

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.4884 of 2011

Imtiyaz Momin Ansari, S/o Kamaruddin Ansari, aged about 38 years,
R/o Rasulpur, Ambikapur, District Surguja (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through Secretary, Panchayat & Gramin Vikas Vibhag, D.K.S. Bhawan, Raipur, District Raipur (C.G.)
2. Collector, Ambikapur, Surguja, District Surguja (C.G.)
3. Zila Panchayat, Surguja, through Chief Executive Officer, Zila Panchayat, Surguja, Ambikapur, District Surguja (C.G.)
4. Chief Executive Officer, Zila Panchayat, Surguja, Ambikapur, District Surguja (C.G.)
5. Chief Executive Officer, Janpad Panchayat, Bhaiyathan, District Surguja (C.G.)

---- Respondents

For Petitioner: Mr. Manoj Paranjpe, Advocate.

For Respondents No.1 and 2 / State: -

Mr. Siddharth Dubey, Deputy Govt. Advocate.

For Respondents No.3 to 5: -

Mr. Pawan Shrivastava, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

26/08/2021

1. Proceedings of this matter have been taken-up through video conferencing.
2. The petitioner calls in question the order passed by the Chief Executive Officer, Zila Panchayat, Surguja, dated 1-8-2011 by which the said authority with approval of the Collector has directed the Chief Executive Officer, Janpad Panchayat, Bhaiyathan that the petitioner's appointment be cancelled, as he has obtained appointment on the post of Shiksha Karmi Grade-III on the basis of forged certificate.

3. Mr. Manoj Paranjpe, learned counsel appearing for the petitioner, would submit that the appointing authority of the petitioner is Janpad Panchayat, Bhaiyathan and the Chief Executive Officer, Zila Panchayat, Surguja is not his appointing authority, therefore, no direction can be issued for cancellation of appointment of the petitioner that too on the basis of enquiry conducted beyond his back in view of the decision of the Supreme Court in the matter of Joint Action Committee of Air Line Pilots' Association of India (ALPAI) and others v. Director General of Civil Aviation and others¹. He would further submit that the petitioner has already been acquitted from the criminal charges on 30-10-2018.
4. Mr. Siddharth Dubey, learned State counsel, and Mr. Pawan Shrivastava, learned counsel for respondents No.3 to 5, would support the impugned order.
5. I have heard learned counsel for the parties and considered their submissions made herein-above and also went through the record with utmost circumspection.
6. It is not in dispute that the petitioner's appointing authority on the post of Shiksha Karmi Grade-III is Janpad Panchayat, Bhaiyathan and Janpad Panchayat, Bhaiyathan falls within the administrative control of Zila Panchayat, Surguja, but the Chief Executive Officer of Zila Panchayat, Surguja cannot take the position of disciplinary authority of the petitioner and therefore disciplinary action, if any, has to be taken by the Janpad Panchayat who is the disciplinary authority of the petitioner and thus, the CEO, Zila Panchayat, Surguja cannot make any direction for cancellation of appointment of the petitioner, if any.
7. The Supreme Court in Joint Action Committee of Air Line Pilots'

¹ (2011) 5 SCC 435

Association of India (supra) while dealing with mandatory need of exercise of power / discretionary power in administrative or executive function held that if any decision is taken by a statutory authority at the behest or on suggestion of a person who has no statutory role to play, the same would be patently illegal. It was observed by their Lordships in paragraphs 27 and 28 of the report as under: -

“27. Similar view has been reiterated by this Court in *Commr. of Police v. Gordhandas Bhanji*², *Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia*³ and *Pancham Chand v. State of H.P.*⁴ observing that an authority vested with the power to act under the statute alone should exercise its discretion following the procedure prescribed therein and interference on the part of any authority upon whom the statute does not confer any jurisdiction, is wholly unwarranted in law. It violates the constitutional scheme.

28. In view of the above, the legal position emerges that the authority who has been vested with the power to exercise its discretion alone can pass the order. Even a senior official cannot provide for any guideline or direction to the authority under the statute to act in a particular manner.”

8. Reverting to the facts of the case in the light of the decision of the Supreme Court in the aforecited case, the petitioner's appointing authority being Janpad Panchayat, Bhaiyathan admittedly and undisputedly, the CEO, Zila Panchayat, Surguja has no authority and jurisdiction to direct for cancellation of the petitioner's appointment as it is the sole jurisdiction and authority of the disciplinary authority i.e. Janpad Panchayat, Bhaiyathan to initiate disciplinary action against the petitioner and no direction can be issued by the higher authority to cancel appointment. In that view of the matter, order dated 1-8-2011 passed by the Chief Executive Officer, Zila Panchayat, Surguja, is hereby set aside qua the cancellation of appointment only of the

2 AIR 1952 SC 16

3 AIR 2004 SC 1159

4 AIR 2008 SC 1888

petitioner. However, Janpad Panchayat, Bhaiyathan is at liberty to proceed in accordance with law.

9. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma