

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 8952 of 2019

Ibne Safi Ansari S/o Kamruddin Ansari Aged About 51 Years
Assistant Grade II, Office Of Janpad Panchayat Bhaiyathan, R/o
Village And Post Bhaiyathan, Tahsil Bhaiyathan, Civil And Revenue
District Surajpur, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Panchayat And Rural Development Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh.
2. Director, Directorate Of Panchayat, Chhattisgarh, Naya Raipur, District Raipur, Chhattisgarh.
3. Commissioner, Surguja, Commissioner, Ambikapur, Chhattisgarh.

--- Respondents

For petitioner – Smt. Meena Shastri, Advocate.
For State-Shri Kunal Das, PL.

Hon'ble Shri Justice Goutam Bhaduri

Order

24/10/2019

Heard.

1. In the instant petition challenge is to the order of suspension dated 27/09/2019 (Annexure P-1) passed by the Commissioner, Surguja Division, Ambikapur. It is contended that the petitioner was working as Accountant in the office of Janpad Panchayat, Surajpur and he was appointed on 15/04/1988 as per Annexure P-2 by the Chief Executive Officer, Janpad Panchayat, Khadgawa. It is stated that as per the Chhattisgarh Panchayat Service (Recruitment and General Conditions of Services) Rules, 1999 according to the Rule 34 the employees of the Panchayat would be under administrative control of the Panchayat through the Chief Executive Officer and Chhattisgarh Panchayat Service (Discipline and Appeal) Rules, 1999 as per Rule 4 the suspension is governed which speaks that the appointing authority or any authority to which it is subordinate, or disciplinary authority may place a member of

Panchayat service under suspension. It is contended that in any case the Commissioner is not the appointing authority of the petitioner, therefore the order itself is without jurisdiction.

2. Learned State counsel opposes the argument and submits that the order is well merited which do not call for any interference.

3. Reading of the Annexure P-2 would show that the petitioner was appointed by the Chief Executive Officer, Janpad Panchayat, Khadgawa. As per the Chhattisgarh Panchayat Service (Recruitment and General Conditions of Services) Rules, 1999 which have been framed in exercise of the powers conferred by the sub-section (2) of Section 70 of the Chhattisgarh Panchayat Raj, Adhiniyam, 1993), Rule 34 purports that all the Panchayat employees shall be under the administrative control of the Panchayat through its Chief Executive Officer which reads as under:-

“34. Control and Discipline.-All the Panchayat employees shall be under the administrative control of the Panchayat through its Chief Executive Officer.”

4. In respect of the discipline and appeal to the Panchayat service, Chhattisgarh Panchayat Service (Discipline and Appeal) Rules, 1999 have been framed in exercise of the powers conferred by sub-section (1) of Section 95 read with sub-section (2) of Section 70 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 part-II of it Rule 4 is about suspension which reads as under:-

“4. Suspension.-(1) The appointing authority or any authority to which it is subordinate, or disciplinary authority in that behalf, may place a member of Panchayat service under suspension:-

(a) Where a disciplinary proceeding against him is contemplated, or is pending or

(b) Where a case against him in respect of any criminal offence involving moral turpitude is under investigation inquiry or trial:

Provided that where the order of suspension is made by an authority subordinate to or lower in rank than the appointing authority, such authority shall forth with report to the appointing authority the circumstances in which the order was made.

(2) A member of Panchayat Service shall be deemed to have been placed under suspension by an order of appointing authority:-

(a) With effect from the date of his detention, on a criminal charge or otherwise, for a period exceeding forty eight hours.

(b) With effect from the date of his conviction, if the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty eight hours and is not forthwith dismissed or removed or compulsorily retired consequent upon such conviction.”

5. Reading both the Rules, Rule 34 of Chhattisgarh Panchayat Service (Recruitment and General Conditions of Services) Rules, 1999 and Rule 4 of Chhattisgarh Panchayat Service (Discipline and Appeal) Rules, 1999 would show that the power to take disciplinary action and the control are vested with the person who appointed the member of the panchayat. The Rule 4 would purport that the appointing authority may place the member of Panchayat under suspension and as per Annexure P-2 the appointing authority of the petitioner is shown as Chief Executive Officer, Janpad Panchayat, Khadgawa, therefore in any case the Annexure P-1, suspension order dated 27/09/2019 passed by the Commissioner, Surguja Division, Ambikapur cannot be stated to have been passed under the Chhattisgarh Panchayat Raj, Adhiniyam, 1993.

6. If orders are passed by the Commissioner, then in such case the petitioner shall also lose a right of appeal under the Chhattisgarh Panchayats (Appeal and Revision) Rules, 1995 wherein Rule 3

contemplates that in case the order is passed by the Janpad Panchayat or Zila Panchayat then it would be appealable before the Commissioner.

7. In the result, Annexure P-1 dated 27/09/2019 passed by the Commissioner, Sarguja Division, Ambikapur is quashed being without any jurisdiction. However, it is observed that the respondent shall be at their liberty to invoke the disciplinary power if they deem fit as contemplated under the Chhattisgarh Panchayat Raj, Adhiniyam, 1993 and the Rules made therein.

8. Accordingly, the petition stands allowed.

Sd/-

(Goutam Bhaduri)

JUDGE