

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 1842 of 2020**

- Subir Bhattacharya S/o Late Shri P.K. Bhattacharya Aged About 49 Years Account Officer, District Panchayat Gariyaband, District-Gariyaband, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through- Avar Secretary, Department Of Panchayat And Rural Development Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur- Chhattisgarh
2. The Secretary Finance Department Of Finance, Mantralaya, Mahanadi Bhawan, Naya Raipur, District- Raipur, Chhattisgarh
3. The Chief Executive Officer District Panchayat Gariyaband, District-Gariyaband, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Anil Singh Rajput, Advocate
For Respondents/ State	:	Ms. Richa Shukla, Dy. G.A.

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****19/03/2020**

1. Heard.
2. Learned counsel for the petitioner would submit that the petitioner is an employee of the Finance Department and he has been suspended by order of Additional Secretary, Panchayat and Rural Development Department and as per Rule 9 of C.G. Civil Services (Classification, Control and Appeal) Rules, 1966 (for short 'Rule, 1966'). Reference is made to the law laid down by the Supreme Court in the case of Whirlpool Corporation Vs. Registrar of Trade

Marks. Mumbai and Ors. reported in AIR 1999 SC 22 and the judgment in the case of N.C. Gupta V. State of M.P. and Ors. in 2007 (I) MPWN 2 and it is contended that the petitioner cannot be suspended by any officer of Panchayat Department as the petitioner belongs to Finance Department. It is stated the suspension order has been passed by the Department of Panchayat and Rural Development, therefore, would be non existent.

3. Rule 9 of the Rules of 1966, purports that the suspension under Rule 9 can be made by the appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the Governor by general or special order, may place a Government servant under suspension. Therefore, learned counsel for the petitioner would submit that the petitioner cannot be held subordinate to the Additional Secretary Panchayat and Rural Development Department and he can be held subordinate only to the Finance Department.

4. Rule 9 of C.G. Civil Services (Classification, Control and Appeal) Rules, 1966 reads as under:-

"9. (1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the Governor by general or special order, may place a Government servant 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 is under investigation, inquiry or trial:

[Provided that a Government servant shall invariably be placed under suspension when a challan for a criminal offence involving corruption or other moral turpitude is filed against him :]

Provided further that where the order of suspension is made by an authority lower than the appointing authority,

such authority shall forthwith report to the appointing authority the circumstances in which the order was made.

2. A Government servant shall be deemed to have been placed under suspension by an order of appointing authority-

(a) with effect from the date of his detention, if he is detained in custody whether on a criminal charge or otherwise for a period exceeding forty-eight hours;

(b) with effect from the date of his conviction, if, in the event of 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 to such conviction."

5. *Prima facie*, perusal of Annexure P-1, would show that the petitioner was promoted and was posted as Account Officer in the Zila Panchayat, Gariyaband by order dated 03.03.2017, during such discharge of job in the Zila Panchayat, Gariyaband the petitioner was subjected to suspension and the suspension order (Annexure P-2) has been passed by Additional Secretary, Panchayat and Rural Development Department. Rule 9 of Rules of 1966 gives the power of suspension to the appointing authority or any other authority to which it is subordinate, therefore, the petitioner when was placed in the Office of Zila Panchayat, Gariyaband, he would be discharging the job as a subordinate to that department of Panchayat. Logically, also the Finance Department Officers are placed under different departments and in case any misconduct is committed by them in that department then it is not expected that it is the Finance Department alone which would pass the suspension order. If the person is placed to a certain department, he would be deemed to be subordinate to that authority of that department. The reliance of the petitioner on AIR 1999 SC 22 and the Judgment of 2007 (I) MPWN 2 in the case of N.C. Gupta V. State of M.P. and Ors., are entirely on the different subject issue, it is on the jurisdiction, wherein the Courts have held that the High Court is empowered to exercise the power

under Article 226 when it is question of jurisdiction. Here, *prima faice* the suspension of the petitioner having been passed by the Additional Secretary Panchayat and Rural Development Department under such department petitioner was working while the alleged misconduct was conducted. So the petitioner would be sub ordinate to such higher ups of the department. Therefore, it cannot be said that the suspension has been passed by authority not empowered to pass the order and only the appointing authority would be entitled to pass the order. In given facts, the petition sans merit is liable to be and is hereby dismissed at motion stage.

Sd/-

Goutam Bhaduri
Judge

Jyoti