

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**WA No. 323 of 2020***(Arising out of order dated 17.07.2020 passed by learned Single Judge in WP(S) No. 2805/2020)*

- Gopal Krishna Mishra S/o Shri Ravishankar Mishra aged about 59 years, Presently working as 'Assistant Director (Tribal)' in the O/o Assistant Commissioner (Tribal) Korba, Chhattisgarh, R/o I.T.I. Chowk, Janpad Panchayat Campus, Korba, Chowki Rampur, P.S. Kotwali, Korba Chhattisgarh.

-----Appellant/ Petitioner**VERSUS**

1. State of Chhattisgarh through The Secretary, Department of Tribal Welfare Development, Mantralaya, New Raipur C.G.
2. The Commissioner Schedule Caste and Schedule Tribe, Development, Indravati Bhawan, Atal Nagar, Raipur C.G.
3. Assistant Commissioner, Tribal Welfare, Korba, District Korba C.G.
4. The Collector District Korba, C.G.

-----Respondents

For Appellant	:	Mr. Sunil Kumar Soni, Advocate
For Respondent -State	:	Mr. Sudeep Agrawal, Deputy Advocate General

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

Judgment on Board**Per Parth Prateem Sahu, J.****25/08/2020**

1. Correctness and sustainability of the impugned order dated 17-07-2020 passed in Writ Petition (S) No. 2805/2020 is put to challenge in this writ appeal whereby learned Single Judge dismissed the writ petition on the ground that the appellant is having alternate remedy of appeal under Rule 23 of the Chhattisgarh Civil Services (Classification Control and Appeal) Rules, 1966 (henceforth "CCA Rules, 1966").
2. The grievance raised by the appellant is that he was holding the charge of Chief Executive Officer, Janpad Panchayat, Kartala and is a Class II gazetted officer. The Collector *vide* order dated 02-07-2020 has passed an order of his suspension under Rule 9 of the CCA Rules, 1996 to which

the Collector is not having jurisdiction. He submits that the power of suspension under Rule 9 of the said Rules vests with the Appointing Authority of the appellant and the Collector is not an appointing authority/ disciplinary authority and, therefore, the order of suspension (Annexure A-3) is without jurisdiction, being so, the learned Single Judge ought not to have dismissed the writ petition on the ground of having alternate remedy. To buttress his submission with regard to jurisdiction of the Collector issuing the order of suspension, learned counsel for the appellant places his reliance on an order passed in WPS No. 3160/2006, *Anil Kumar Jain v. State of Chhattisgarh and others*.

3. Mr. Sudeep Agrawal, learned counsel representing the State submits that upon detecting huge financial irregularities to the tune of Rs. 98,08,461/- in distribution of cheques to the Secretaries to different village panchayats, the Collector has issued an order Annexure A-3 dated 02-07-2020. He also submits that under 2nd Proviso to Rule 9 of the CCA Rules, 1966, it is envisaged that the authority lower than the appointing authority can pass the order of suspension and such authority shall forthwith report to appointing authority the circumstances under which the order was made and the order of suspension was forwarded to the Commissioner, Schedule Tribe and Schedule Caste Development, Raipur for approval of order of suspension. He submits that thereby the Collector has complied with the requirement of 2nd Proviso to Rule 9 of CCA Rule, 1966 and there is no illegality in passing the order Annexure A-3 by the Collector. He further submits that the judgment on which the appellant placing reliance on submitting that the appellant being Class II Gazetted Officer, the Collector is having no jurisdiction, is on different facts.
4. Mr. Sunil Kumar Soni, learned counsel for the appellant in reply to the submission made by the learned State counsel submits that the power under Rule 9 of the CCA Rule, 1966 has been delegated to the Collector

by virtue of G.A.D. Circular dated 23rd May 1996 which is only with regard to the employees of Class III and Class IV (Except Police Employee) and not for Class II Gazetted Officer and, therefore, the said proviso is to be read in the light of said notification dated 23rd May, 1996. It is also contended by the learned counsel for the appellant that the submission made by the learned counsel for the State that as per the 2nd Proviso to Rule 9 of CCA Rule, 1996, order of suspension was forwarded to the competent authority is not correct because the Commissioner is not an Appointing Authority of the appellant but it the State and, therefore, there was non-compliance of the requirement of 2nd Proviso to Rule 9 of CCA Rule, 1996 and the order of suspension is required to be set aside.

5. Mr. Sudeep Agrawal submits that though the suspension order has been forwarded to the Commissioner for approval as reflected from Annexure A-3 suspension order but it has been placed before the Competent Authority- State and the State Government *vide* letter dated 20th August 2020 Annexure R-1 approved the order of suspension. He submits that merely forwarding the order of suspension to an authority will not make any difference but what is to be looked into is whether the competent authority had approved the order of suspension or not and in this case the State Government has approved the order of suspension forwarded by the Collector and there is no case made out by the appellant for interfering with the impugned order passed by the learned Single Judge.
6. We have heard Mr. Sunil Kumar Soni, learned counsel for the appellant as well as Mr. Sudeep Agrawal, learned Deputy Advocate General representing the State at length.
7. Rule 9 of the CCA Rules, 1966 provides for suspension. 2Nd Proviso to Rule 9(1) of the CCA Rule, 1996 is reproduced below for ready reference.

“[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.”

8. Upon reading of the above-said provision, it is crystal clear that the Authority lower than the Appointing Authority can pass order of suspension and there is no such bar, but the requirement has been made in the proviso for exercising the jurisdiction is forwarding the report to the appointing authority mentioning the circumstances under which the order was passed. Perusal of Annexure A-3 suspension order which is in detail would show the reasons for which the Collector has passed the order of suspension and the same was forwarded for its approval. As per Annexure R-1, approval order, dated 20-08-2020 filed along with the reply on the part of the State, the suspension order was approved by the State Government and thereby, there is compliance of the requirement as mentioned in the 2nd Proviso to Rule 9 of the CCA Rules, 1996. When the approval is of the competent authority then it will be deemed that even if the order of suspension is forwarded to some other authority, subsequently, it was placed before the competent authority who after application of his mind, approved the order of suspension.
9. In view of the above, the submission made by the learned counsel for the appellant that the Collector is not having the jurisdiction to pass order of suspension is not sustainable and it is hereby repelled. The judgment on which the appellant has placed his reliance is on different facts; in that case, the Collector not only issued the order of suspension but also instituted departmental enquiry against that employee. In contrast, in the case at hand, the Collector has only put the appellant under suspension *vide* Annexure A-3 for which he is having the jurisdiction under the 2nd Proviso to Rule 9 of the CCA Rule, 1966. The submission of the learned counsel for the appellant with regard to notification dated 23rd May 1996 is with regard to delegation of power for exercising the jurisdiction of suspension and imposing minor penalties also whereas the 2nd Proviso to

Rule 9 of CCA Rule, 1966 is a statutory provision conferring powers upon the authority lower than the appointing authority to pass order of suspension with a requirement to report the same to the appointing authority as to in what circumstances the order of suspension is passed. Both, the 2nd Proviso of Rule 9 of CCA Rule, 1966 and delegation of power under the notification dated 23rd May 1996 operate in different fields. 2Nd Proviso to Rule 9 of CCA Rule, 1966 only gives power to the authority lower than the appointing authority to suspend and to report, but under the notification dated 23rd May 1996, powers are delegated to Collector to pass order of suspension and also to impose minor penalties.

10. For the foregoing reasons, we do not find any infirmity in the order passed by the learned Single Judge calling interference of this Court. The writ appeal being devoid of any substance which is liable to be and is hereby dismissed accordingly without prejudice to the rights and liberty of the appellant to avail the remedy of appeal available to him under the law.

Sd/-
(P.R. Ramachandra Menon)
 Chief Justice

Sd/-
(Parth Prateem Sahu)
 Judge