

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 9961 of 2019**

- Ku. Ganga Devi Yadav D/o Shri Ishwar Prasad Yadav Aged About 22 Years Ex-Rojgar Sahayika/ Assistant In The Office Janpad Panchayat-Chakarda P.S. Sarsiva, Janpad Panchayat-Bilaigarh District- Baloda-Bazar Bhatapara Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary Panchayat And Rural Development Mahanadi Bhawan,atal Nagar,/Raipur Chhattisgarh
2. The Collector District Baloda Bazar Bhatapara Chhattisgarh, District : Raipur, Chhattisgarh
3. The Chief Executive Officer Zila Panchayat Baloda-Bazar-Bhatapara District Balod Bazar-Bhatapara Chhattisgarh
4. The Chief Executive Officer Janpad Panchayat Bialigarh District Baloda Bazar Bhatapara Chhattisgarh

---- Respondents

For Petitioner : Shri Sushil Dubey,
Advocate

For State/ Respondents No. 1 & 2 : Shri Neeraj Pradhan,
Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****27/02/2020**

Heard.

1. The instant petition is against the order Annexure P-1 dated 28.06.2019 whereby services of the petitioner who is a Rojgar Sayayika Village Panchayat Chakarda, Janpad Panchayat Bilaigarh has been dispensed with on the ground that she has not followed the directions issued for MGNREGA and has disobeyed the prohibitory Clause 2 (xiv) of Standard Operating

Procedure (SOP) for execution of work by use of machines in discharge of MGNREGA. The services has been dispensed with in pursuance of the power exercised under C.G. Panchayat Service (Discipline & Appeal) Rules, 1999 and under Rule 5 thereof and major penalty was imposed along with power conferred in C.G. Civil Services (Classification, Control & Appeal) Rules, 1966.

2. The short facts of this case are that at village Chakarda wherein the petitioner is working as Rojgar Sayayika, fund was allocated for deepening of a pond namely "Matkhanwa Talab". The allegations are that for excavation of the pond the JCB machine was used instead of human labour which is contrary to the SOP which prohibits the use of machinery. The termination order purports that when the complaint was received then in the Block level enquiry was made and violation of clause 2 (xiv) of SOP was found, which is against the guidelines of MGNREGA. Consequently, the services were terminated.
3. Learned counsel for the petitioner would submit that the enquiry was commenced on the basis of a paper publication which has no authenticity even otherwise the statements were recorded, unilaterally in general which would show that while the work of deepening was carried out certain big boulders were found, therefore, in order to remove such boulders, JCB machine was used to put it at the bank of the pond. It is contended JCB machine was used only for 2 hours in the night and rest of the work was carried out manually for deepening of the pond. He would submit that it was done at the behest of the Sarpanch and not at the behest of the petitioner therefore no consent was obtained of the petitioner and he referred to the document and would submit that only to remove the huge boulders the JCB machine was used. Consequently, there is no violation of guidelines of MGNREGA and SOP was followed. He further submits that no enquiry as contemplated under Section 7 of the Rules of 1999 was followed. In a result

the order of termination is without jurisdiction.

4. Per contra, learned State counsel opposes the arguments.
5. Perused the termination order Anneuxre P-1. The reference made in termination about a mandate of Clause for MGNREGA execution of work when such direction are perused it speaks about stoppage of fund under Clause 27 (2) of MGNREGA and Clause 2 (xiv) of the SOP purports that the MGNREGA may stop the fund in case certain irregularities are found which includes the work carried out by machines. The documents filed along with the petition shows that after paper publication was made primarily enquiry was made wherein finding by Ritesh Kumar Yadav (Sub-Engineer) is recorded where in statements of Manharan Das (Kotwar), Uttari Bai (Sarpanch) and the petitioner too was recorded. The finding by sub-engineer and statement recorded would show that while the pond was excavated few boulders were found. Therefore, to remove the boulders on 30.05.2019 from 8pm to 10 pm for 2 hours JCB machine was used. The enquiry made by Ritesh Kumar Yadav (Sub Engineer) shows that JCB machine was not used for deepening of the pound and the documents would show that the villagers were consented to remove the boulders as it was not manually possible to remove such boulders. The petitioner further in his reply stated that the removal of the boulders were done by the Sarpanch with the consent of the villagers wherein she (petitioner) had not consented for use of JCB machine. The primary reading of the SOP speaks about the stoppage of fund in case machinery is used in MGNREGA work. It do not completely bar the use of machinery in case of need and for all practical purpose to achieve the object of work during excavation if boulders are found and if it is not manually possible to remove them, then in such case machinery can be used to remove the heavy boulders. The report shows that deepening of the pond was manually done except the removal of the boulder no extra work was done by the JCB machine.

6. Be that as it may. The services of the petitioner has been dispensed with under Rule 7 of Rule of 1999. Reading of the Rule 7 of the Rules, 1999 would show that no order, imposing on a member of the Panchayat Service, any of the penalties specified in clauses (iv) to (via) of rule 5 would be imposed except after a formal inquiry is held as provided further. Reading of the Rule 7 of the Rules, 1999 further purports that when an order for formal inquiry has been made, the disciplinary authority shall frame definite charges on the basis of allegations and shall communicate such charges, along with the statement of the allegations, to the member of the Panchayat Service and also require him to submit the reply in defence and also to state whether she desires to be heard in person or not. Further it purports that the disciplinary authority shall also allow the person to inspect the document and on receipt of the written statement of defence or even if it is not received, the disciplinary authority may himself enquire into such of the charges as are not admitted or appoint an Enquiry Officer to hold the inquiry and forward to him his report along with his recommendation with all the enquiry papers. It also purports that all the due procedure to defend the particular employee should be given and after conclusion of the enquiry a report would be prepared. The finding would be recorded on each charges with reasons thereunder. Thereafter, the enquiry officer other than the disciplinary authority shall submit the records of the proceeding to the disciplinary authority without any recommendation relating to the penalty to be imposed and if the major penalty is contemplated under Rule 5, it shall furnish to the person charged a copy of the report of the Enquiry Officer, and where the disciplinary authority is not the Enquiry Officer, the disagreement, if any, with the finding of the Enquiry Officer, shall also be placed. Thereafter, the disciplinary authority shall consider the representation, if any made, by the person charged.

7. Rule 5 (b) of the Rules, 1999 reads as under:-

5. Penalties.- The following penalties may for good and sufficient reasons, and as hereinafter provided by imposed on a member of the Panchayat Service, namely:-

(a) xxxxxxx xxx

(b) Major Penalties-

(iv) Reduction in rank including reduction to a lower post or time-scale or to a lower stage in a time-scale.

(v) Compulsory retirement,

(vi) Removal from service not disqualifying for future employment,

(vii) Dismissal from service which shall ordinarily be a disqualification for future employment:

Provided that in the case of member who have been allocated to the panchayat service and who according to the terms and conditions of their service which were immediately applicable to them before such allocation were not liable to the penalty or fine, no penalty or fine shall be indicated upon them.

8. In the reply of the petitioner it shows that after the initial notice was served the petitioner replied that she has not given any instructions for use of machinery and has denied the allegations. So in case the allegations were denied the disciplinary authority was required to nominate a person to present the case in support of the charges before the Enquiry officer and after conclusion of the enquiry he was required to prepare a report of enquiry and record his finding together with the reasons thereafter when the Enquiry officer is other than the disciplinary authority he was required to submit the records of the proceedings to the disciplinary authority without any recommendation and the disciplinary authority thereafter was required to give to the member of Panchayat in the services of the panchayat to give opportunity to give his representation thereafter was required to pass an order. Apparently, the order Annexure P-1 would show that the rules of natural justice including the statutory requirements were not followed. Instead the preliminary enquiry conducted with the documents shows that the petitioner was not held responsible for removal of boulders by JCB

machine.

9. Since apparently violation of principles of natural justice was committed, therefore, the ratio laid down in the case of ***Satwati Deswal Vs. State of Haryana and others {(2010) 1 SCC 126}*** shall be applicable in the case of the petitioner and writ petition would be maintainable.
10. In a result, it is observed that the order Annexure P-1, the termination of the petitioner is against the Rule 7 of 1999 and facts of the case considering the role played by the petitioner do not substantiate any misconduct. In a result the order Annexure P-1, cannot be allowed to be sustained and the same is set aside primarily on the ground that the rule of *Audi Alteram Partem* were not followed. The petitioner is reinstated back to the service with all consequential benefits from the date of her termination.

Sd/-

(Goutam Bhaduri)

Judge