

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 393 of 2019**

*{Arising out of order dated 27.09.2018 passed by the learned Single Judge in Writ
Petition (S) No. 6342 of 2018}*

1. State of Chhattisgarh, through the Principal Secretary, Department of Home,
New Raipur, District Raipur (C.G.)
2. The Superintendent of Police, District Rajnandgaon (C.G.)
3. The Deputy Superintendent of Police, (IUCAW), District Rajnandgaon (C.G.)

---- Appellants**Versus**

- Suresh Kumar Dhruv, S/o Shri Anant Ram Dhruv, aged about 47 years, working
as Constable, Police Station Reserve Police Line under O/o S.P. Rajnandgaon
District Rajnandgaon, District Rajnandgaon (C.G.) R/o New Police Line 18 Acre,
Qtr. No. H/49, P.S. Kotwali, Rajnandgaon, District Rajnandgaon (C.G.)

---- Respondent

For Appellants/State	:	Shri Gagan Tiwari, Deputy Government Advocate.
For Respondent	:	Shri Sunil Verma, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu, Judge

Judgment on Board**Per P. R. Ramachandra Menon, Chief Justice****16.10.2019**

1. The verdict passed by the learned Single Judge, virtually granting the relief sought for by the writ Petitioner with regard to challenge raised against the order passed by the Enquiry Officer, whereby the Defence Assistant engaged by the writ Petitioner in a disciplinary proceeding was denied permission to represent the writ Petitioner, is put to challenge in this appeal.

2. Heard Shri Gagan Tiwari, the learned counsel representing the Appellants/State as well as Shri Sunil Verma, the learned counsel appearing for the Respondent.
3. Sequence of events is as follows: The Respondent herein, who was working as a Constable in the Police Department was proceeded against by the authorities for some delinquency noted in connection with the service. A domestic enquiry was sought to be conducted and an Enquiry Officer was appointed in accordance with the relevant provisions of law and the matter was being proceeded accordingly. In the said proceedings, the Respondent sought to avail the assistance of a person by name Shri Birendra Kumar Sinha who was a former employee in the Police Department. The Enquiry Officer passed an order dated 30.08.2018 (Annexure P/5) denying permission to the delinquent employee to be represented by the aforesaid Defence Assistant, which made the aggrieved person to approach this Court by filing a writ petition, seeking to set aside the order passed by the Enquiry Officer and to permit the delinquent employee to participate in the proceedings.
4. The Appellants herein, who were the Respondents before the learned Single Judge took up a contention that the Defence Assistant by name Shri Birendra Kumar Sinha, who was sought to be engaged by the delinquent employee, was not a Government employee as on date and as such, it was not possible to permit the delinquent employee to avail his assistance. The said contention was considered and it was repelled by the learned Single Judge holding that no provision of law was brought to the notice of the Court to sustain the stand. It was accordingly, that the writ petition was allowed, setting aside the order under challenge, which made the Respondents in the writ petition to file the present appeal.
5. The learned counsel for the Appellants submits that, as pointed out in the grounds C and D of the memorandum of appeal, by virtue of the Regulation 213

of the Police Regulations, the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (for short, 'Rules of 1996') are applicable in the case of the disciplinary action of the Police officials as well. It is stated that by virtue of the mandate in Rule 14 of the Rules of 1996, only a Government servant can be engaged as Defence Assistant, whereas in the instant case, the Respondent/writ Petitioner wanted to engage a person who is not a Government servant, and hence the grievance.

6. The relevant provisions as contained in the sub-rule 8 of Rule 14 of the Rules of 1966 which is sought to be relied by the Appellants reads as follows:

“14. Procedure for imposing penalties.-

xxx

xxx

xxx

(8) The Government servant may take the assistance of any other Government servant to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits.”

7. Even on a plain reading of sub-rule 8, it is seen that there is no absolute bar in getting the delinquent employee to be represented by a non-government servant and in some cases, permission can also be granted to be represented by a legal practitioner, provided the Disciplinary Authority is a legal practitioner or when the Disciplinary Authority, having regard to the circumstances of the case grants sanction. This means, the situation envisaged under sub-rule 8 of Rule 14 of the Rules of 1966 is not to deny the right to be defended to the delinquent employee, but to facilitate such engagement by making available the service of a Government employee at no cost. It is for the department to make necessary arrangement in this regard and such assistance is to be rendered by a serving Government employee free of cost, as duty leave is granted and the salary is being paid by the Government, besides extending such other facility in this regard. Where engagement is made by the delinquent employee of his

own, if the Defence Assistant is not a Government servant, then, the expenditure and such other requirements are necessarily to be satisfied by the delinquent employee himself and not by the Government as it happens in the case of engagement of a legal practitioner (when permitted).

8. Another aspect to be noted is that the Respondent/writ Petitioner had a specific case that the person sought to be engaged by him by name Shir Birendra Kumar Sinha was being permitted to be the Defence Assistant in various other cases as well and there was no objection in this regard at any point of time for the Department. Even in the case of the Respondent-writ Petitioner, in respect of some other charges, it is seen from Annexure P/4 proceedings dated 26.04.2018 that the witnesses were cross-examined by the Defence Assistant by name Shri Birendra Kumar Sinha and the proceedings bear the signature of the said Defence Assistant as well. The objection, if at all any, ought to have been brought to the notice of the Disciplinary Authority and the Enquiry Officer, of his own was not correct or justified in rejecting the request of the Petitioner, when the very same person was being permitted to act as Defence Assistant in some other context, as revealed from Annexure P/4.
9. Above all, the Appellants have not established any 'prejudice' to the State Government on granting the request of the delinquent employee to avail the service of Defence Assistant named by him, in respect of the present charges as well. In the said circumstances, we are of the view that this is not a fit case to call for the interference.
10. Appeal fails. It is dismissed accordingly.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge