

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURWPS No. 3448 of 2020

- Homeshwari Sarva S/o Shri Lochan Prasad Sahu Aged About 44 Years R/o Village Devri, Police Station Arjunda, Tehsil Gundardehi, District Balod Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Its Secretary, Department Of Panchayat And Rural Development, Chhattisgarh Rajya Mantralaya , Mahanadi Bhavan Police Station Mandir Hasaud, Naya Raipur Chhattisgarh.
2. Collector Of Bemetara Bemetara Chhattisgarh.
3. Chief Executive Officer Janpad Panchayat, Navagarh, District Bemetara Chhattisgarh.

---- Respondents

For Petitioner : Mr. Pallav Mishra , Advocate

For State : Ms. Akanksha Jain, Dy. G.A.

Hon'ble Shri Justice Goutam BhaduriOrder31.08.2020

1. Heard
2. Learned counsel for the petitioner submits that the petitioner was terminated by order dated Annexure P/2 on the allegation that a criminal case was registered against him that he had obtained the job on the post of Shiksha Karmi Grade III on the basis of fake mark-sheet and BTI papers. He submits that as per the Chhattisgarh Panchayat Shiksha Karmis (Recruitment and Conditions of Service) Rules 1997, the disciplinary control vests with Zila Panchayat or Janpad Panchayat but in this case the order of termination was passed by the Collector therefore would be a nullity. He further submits that in the same order of termination, the prosecution was ordered for. It is further stated that after the criminal case was registered and tried and after trial the petitioner was eventually discharged by an order dated 28.02.2020 by JMFC. Under these circumstances,

the petitioner at this moment prays that the petitioner's representation dated 20.05.2020 (Annexure P/4) may be decided which was subsequently made to the Chief Executive Officer Janpad Panchayat Navagarh i.e. Respondent No. 3.

3. Learned State counsel submits that the order dated 07.07.2008 (Annexure P/2) has never been challenged and it has attained the finality. He further submits that as per para 36 of the criminal case in which the petitioner was discharged, the discharge was not decided on merit but were given benefit of doubt.
4. *Prima facie* the reading of the order dated 07.07.2008 shows that the order of termination was made by the Collector Durg. According to Rule 9 of the Chhattisgarh Panchayat Shiksha Karmis (Recruitment and Conditions of Service) Rules 1997 (henceforth 'the Rule 1997'), the disciplinary controls are vested with Zila Panchayat or Janpad Panchayat. For the sake of brevity, the Rule 9 is quoted hereinbelow:-

“9. Discipline and Control:- The Shiksha Karmis shall be under the administrative control of Zila Panchayat or Janpad Panchayat, as the case may be. The General Administration Standing Committee of the Zila Panchayat or Janpad Panchayat, as the case may be, shall be the disciplinary authority for major punishment and the Chief Executive Officer of the Panchayat for the minor punishment.”

5. The reading of Annexure P/2 dated 07.07.2008 was passed by the Collector. It further shows that no departmental enquiry was held either by General Administration Standing Committee of Zila Panchayat or Janpad Panchayat. The Rule 9 of the Rule 1997 were given a go by and the Collector usurped the jurisdiction to terminate the services of the petitioner otherwise to the mandate of Rule 9. It is obvious that after the discharge in the criminal case, the representation has been filed by the petitioner against the termination too. Therefore at this moment, the submission of the State counsel that the Rule of acquiescence would apply to the petitioner for not challenging the order of termination would amount to a new set of legislation against the spirit of Rule 9. If any authority is not vested any power to pass any order the same cannot be

made by other officials by implied power. Since the petitioner has made a limited prayer at this moment to decide the representation, therefore as of now the respondent No. 3 is directed to decide the representation of the petitioner within a period of 60 days from the date of receipt of this order.

6. With the aforesaid direction/ observation, the writ petition stands disposed of.

Sd/-

Goutam Bhaduri
Judge

Jyoti