

HIGH COURT OF CHHATTISGARH, BILASPURWPS No. 3666 of 2020

1. Sanat Kumar S/o Punaram Nirmalkar, Aged About 41 Years Resident Of Village - Khati, Post - Karesera , P.S. - Khamariya, District Bemetara (Chhattisgarh)
2. Shilaram S/o Girwar Sahu, Aged About 36 Years Resident Of Village Khati, P.S. - Khamariya, District - Bemetara (Chhattisgarh)
3. Rishab Kumar S/o Tulsiram Nirmalkar, Aged About 45 Years Resident Of Village - Chilfi, P.S.- Dadhi, District - Bemetara (Chhattisgarh)
4. Ku. Bhuneshwari Verma D/o Ayodhya Prasad Verma, Aged About 32 Years Resident Of Village Kodhwa, P.S. - Madhi, District - Raipur (Chhattisgarh)
5. Asha Kurre D/o Parmeshwar Kurre, Aged About 33 Years Resident Of Village Patna Kapa, Post - Sambalpur, P.S. - Nandghat, District - Bemetara (Chhattisgarh)
6. Rohit Kumar Kashyap S/o Ishwar Singh Kashyap, Aged About 33 Years Resident Of Village - Mohtara, Post - Khandsara, Tehsil And District - Bemetara (Chhattisgarh)
7. Lalit Kumar Sahu S/o Domar Sahu, Aged About 34 Years Resident Of Village - Nawagaon Kala, Post - Tipni, Tahsil - Than Khamariya, Block- Saja, District - Bemetara (Chhattisgarh)
8. Ganeshram Sahu S/o Budhram Sahu, Aged About 45 Years Resident Of Village - Keshla, Post - Aamodi, P.S. And Tahsil - Aarang, District - Raipur (Chhattisgarh)
9. Lakhanlal Verma S/o Shri Jhulpwara Verma, Aged About 42 Years Resident Of Village And Post - Jara, P.S. - Plari, District - Balodabazar (Chhattisgarh)
10. Dayaluram Pal S/o Lalaram Pal, Aged About 37 Years Resident Of Village And Post - Suhela, District - Bhatapara, Balodabazar (Chhattisgarh)
11. Yashwant Kumar Sahu S/o Shri Bipatram Sahu Aged About 41 Years Resident Of Village - Koliha, Tahsil - Simga, P.S. - Bhatapara, District - Balodabazar (Chhattisgarh)
12. Tirithram Sahu S/o Arjunlal Sahu, Aged About 35 Years Resident Of Village - Dhaneli, P.S. - Bhatapara, District - Balodabazar - Bhatapara (Chhattisgarh)
13. Omprakash Verma S/o Shri J.R. Verma, Aged About 38 Years Resident Of Village And Post - Mohra, P.S. - Sohela, District - Raipur (Chhattisgarh)
14. Krishna Manikpuri W/o Ishwar Das, Aged About 37 Years Resident Of Village - Rohasi, Tahsil - Palari, District - Balodabazar Bhatapara (Chhattisgarh)

---- Petitioners**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Panchayat And Gramin

Vikas, Mantralaya, New Raipur, District - Raipur (Chhattisgarh)

2. The Collector, Durg, District - Durg (Chhattisgarh)

3. Chief Executive Officer, Janpad Panchayat Nawagarh, District Durg (Chhattisgarh)

---- Respondents

For Petitioners : Ms. Sharmila Singhai , Advocate

For State : Shri Amrito Das, Addl. AG

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

18.09.2020

1. Heard

2. Learned counsel for the petitioners submits that the petitioners were terminated by order dated 21.07.2008 & 25.08.2008 (Annexure P/2) on the allegation that a criminal case was registered against them that they had obtained the job on the post of Shiksha Karmi Grade III on the basis of forged documents i.e. NCC, Sports Certificate and Experience Certificate. She 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. She 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 petitioners were eventually discharged by an order dated 28.02.2020 by Chief Judicial Magistrate. Under these circumstances, the petitioners at this moment pray that the petitioners' representations Annexure P/5 (colly) 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 21.07.2008 & 25.08.2008 (Annexure P/2) have never been challenged and it has attained the finality. He further submits that as per para 28 of the criminal case bearing No.36/2012 in which the petitioners were discharged, the discharge was not decided on merit but were given benefit of doubt.
4. *Prima facie* the reading of the order dated 21.07.2008 & 25.08.2008 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 21.07.2008 & 25.08.2008 were passed by the Collector Durg, 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 Rules 1997 were given a go by and the Collector usurped the jurisdiction to terminate the services of the petitioners otherwise to the mandate of Rule 9. It is obvious that after the discharge in the

criminal case, the representations have been filed by the petitioners against the termination too, therefore at this moment, the submission of the State counsel that the Rule of acquiescence would apply to the petitioners for not challenging the order of termination would amount to a new set of legislation against the spirit of Rule 9 of the Rules, 1997. If any authority is not vested with any power to pass an order, the same cannot be made by other officials by implied power. Since the petitioners have made a limited prayer at this moment to decide the representations, therefore as of now the respondent No. 3 is directed to decide the representations of the petitioners (Annexure P-5 (colly)) 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

Ashu