

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 2008 of 2014**

- Akhilesh Upadhyay S/o Shri B.D.Upadhyay Aged About 46 Years R/o Village Domhra, Post Singrauli, Ps Janakpur, P.S. Janakpur, Tahsil Janakpur, Distt Koriya- Baikunthpur, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Panchayat, Mantralaya, Naya Raipur, Dist Raipur, Chhattisgarh
2. The Zila Panchayat Koriya Through Its Chief Executive Officer, Distt Koriya-Baikunthpur, Chhattisgarh
3. The General Administration Committee Zila Panchayat, Koriya, Distt Koriya-Baikunthpur, Chhattisgarh
4. The Divisional Commissioner, Ambikapur Division, Distt Surguja, Chhattisgarh
5. The District Collector Distt Koriya- Baikunthpur, Chhattisgarh
6. The Chief Executive Officer, Zila Panchayat Koriya, Distt Koriya- Baikunthpur, Chhattisgarh

---- Respondents

For Petitioner : Shri Sunil Pillai, Advocate

For Respondents/State : Shri Priyank Rathi, PL

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****26/02/2020**

1. Heard.
2. Challenge in this petition is to the termination order dated 10.03.2011 (Annexure P-1) which was further affirmed in appeal by the Commissioner, Surguja Division, Ambikapur vide Annexure P-4 dated 24.03.2014.

3. Learned counsel for the petitioner would submit that the petitioner was appointed as Teacher in the Janpad Panchayat, Janakpur, subsequently, it was under the Zila Panchayat, Koriya. He would further submit that the services of the petitioner was terminated without adhering to the Panchayat Service (Discipline and Appeal) Rules, 1999 (for short 'the Rules, 1999'). It is stated that the Rule 7 thereof prescribes the procedure to impose the major penalty. He would further submit that the petitioner was terminated that is a major penalty as such before termination of the service Rule 7 of the Rules, 1999 required to be adhered to. He would further submit that before the termination of the service, the petitioner was not given the opportunity of hearing, therefore, the rules of natural justice were not followed and the writ petition would lie in view of the law laid down by the Supreme Court in the case of ***Satwati Deswal Vs. State of Haryana and others {(2010) 1 SCC 126}***.
4. Per contra, learned State counsel would submit that according to the Chhattisgarh Panchayat (Appeal & Revision) Rules, 1995 (for short 'the Rules, 1995') against the order of the Commissioner the petitioner should have preferred a revision, therefore, the writ petition would not lie.
5. A very short issue is involved in this case. The appointment of the petitioner to the post of Panchayat Teacher is not in dispute. When the petitioner was the part and parcel of the Panchayat Service then the Rules, 1999 would come into play.
6. Rule 5 (b) of the Rules, 1999 reads as under:-

5. Penalties.- The following penalties may for good and sufficient reasons, and as hereinafter provided by imposed on a member of the Panchayat Service, namely:-

(a) xxx xxx xxx

(b) Major Penalties-

(iv) Reduction in rank including reduction to a lower post or time-scale or to a lower stage in a time-scale.

(v) Compulsory retirement,

(vi) Removal from service not disqualifying for future employment,

(vii) Dismissal from service which shall ordinarily be a disqualification for future employment:

Provided that in the case of member who have been allocated to the panchayat service and who according to the terms and conditions of their service which were immediately applicable to them before such allocation were not liable to the penalty or fine, no penalty or fine shall be indicated upon them.

7. Rule 7 of the Rules, 1999 prescribes the procedure for imposing major penalties and the entire procedure has been prescribed. Reading of the Rule 7 of the Rules, 1999 would show that no order, imposing on a member of the Panchayat Service, any of the penalties specified in clauses (iv) to (via) of rule 5 would be imposed except after a formal inquiry is held as provided further. Reading of the Rule 7 of the Rules, 1999 further purports that when an order for formal inquiry has been made, the disciplinary authority shall frame definite charges on the basis of allegations and shall communicate such charges, along with the statement of the allegations, to the member of the Panchayat Service and also require him to submit the reply in defence and also to state whether he desires to be heard in person or not. Further it purports that the disciplinary authority shall also allow the person to inspect the document and on receipt of the written statement of defence or even if it is not received, the disciplinary authority may himself enquire into such of the charges as are not admitted or appoint an Enquiry Officer to hold the inquiry and forward to him his report along with his recommendation with all the enquiry papers. It also purports that all the due procedure to defend the particular employee should be given and

after conclusion of the enquiry a report would be prepared. The finding would be recorded on each charges with reasons thereunder. Thereafter, the enquiry officer other than the disciplinary authority shall submit the records of the proceeding to the disciplinary authority without any recommendation relating to the penalty to be imposed and if the major penalty is contemplated under Rule 5, it shall furnish to the person charged a copy of the report of the Enquiry Officer, and where the disciplinary authority is not the Enquiry Officer, the disagreement, if any, with the finding of the Enquiry Officer, shall also be placed. Thereafter, the disciplinary authority shall consider the representation, if any made, by the person charged.

8. The Annexure P-1, the termination order would show that the termination has been passed on the basis of a resolution adopted on 29.12.2010. It also speaks of the Rules, 1999 and as stated that the Rules, 1999 contains the Rule of termination, as such the termination is effected. In the return of the State nothing has been placed on record to show that the petitioner was heard or any enquiry was contemplated. Rather termination is based on a resolution which was passed on the ground that the petitioner was absent for a period of time in intermittent period from March to October, 2010. Therefore, the order of termination was made with a stigma.
9. Admittedly, it appears from the record that the procedure prescribed under Rule 7 of the Rules, 1999 for imposing major penalty of the departmental enquiry has not been followed. Despite the Chief Executive Officer is in know of the Rules, 1999 which finds a reference in the termination order it was not followed. The record would further show that the petitioner has filed an appeal under Rule 15 of the Rules, 1999 before the Commissioner and the Commissioner by order dated 24.03.2014 (Annexure P-4) has dismissed the appeal.

10. Reading of the order of the Commissioner would show that no discussion is made as to why the order of termination is justified despite it was apparent on the face of the record that Rule 7 of the Rules, 1999 was not followed instead the reply and the contention of the parties were recorded to hold that the termination is justified. Since apparently violation of principles of natural justice was committed, therefore, the ratio laid down in the case of **Satwati Deswal Vs. State of Haryana and others {(2010) 1 SCC 126}** shall also be applicable in the case of the petitioner and writ petition would be maintainable.
11. Since the order of termination and the order of appeal fail to take into consideration the non-compliance of Rule 7 of the Rules, 1999, therefore, flagrant violation of the principles of natural justice were committed. In a result, both the orders i.e. the order dated 10.03.2011 (Annexure P-1) and order dated 24.03.2014 (Annexure P-4) cannot be allowed to sustain. Consequently, both the orders are set aside. Respondents are directed to reinstate the petitioner into the service with all consequential benefits.
12. Accordingly, the petition stands allowed.

Sd/-

Goutam Bhaduri
Judge

Ashu