

AFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****WA No. 813 of 2018**

1. Humendra Kumar Pawade S/o Shri Bhimadhar Pawade Aged About 33 Years R/o Village And Gram Panchayat Bhejipadar, Block Mainpur, District Gariyaband Chhattisgarh.

**---- Appellant****Versus**

1. State Of Chhattisgarh Through Secretary, Panchayat And Rural Department, Mantralaya, Mahanadi Bhawan, Naya Raipur Chhattisgarh.
2. Collector And District Co-Ordinator Gariyaband, District Gariyaband Chhattisgarh.
3. Chief Executive Officer Zila Panchayat, Gariyaband, District Gariyaband Chhattisgarh.
4. Chief Executive Officer Janpad Panchayat Mainpur, District Gariyaband Chhattisgarh.
5. Programme Officer Mahatma Gandhi National Rural Employment Guarantee Project, Janpad Panchaya Mainpur, District Gariyaband Chhattisgarh.

**---- Respondent**

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For Appellant

Ms. Meena Shastri, Advocate

For Respondent/State

Mr. Gagan Tiwari, Advocate

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**Hon'ble Shri Prashant Kumar Mishra, Ag.CJ****Hon'ble Shri Parth Prateem Sahu, J.****Judgment on Board****By****Prashant Kumar Mishra, Ag. CJ**

**28-03-2019**

1. The appellant herein was appointed to work as Rojgar Sahayak of Gram Panchayat, Bhejipadar, on 15-5-2007 under the provisions of the Chhattisgarh Civil Sewa (Samvida Niyukti) Niyam, 2004 (*for short 'the Rules, 2004'*). The appellant continued on the post on the strength of assessment of his suitability for continuation of the contract appointment on year to year basis. However, his Annual Confidential Report (*ACR*) or Performance Appraisal Report (*PAR*) for the year 2017-18 was not 'excellent' or 'very good', therefore, under Rule 15 (3) of the Chhattisgarh Civil Sewa (Samvida Niyukti) Niyam, 2012 (*for short 'the Rules, 2012'*) the appellant was not found suitable for continuation of contract appointment for the ensuing year and as a consequence his services stand terminated by order dated 18-5-2018 (Annexure – P/1 in WPS No.5637 of 2018).
2. The writ Court has dismissed the writ petition despite the finding that it was unnecessary for the respondents to have taken note of the *ACR*'s of the appellant for determining whether the contract has to be extended or not observing further that continuation of a contractual employee depends upon his suitability for such continuation with which writing of *ACR* is not at all concerned and that it is in the exclusive

domain of the employer to continue or not to continue the contractual employee in the service as such employee does not hold a civil post.

3. Referring to the decision rendered by the Supreme Court in **Dev Dutt v Union of India and Others**<sup>1</sup>, it is argued by the learned counsel appearing for the appellant that the appellant cannot be treated adversely without seeking his representation or explanation about the ACR, which was not communicated to him, therefore, the order of discontinuation of employment is rendered in violation of principles of natural justice.
4. After hearing learned counsel for the parties, we are convinced that the order of discontinuation of contract appointment of the appellant deserves to be quashed for the reason that Rule 15 (3) of the Rules, 2012 itself provides that confidential report of the person, appointed on contract, shall be recorded so that his work may be assessed in case he is to be considered for appointment on contract basis for the next year and for such continuation the ACR/PAR should be 'excellent' or 'very good'. Once the Rule itself provides that the ACR or PAR would form the basis for according benefit of extension of contract employment it goes without saying

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<sup>1</sup> (2008) 8 SCC 725

that a contract employee has a right to represent against the ACR which may work adverse to his interest if the same is not of required standard as laid down under Rule 15 (3) of the Rules, 2012. Even if contract employee is not entitled to hold the post, if the Rules itself provide for consideration of ACR or PAR as a measure to assess the suitability, the law laid down by the Supreme Court in **Dev Dutt** (supra) would apply with full force for the reason that if an employee is entitled to any benefit out of the ACR or PAR the same has to be communicated without which it cannot be considered against the employee.

5. It is also to bear in mind that the Supreme Court has settled, in '*n*' number of cases that when an authority takes a decision which may have civil consequences and affects the rights of a person, the principles of natural justice would at once come into play. (See: **State of Maharashtra v Public Concern for Governance Trust and Others**<sup>2</sup>).
6. A contract employee or for that matter any public servant may not have the right of prior opportunity of hearing before writing of ACR, but once it is considered for giving or for not giving any benefit the same has to be communicated to the person before taking any decision *qua* the benefit which may

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<sup>2</sup> (2007) 3 SCC 587

be bestowed to the contract employee on the basis of such ACR.

7. For the above stated reasons, we are inclined to allow this writ appeal. The writ appeal is accordingly allowed. The order impugned in WPS No.5637 of 2018 i.e. Annexure – P/1 dated 18-5-2018, discontinuing the appellant's employment as Rojgar Sahayak, is set aside.
8. The competent authority shall now provide the appellant an opportunity to represent against the ACR/PAR and based on the decision on the appellant's representation the competent authority shall consider the issue afresh concerning continuation of contract employment of the appellant on the post of Rojgar Sahayak for the year 2019-20. It is made clear that there shall be no order as to the back wages.
9. In the result, the writ appeal is allowed to the extent indicated above.

Sd/-

(Prashant Kumar Mishra)  
Acting Chief Justice

Sd/-

(Parth Prateem Sahu)  
Judge

Gowri