

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 3874 of 2010**

Ku. Kavita Pandey D/o Shri B.L. Pandey, Aged about 23 years, Shikshakarmi Grade III, Govt. Primary School Ullur, Distt. Bijapur, Chhattisgarh, R/o Village Bhopalpattanam, Distt. Bijapur, Chhattisgarh.

---Petitioner

Versus

1. The State of Chhattisgarh, through the Secretary, Panchayat and Rural Development Department, D.K.S. Bhawan, Raipur, Chhattisgarh.
2. The Commissioner, Bastar Division, at Jagdalpur, Distt. Bastar, Chhattisgarh.
3. The Collector, Bijapur, Distt. Bijapur, Chhattisgarh.
4. Assistant Commissioner, Tribal Welfare Department, South Bastar, Bijapur, Chhattisgarh.
5. Sub Divisional Officer (Revenue), Bhopalpattanam, Distt. Bijapur, Chhattisgarh.
6. Chief Executive Officer, Janpad Panchayat Bhopalpattanam, Distt. Bijapur, Chhattisgarh.
7. Block Education Officer, Development Block Bhopalpattanam, Distt. Bijapur, Chhattisgarh.

--- Respondents

Writ Petition (S) No. 5694 of 2010

Smt. Shashiprabha Singh W/o Shri Shailendra Singh, Aged about 26 years, R/o Quarter No. 97, Surbhi Colony, Near S.P. Office, Dantewada, Chhattisgarh.

---Petitioner

Versus

1. The State of Chhattisgarh, through the Secretary,
Department of Panchayat and Rural Development,
D.K.S. Bhawan, Mantralaya, Raipur, Chhattisgarh.
2. Collector, Beejapur, Chhattisgarh.
3. Deputy Collector, Beejapur, Chhattisgarh.
4. Chief Executive Officer, Janpad Panchayat
Bhopalpatnam, Distt. Beejapur, Chhattisgarh.
5. Jeevan Lal Deshlahre, Chief Executive Officer,
Janpad Panchayat Bhopalpatnam, Distt. Beejapur,
Chhattisgarh.

--- Respondents

For Petitioner in WPS No. 3874/2010 :-

Mr. A.K. Prasad, Advocate

For Petitioner in WPS No. 5694/2010 :-

Mr. Varun Sharma, Advocate

For State in both the petitions :-

Mr. Animesh Tiwari, Dy. A.G.

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board (Through Video Conferencing)

03/08/2021

1. Since common question of fact and law is involved
in both of these writ petitions, they have been
heard together and are being decided by this
common order.

2. Both the petitioners herein were appointed on the post of Shiksha Karmi Grade III by Janpad Panchayat, Bhopalpatnam vide order dated 31/05/2005 (Annexure P/3) under the provisions of Chhattisgarh Panchayat Shiksha Karmi (Recruitment and Conditions of Service) Rules, 1997 and they completed the probation period of three years. Thereafter, taking cognizance of the letter dated 03/10/2009 written by the C.E.O., Janpad Panchayat, Bhopalpatnam, the Deputy Collector, Bijapur initiated proceeding under Section 85 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (hereinafter 'Act of 1993') and issued notice to the present two petitioners as well as eight other persons. The petitioners appeared and sought time to file reply but they were refused time and ultimately, in a long drawn process, vide order dated 19/12/2009 (Annexure P/10) final order was passed by the Collector, Bijapur directing removal of petitioners along with other persons from the post of Shiksha Karmi Grade III under Section 85(1) of the Act of 1993 and a copy of that order was sent to the State Government in compliance of Section 85(2) of the Act of 1993, but it is the case of the petitioners that thereafter nothing has taken place.

3. In WPS No. 3874/2010, the petitioner has called in question the order dated 12/07/2010 (Annexure P/1) passed by the Commissioner, Bastar Division dismissing the appeal preferred by the petitioner against order dated 19/12/2009 (Annexure P/10) passed by the Collector, Bijapur directing removal of petitioner from the post of Shiksha Karmi Grade III.
4. In WPS No. 5694/2010, the consequential order of petitioner's termination was passed on 06/04/2010 (Annexure P/13) which was challenged by the petitioner in WPS No. 2713/2010 wherein this Court vide order dated 17/06/2010 (Annexure P/17) remanded the matter to the C.E.O, Janpad Panchayat, Bhopalpatnam, who thereafter passed the impugned order dated 21/07/2010 (Annexure P/1) confirming the order of termination, which has been called in question by the petitioner.
5. In both the writ petitions, petitioners have mainly challenged the legality, validity and correctness of order dated 19/12/2009 (Annexure P/10) passed by the Collector, Bijapur in exercise of power conferred under Section 85(1) of the Act of 1993 principally on the ground that there is non-compliance of proviso to Section 85(2) of the Act of 1993 and neither proceeding has been

initiated by the State Government or the Director, Panchayat being the competent authority under Section 85(2) of the Act of 1993 nor the petitioners were afforded a reasonable opportunity of hearing which they are entitled to under proviso to Section 85(2) of the Act of 1993.

6. Return has been filed by the State justifying the order dated 19/12/2009 (Annexure P/10) passed by the Collector, Bijapur stating that petitioners were not eligible to be appointed on the post of Shiksha Karmi Grade III, therefore, invoking the power conferred under Section 85(1) of the Act of 1993, petitioners' appointment has rightly been cancelled/annulled which is absolutely in accordance with law.

7. Mr. A.K. Prasad and Mr. Varun Sharma, learned counsel for respective petitioners, would submit that in order to comply with the proviso to Section 85(2) of the Act of 1993, the Director, Panchayat would be the competent authority to confirm, set aside, revise or modify the order passed by the prescribed authority under Section 85(1) of the Act of 1993, but neither the State Government nor the Director, Panchayat has initiated any such proceeding and moreover, no reasonable opportunity of hearing was afforded to

the petitioners in accordance with the proviso to Section 85(2) of the Act of 1993 while confirming the order passed by the Collector, Bijapur under Section 85(1) of the Act of 1993. The impugned order dated 19/12/2009 (Annexure P/10) passed by the Collector, Bijapur has automatically come to an end and has lapsed, therefore, it could not have been enforced by terminating the services of the petitioners as the said proviso is mandatory in nature and accordingly, it is liable to be set aside. Mr. Varun Sharma, learned counsel for the petitioner in WPS No. 5694/2010 would rely upon the decision passed by this Court in the matter of **Sarpanch, Gram Panchayat v. State of Chhattisgarh & Anr.**¹.

8. Mr. Animesh Tiwari, learned State counsel, would support the impugned order and submit that since petitioners were not qualified for the post of Shiksha Karmi Grade III, therefore in accordance with Section 85(1)(b) of the Act of 1993, they have rightly been terminated from service by the order passed by the Collector, Bijapur. He would also submit that in WPS No. 3874/2010, petitioner's order of termination has also been confirmed by the Commissioner (Annexure P/1), therefore no fault can be found in the order

passed by the Collector (Annexure P/10) annulling petitioners' appointment on the post of Shiksha Karmi Grade III and accordingly, both the writ petitions deserve to be dismissed.

9. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.
10. It is not in dispute that petitioners were appointed on the post of Shiksha Karmi Grade III by Janpad Panchayat, Bhopalpatnam vide order dated 31/05/2005 (Annexure P/3) and they have also successfully completed the period of probation under the relevant rules though no express order of confirmation has been passed in their favour by the appointing authority. On a request made by the C.E.O., Janpad Panchayat, Bhopalpatnam vide letter dated 03/10/2009, the Collector, Bijapur initiated proceeding under Section 85(1) of the Act of 1993 and issued notices to the petitioners along with eight other persons who are not before this Court. The petitioners appeared and sought time to file reply but it appears from the record that no documents were supplied to them and ultimately, by order dated 19/12/2009 (Annexure P/10), the Collector, Bijapur annulled the appointment of the

petitioners holding that they were not eligible for appointment on the post of Shiksha Karmi Grade III and subsequently, the order of petitioners' termination was passed which was assailed by the petitioner in WPS No. 5694/2010 but on matter being remanded by this Court, the order of termination was maintained. In WPS No. 3874/2010, petitioner's appeal preferred against the order of the Collector has also been dismissed by the Commissioner, Bastar Division by order dated 12/07/2010 (Annexure P/1).

11. The short question involved in these writ petitions is, whether the order of prescribed authority/Collector, Bijapur passed under Section 85(1) of the Act of 1993, on being sent to the State Government/competent authority under Section 85(2) of the Act of 1993, the proviso to Section 85(2) of the Act of 1993 has been complied with after giving an opportunity of hearing to the petitioners against the order passed by the prescribed authority under Section 85(1) of the Act of 1993 ?

12. At this stage, it would be appropriate to notice Section 85 of the Act of 1993, which provides as under :-

"85. Power to suspend execution of orders, etc. - (1) The State Government or the prescribed authority may by an order in writing and for reasons to be stated therein suspend the execution of any resolution passed, order issued, licence or permission granted or prohibit the performance of any act by a Panchayat, if in his opinion, -

(a) such resolution, order, licence, permission or act has not been legally passed, issued, granted or authorised;

(b) such resolution, order licence, permission or act is in excess of the powers conferred by this Act or is contrary to any law; or

(c) the execution of such resolution or order, of the continuance in force of such licence or permission of the doing of such act is likely -

(i) to cause loss, waste or misapplication of any money or damage to any property vested in the Panchayat;

(ii) to be prejudicial to the public health, safety or convenience;

(iii) to cause injury or annoyance to the public or any class or body of persons; or

(iv) to lead to a breach of peace.

(2) Whenever an order is made by the prescribed authority under sub-section (1), it shall forthwith and in no case later than ten days from the date of order, forward to the State Government or the Officer nominated by the State Government for this purpose, copy of the order with the statement of reasons for making it, and, the State Government or the officer nominated by it may confirm, set aside, revise or modify the order or direct that it shall continue to be in force with or without modification permanently or for such period as may be deemed fit :

Provided that no order of the prescribed authority passed under sub-section (1) shall be confirmed, set aside, revised or modified by the State Government or the officer nominated by it without giving the Panchayat concerned a reasonable opportunity of being heard against the proposed order."

13. Vide notification dated 13/05/2003, the Collector has been notified as the prescribed authority for exercise of power conferred under Section 85(1) of the Act of 1993 qua the Janpad Panchayat. Similarly, the Director, Panchayat has been notified to be the competent authority for the purpose of proviso to Section 85(2) of the Act of 1993 vide notification dated 26/07/2005.

14. Section 85(1) of the Act of 1993 provides power to the State Government or the prescribed authority who is empowered to suspend the execution of any resolution passed, order issued, licence or permission granted or prohibit the performance of any act by a Panchayat, by an order in writing and for reasons to be stated therein, if in his opinion such resolution, order, licence, permission or act has not been legally passed, issued, granted or authorised or such resolution, order licence, permission or act is in excess of the powers conferred by this Act or is contrary to any law or if its execution is likely to cause some loss or damage to any property vested I the Panchayat or is prejudicial to public health and safety or is likely to cause injury or annoyance to the public or may lead to breach of peace. By virtue of Section 85(1) of the Act of 1993, only

the power to suspend the execution has been given to the prescribed authority.

15. By virtue of Section 85(2) of the Act of 1993, whenever an order is made by the prescribed authority under Section 85(1), it shall forthwith and in no case later than ten days from the date of order, forward to the State Government or the Officer nominated by the State Government copy of the order with the statement of reasons for making it and the State Government or the officer nominated therein has been empowered to confirm, set aside, revise or modify the order passed by the prescribed authority under Section 85(1) of the Act of 1993.

16. Now comes the proviso to Section 85(2) of the Act of 1993, which clearly provides that no order of the prescribed authority passed under Section 85(1) of the Act of 1993 shall be confirmed, set aside, revised or modified by the State Government or the officer nominated by it without giving the Panchayat concerned a reasonable opportunity of being heard against the proposed order. Proviso to Section 85(2) of the Act of 1993 contemplates the opportunity of hearing to be given to the Panchayat though it is silent as to whether the opportunity of hearing is required to be given to

the person who is affected by the order of the prescribed authority, like the petitioners in the instant case.

17. In this regard, the decision of the Madhya Pradesh High Court in the matter of **Naresh Singh v. State of M.P. and Others.**² may be noticed herein profitably in which his Lordship has clearly held that by virtue of proviso to Section 85(2) of the Act of 1993, not only the Panchayat but the person who is affected by the order passed by the prescribed authority under Section 85(1) of the Act of 1993 is also required to be given reasonable opportunity of hearing before confirming, setting aside, revising or modifying the order passed under Section 85(1) of the Act of 1993. Paragraph 16 of the judgment states as under:-

"16. I find that there is violation of Articles 14 and 16 of the Constitution of India in the present case as no opportunity of hearing was afforded. Thus, the order issued is entirely bad in law and is liable to be quashed. As per proviso to Section 85 of the Adhiniyam, reasonable opportunity of being heard against the proposed order could have been afforded not only to the panchayat concerned but also to the person affected by it. The action under Section 85 of the Adhiniyam is not sustainable and consequently removal based on it particularly when the petitioner had served for one and half years, he should have been afforded opportunity of hearing. The law is

well settled that it is the basic minimum requirement of issuance of show cause notice and the incumbent is required to be heard and an enquiry may be conducted which may be necessary in the facts and circumstances of each case. That was not done as held by the Supreme Court in *Ku. Neelima Misra vs. Dr. Harinder Kaur Paintal and others*, AIR 1990 SC 1402, *Shrawan Kumar Jha and others vs. State of Bihar and others*, AIR 1991 SC 309, *Basudeo Tiwary vs. Sido Kanhu University and others*, AIR 1996 SC 2219, *S. Ashok Kumar and others vs. State of Tamilnadu and others*, 1994(2) SCC 631. A similar view was taken by a Division Bench of this Court in the case of *Mata Prasad Sahu vs. State of M.P. and others*, 2000(3) MPHT 408."

18. Similarly, in the matter of **Sarpanch** (supra), the Division Bench of this Court while dealing with the proviso to Section 85(2) of the Act of 1993 held as under in paragraphs 16 and 18 :-

"16. Proviso to sub-Section 2 of Section 85 of the Adhiniyam 1993 clearly mandates that the State Government or the Officer nominated by it to give reasonable opportunity of hearing against the proposal/order placed before him for consideration for confirmation or passing some other appropriate order on it. If any statute envisaged the procedure to be followed by the authority exercising his jurisdiction under it, then he is incumbent to give effect to the provision of the statute in that manner only. He is not permitted to act according to his own choice.

18. When under the law it is specifically provided that the order of confirmation is to be passed only after providing reasonable opportunity of being heard then, the Collector was bound to issue notice to the Panchayat before passing order dated 13.08.2019. It appears from the order that no such proceeding was drawn by him. The Collector committed an error in not drawing the proceeding as mandated under Section 85 of the Adhiniyam 1993."

19. From the conspectus of the aforesaid judgments, it is quite clear that under Section 85(1) of the Act of 1993, the prescribed authority has the power to suspend the execution of an order finding it illegal and thereafter, the prescribed authority is required to forward its order to the competent authority/State Government or the Officer nominated by the State Government within 10 days for the purpose of Section 85(2) of the Act of 1993 and by virtue of proviso to Section 85(2) of the Act of 1993, the order passed by the prescribed authority under Section 85(1) of the Act of 1993 can be set aside, revised or modified by the State Government or the officer nominated by it only after giving an opportunity of hearing to the Panchayat concerned including the person who is affected by the order of the prescribed authority. Any order passed by the State Government or the officer nominated by it for the purpose of Section 85(2) of the Act of 1993 without giving reasonable opportunity of hearing to the concerned Panchayat or the person directly affected would be without jurisdiction and without authority of law as proviso to Section 85(2) of the Act of 1993 is mandatory in character because under Section 85(1) of the Act of 1993, the prescribed authority has only been given the power

to suspend the execution of an order finding it illegal and unless the order of the prescribed authority is confirmed or modified by the State Government or the officer nominated by it under Section 85(2) of the Act of 1993, the order of the prescribed authority would not have any effect. Further for the reason that the order passed under Section 85(1) of the Act of 1993 has drastic consequences, therefore it requires confirmation/rectification by the State Government or the officer nominated by it being the competent authority after giving reasonable opportunity of hearing to the concerned Panchayat and the person affected by the order of the prescribed authority in terms of proviso to Section 85(2) of the Act of 1993.

20. Reverting to the facts of the present case in light of the aforesaid legal position, it is quite vivid that in the instant case though the prescribed authority being the Collector, Bijapur initiated proceeding under Section 85(1) of the Act of 1993 on the request made by the C.E.O., Janpad Panchayat, Bhopalpatnam vide his letter dated 03/10/2009 and passed the order dated 19/12/2009 (Annexure P/10) directing cancellation of petitioners' appointment on the post of Shiksha

Karmi Grade III and the said order was sent to the State Government on 23/12/2009, but it appears that thereafter no proceeding has been initiated either by the State Government or by the Director, Panchayat who is the officer nominated by the State Government for the purpose of Section 85(2) of the Act of 1993 and no opportunity of hearing was afforded to the petitioners before confirming their order of termination. As such, the order dated 19/12/2009 (Annexure P/10) passed by the Collector, Bijapur was never confirmed by either the State Government or the Director, Panchayat.

21. At this stage, it would be appropriate to notice the decision rendered by the Division Bench of Madhya Pradesh High Court in the matter of **Mukesh Kr. Harderia v. State of M.P.**³ wherein it has clearly been held that the lifespan of order passed under Section 85(1) of the Act of 1993 is only 10 days and it has to be thereafter confirmed as per proviso to Section 85(2) of the Act of 1993, which states as under :-

“If the recommendations made by the Sub Divisional Officer are accepted by the State Government then only a final order of an effective order would come into being and such an order can only be challenged. If the Sub Divisional Officer in his wisdom does not refer the matter to the State Government or the officer nominated by the State Government

then the order passed by the Sub Divisional Officer under Section 85(1) of the Adhiniyam in fact would lose its efficacy after 10 days and would become a dead letter. The recommendations made by the Sub Divisional Officer to the State Government or to the officer nominated by the State Government cannot be challenged in an appeal."

22. In the instant case, since the order of Collector, Bijapur dated 19/12/2009 (Annexure P/10) though was forwarded to the State Government within 10 days, but as per Section 85(2) of the Act of 1993 no proceeding was initiated either by the State Government or by the Director, Panchayat being the officer nominated by the State Government and by virtue of proviso to Section 85(2) of the Act of 1993, no notice was issued either to the concerned Panchayat or to the petitioners giving them reasonable opportunity of hearing, as such, the order passed by the Collector annulling the appointment of petitioners was never confirmed in accordance with proviso to Section 85(2) of the Act of 1993 and therefore, it has come to an end after the period of ten days and has lost its efficacy. Thus, no order of termination could have been passed on the basis of order dated 19/12/2009 (Annexure P/10) passed by the Collector, Bijapur under Section 85(1) of the Act of 1993.

23. As a fallout and consequence of the aforesaid discussion, since the order dated 19/12/2009

(Annexure P/10) passed by the Collector, Bijapur has lost its efficacy, the order of petitioners' termination is without jurisdiction and without authority of law. Accordingly, order dated 19/12/2010 (Annexure P/10) to the extent of the petitioners Kavita Pandey and Shashiprabha Singh is hereby quashed. The order dated 12/07/2010 (Annexure P/1 in WPS No. 3874/2010) by which the Commissioner has affirmed the order of the Collector in the appeal preferred by the petitioner Kavita Pandey is also hereby quashed. Similarly, the order dated 21/07/2010 (Annexure P/1 in WPS No. 5694/2010) terminating petitioner Shashiprabha Singh from service is also quashed. Since petitioner in WPS No. 3874/2010 namely Kavita Pandey is already working, no further order is required in her case, however, since petitioner in WPS No. 5694/2010 namely Shashiprabha Singh has been removed from service, she shall be reinstated with all service benefits except full backwages. The question of full backwages shall be considered by the Janpad Panchayat, Bhopalpatnam in accordance with/in line with Rule 54 of the Fundamental Rules within 60 days from the date of receipt of copy of this order.

24. Accordingly, both the writ petitions are allowed
to the extent indicated herein-above. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet