation and others** reported in **(2011) 5 SCC 435** when the executive instructions are issued for guidance and to implement scheme of the Act but do not have the force of law can be issued by the competent authority and altered, replaced and substituted at any time. In a result, the executive instruction which has been issued for appointment and removal of the Aanganbadi worker one can fall back on it to test appointment and the removal.

9. Admittedly it appears that no enquiry was ever held. When inspection was made at 10:12 am the petitioner was not found and the further explanation would show that she stated that she had went to arrange for the water had opened the Aanganbadi centre earlier and thereafter had went to the Up-sarpanch in absence of the Sarpanch to get certain signature on the receipts. Certainly the explanation cannot be attributed that it was a major misconduct. The direction which has been issued contains that in case of minor misconduct appears means proved then at first two instances the Aanganbadi worker would be inflicted with punishment of warning if it is found true and on the third occasion enquiry

may be contemplated. Here in the instant case apparently for absence for a day in early hours that too for inspection made at 10:12 am the explanation of the petitioner was not accepted. The petitioner in her explanation stated she had gone to get signature of Up-Sarpanch and reached to the Aanganbadi centre at 10:30. It is also pertinent that within office hours itself on 12/01/2015 every part of removal were concluded. The rules and the guidelines issued by the State certainly were not followed and it being a minor misconduct, direct inflictment of punishment for removal should not have been passed. The removal if are tested considering the nature of allegation i.e. the nature of misconduct, it would show that the removal is shockingly disproportionate and shocks the conscience of the court. Accordingly, same cannot be sustained. The termination order dated 12/01/2015 (Annexure P-4) is set aside. Order of the Collector and Commissioner when are examined it shows those are too cryptic and have failed to take into account to examine the guidelines and the rules to test whether they were followed or not. The orders have simply affirmed the order of termination without going into the merits as to whether the enquiry was properly held or not that too for the minor misconduct.

10. In a result, both the orders of the Collector dated 12/02/2015 and Commissioner dated 15/09/2015 cannot be sustained and accordingly are set aside. In a result the petition stands allowed. The petitioner is directed to be reinstated to the post of Aanganbadi worker forthwith.

No order as to cost.

Sd/-
(Goutam Bhaduri)
JUDGE