

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 3917 of 2020**

- Ghanshyam Sahu S/o Shri Toran Lal Aged About 36 Years Occupation- Assistant Teacher (LB), Government Primary School Bureda, Tahsil And Thana- Saja, District- Bemetara, Chhattisgarh

---- **Petitioner****Versus**

1. State Of Chhattisgarh Through Secretary, Department Of School Education, Mahanadi Bhawan, Naya Raipur, Chhattisgarh
2. Collector, Bemetara, District- Bemerata, Chhattisgarh
3. District Education Officer, Bemetara, District- Bemetara, Chhattisgarh
4. Block Education Officer, Saja, District- Bemetara, Chhattisgarh
5. Narad Singh Rajput R/o Village- Kohakabod, Post- Deurgaon, Tahsil- Saja, District- Bemetara, Chhattisgarh

---- **Respondents**

For Petitioner : Mr. Vinay Pandey, Advocate

For State ; Ms. Richa Shukla, Dy.G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order**07-10-2020**

1. Heard.
2. Challenge in this writ petition is to the notice dated 31-08-2020 (Annexure P/1) issued by the respondent No.4 – Block Education Officer, Saja, District Bemetara, the relevant portion thereof reads

as under:

“उपरोक्त संदर्भित विषयांतर्गत लेख है कि सेवा पुस्तिका सत्यापन हेतु दिनांक 03.09.2020 को समय दोपहर 12:00 बजे समस्त मूल दस्तावेज, न्यायालयीन प्रकरण संबंधित समस्त अभिलेख एवं स्वयं का रंगीन पासपोर्ट साइज फोटो के साथ इस कार्यालय में उपस्थिति देवे।”

3. Learned counsel for the petitioner would submit that initially the petitioner was appointed as Shiksha Karmi Grade III (Panchayat) on 29-6-2007 and subsequently, his service was terminated by order dated 11-01-2017 (Annexure P/2). However, the said termination was set aside by the Joint Administration Committee of Janpad Panchayat by order dated 12-10-2017 (Annexure P/3). Subsequently, service of the petitioner was absorbed in the School Education Department by order dated 20-08-2018 (Annexure P/4). It is further submitted that once the service of the petitioner was absorbed in the School Education Department, he was treated to be the employee in the School Education Department. However, again a notice was served by the Chief Executive Officer, Janapad Panchayat, Saja which was subject matter of challenge in a bunch of writ petitions which were decided collectively by Co-ordinate Bench of this Court on 20-08-2019, wherein the following order was passed.

“20.08.2019

1. Since the issue involved in all the writ petitions are same and the impugned action under challenge is also same, this court proceeds to decide all these petitions by this common order.

2. Challenge in all the writ petitions is to the issuance of charge sheet/memo dated 17.07.2019(Annexure P/1) by the respondent No.5 i.e. Chief Executive Officer, Janpad Panchayat, Saja, District Bemetara.

3. The contention of the petitioners are that they were, at one point of time, appointed as Assistant Teacher (P) under the Panchayat Department and subsequently their services now stand absorbed with the Education Department of the State Govt. since 2018 onwards. According to counsel for the petitioners, subsequent to the absorption of the petitioners, the disciplinary authority as well as the service conditions governing the petitioners are that which are framed by the Education Department of the State Govt. and as such issuance of charge sheet or the action contemplated by the respondent No.5 i.e. Chief Executive Officer, Janpad Panchayat, Saja, is without jurisdiction and competency.

4. The aforesaid contentions so far as factual matrix of the case as regards employment of the petitioners initially under the Panchayat Department and their subsequent absorption in the Education Department is not disputed by the counsel appearing for the respondents.

5. Under the given facts and circumstances of the case, this court is of the opinion that since the services of the petitioners stand absorbed in the Education Department, the petitioners from the date of absorption, for all practical purposes, have to be treated as employees of the Education Department. That, in case if the initial appointment of the petitioners now is to be questioned or tested henceforth, it could only have to be done by the authority competent under the Education Department and not under the erstwhile employer i.e. the Panchayat Department.

6. Given the aforesaid facts, this court is of the opinion that the impugned memo dated 17.07.2019 in all the writ petitions (Annexure P/1) thus being issued by the officer not competent for the same, deserves to be and is accordingly set aside, reserving the right of the State Govt., if they feel so, to proceed further in accordance with law by a competent authority so far as allegation levelled against the petitioners are

concerned.

7. With the aforesaid observations, all the writ petitions stand allowed and disposed of”.

4. Learned counsel for the petitioner would further submit that thereafter, the Block Education Officer, Saja, District Bemetara served the petitioner a notice dated 31-8-2020 (Anenxure P/1) which is under challenge and according to the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules 1966 (for short, “the Rules, 1966”), the schedule would reflect that for the petitioner, who is a Lower Division Teacher, the appointing authority and disciplinary authority would be the Divisional Superintendent of Education which is competent authority to impose penalty, therefore, the Block Education Officer cannot open an enquiry, who is not competent. He further submits that in the enquiry various points have been asked including the fact that how many times he had filed the petition before the court. It is stated that those queries are of no relevance and inquiry in such manner could not have been conducted for want of authority.

5. Learned State counsel, on instructions, would submit that notice dated 31-8-2020 (Annexure P/1) was issued by the Block Education Officer, Saja, who is drawing and disbursing authority and the Anenxure P/2 pertains to the service book verification and as and when the enquiry is contemplated, it would be by the other authority, who is empowered under the provisions of law.

6. Considering the submissions of learned counsel for both the

parties and perusal of notice dated 31-8-2020 (Anenxure P/1), Anenxure P/1 does not reflect that any departmental enquiry with respect to any charges of misconduct is contemplated. As submitted by State it only requires certain information. According to the State, the Block Education Officer, who is drawing and disbursing authority, has sought for such information and therefore, neither any inference nor impediment should come in between to furnish such submission. Since, according to the State, it is not a departmental enquiry under the Rules, 1966, the instant writ petition appear to be premature. The petitioner shall be at liberty to challenge the same in future, if cause of action so arises.

7. With the aforesaid observation, the writ petition stand disposed of.

Sd/-

(Goutam Bhaduri)
Judge

Jyoti