

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 4136 of 2013**

Brijendra Sharma, S/o Late Shri A.K. Sharma, Aged about 43 years, R/o A-1, Srijee Vihar, Dubey Colony, Police Station Mova, Mova, Tahsil and Distt. Raipur, Chhattisgarh.

---Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Public Health and Family Welfare, Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh.
2. Director, Medical Education, Raipur, Chhattisgarh.

--- Respondents

WPS No. 4112 of 2013

Mahesh Kumar Dheewar, S/o Late Siya Ram Dheewar, Aged about 51 years, Working on the post of Administrative Officer, Government Physiotherapy College, Raipur, R/o H-6, Officer Colony, Devendra Nagar, Raipur Police Station Devendra Nagar, Tahsil and Distt. Raipur, Chhattisgarh.

---Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Health & Family Welfare Department, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur, District Raipur, Chhattisgarh.
2. Director Medical Education, Old Nurses House, Raipur, Distt. Raipur, Chhattisgarh.

3. Under Secretary, Health & Family Welfare Department, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur, Distt. Raipur, Chhattisgarh.
4. Chhattisgarh Public Service Commission, through its Secretary, Shankar Nagar Road, Raipur, Distt. Raipur, Chhattisgarh.

--- Respondents

WPS No. 4114 of 2013

Sundaresan E., S/o Late G. Paramu, Aged about 49 years, Working on the post of Administrative Officer, CIMS, Bilaspur, R/o Quarter No. 358, Behind Wadi, Shivghat, Old Sarkanda, Police Station Sarkanda, Tahsil and Distt. Bilaspur, Chhattisgarh.

---Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Health & Family Welfare Department, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur, District Raipur, Chhattisgarh.
2. Director Medical Education, Old Nurses House, Raipur, Distt. Raipur, Chhattisgarh.
3. Under Secretary, Health & Family Welfare Department, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur, Distt. Raipur, Chhattisgarh.
4. Chhattisgarh Public Service Commission, through its Secretary, Shankar Nagar Road, Raipur, Distt. Raipur, Chhattisgarh.

--- Respondents

WPS No. 4354 of 2013

S.K. Anant, S/o Late Samaru Ram, Aged about 53 years, Administrative Officer, Government Dental College, Raipur, R/o House No. B-003, Kuber Apartment, Shankar Nagar, Raipur, Police Station Mowa Pandri, Tahsil and Distt. Raipur, Chhattisgarh.

---Petitioner

Versus

- 1.State of Chhattisgarh, through the Secretary, Department of Health & Family Welfare Department, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur, District Raipur, Chhattisgarh.
- 2.Director Medical Education, Old Nurses House, Raipur, Distt. Raipur, Chhattisgarh.
- 3.Under Secretary, Health & Family Welfare Department, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur, Distt. Raipur, Chhattisgarh.
- 4.Chhattisgarh Public Service Commission, through its Secretary, Shankar Nagar Road, Raipur, Distt. Raipur, Chhattisgarh.

--- Respondents

For Petitioners :- Mr. Vinod Deshmukh, Mr. Manoj Paranjpe and Mr. Rahul Sharma, Advocates

For State :- Mr. Ravi Bhagat, Dy. G.A.

For Respondent 4/CGPSC :- Mr. Aman Pandey, Advocate

For Intervenor :- Mr. Arvind Dubey, Advocate

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

06/07/2021

1. In this batch of writ petitions, the petitioners call in question the impugned order dated 27/11/2013 (Annexure P/1) by which the State Government directed the Director, Medical Education to cancel the promotion given to the petitioners on the post of 'Office Superintendent' as their appointment by promotion was not done in accordance with law.
2. It is the case of the petitioners that they were promoted on the post of 'Office Superintendent' in 2007-08 and thereafter, they have further been promoted on the post of 'Administrative Officer' by order dated 18/07/2011 (Annexure P/9) and since then they have been working on the said post of 'Administrative Officer', but on the complaint of the intervenor namely S.K. Sharma, the State Government has passed an order for cancelling petitioners' promotion on the post of 'Office Superintendent' which is in violation of principles of natural justice as neither any departmental enquiry has been conducted nor any reasonable opportunity of defending themselves has been granted to the petitioners to establish that they

have been appointed and promoted strictly in accordance with law.

3. Mr. Vinod Deshmukh, Mr. Manoj Paranjpe and Mr. Rahul Sharma, learned counsel for the petitioners, would submit that the order passed by the State Government (Annexure P/1) directing the Director, Medical Education to cancel the promotion granted to the petitioners on the post of 'Office Superintendent' is absolutely without jurisdiction of law as they were working on the post of 'Office Superintendent' for a long time and thereafter, they have also been promoted on the post of 'Administrative Officer'. Further the promotion granted to the petitioners on the post of 'Office Superintendent' could not have been cancelled without holding any departmental enquiry or without even affording a minimum opportunity of hearing to the petitioners. As such, the impugned order deserves to be set aside. They would rely upon the decision rendered by this Court in the matter of **Murlidhar Gautam v. State of M.P. (Now C.G.) and Others**¹ to buttress their submission.

4. Mr. Ravi Bhagat, learned Deputy Advocate General, and Mr. Arvind Dubey, learned counsel for the

¹ 2008 (3) CGLJ 288

intervenor, would support the impugned order passed by the State Government and would submit that the instant writ petitions deserve to be dismissed.

5. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.

6. It is not in dispute that petitioners have been promoted on the post of 'Office Superintendent' long back in 2007-08 and thereafter, they have further been promoted on the post of 'Administrative Officer' by order dated 18/07/2011 and they are working on the said post since long. It is also not in dispute that pursuant to the complaint filed by the intervenor S.K. Sharma, proceeding with regard to cancellation of petitioners' promotion has been initiated beyond the back of the petitioners and thereafter, the State Government has taken the impugned decision of cancelling the promotion granted to the petitioners on the post of 'Office Superintendent' and that too, without holding any departmental enquiry or without giving an opportunity to the petitioners to defend themselves.

7. In the matter of Murlidhar (supra), this Court has held as under in paragraphs 8, 9 and 10 :-

"8. It is evident that the promotion under order dated 25.3.1989 (Annexure A/2) was passed on the basis of the recommendations made by the Departmental Promotion Committee. The Departmental Promotion Committee, it appears, had examined all the aspects of the matter before recommending the name of petitioner for promotion, along with 57 other persons. The impugned order was passed without affording an opportunity of hearing to the petitioner. The contention of learned counsel appearing for the State that no show cause notice was required to be issued, is noticed to be rejected on the simple ground that no order which is punitive in nature and visits with civil consequences, causing prejudice to the person concerned can be passed without following the principles of natural justice.

9. Hon'ble Supreme Court in *Bhagwan Shukla Vs. Union of India & Others*² held as under :

"The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the concerned to notice and giving him a hearing in the matter."

10. This Court in the matter of *Laxman Prasad Vs. Krishi Upaj Mandi Samiti, Bemetara* (Writ Petition No. 2800 of 1995), which was allowed vide judgment and order dated 17th April, 2006, held that no punitive order can be passed

without affording an opportunity of hearing to the person concerned, who is affected prejudicially by the impugned order."

8. Reverting to the facts of the present case in light of the principle of law laid down by this Court in Murlidhar (supra), it is quite vivid that petitioners were promoted on the post of 'Office Superintendent' in 2007-08 and thereafter, they have further been promoted on the post of 'Administrative Officer' by order dated 18/07/2011, but on the complaint made by the intervenor namely S.K. Sharma, without subjecting the petitioners to departmental enquiry and without even providing a reasonable opportunity to them to defend themselves, the State Government has straightway directed the Director, Medical Education vide the impugned order to revoke the promotion granted to the petitioners on the post of 'Office Superintendent', which is in complete violation of principles of natural justice and the petitioners cannot be deprived of their promotional post without following the principles of natural justice.

9. Consequently, the impugned order (Annexure P/1) passed by the State Government directing the Director, Medical Education to cancel petitioners'

promotion on the post of 'Office Superintendent' is hereby set aside. However, liberty is reserved in favour of the respondents to proceed in accordance with law.

10. With the aforesaid observations, these writ petitions are allowed to the extent indicated herein-above. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet