

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 2523 of 2010**

- Smt. Vandana Khande, W/o Barsan Khande, aged about 28 years, R/o Village & Post Dharamgarh, Tahsil and District Kabirdham (C.G.)

---- Petitioner**Versus**

1. State of Chhattisgarh, Through the Secretary, Department of Panchayat & Rural Development, D.K.S. Bhawan, Raipur (C.G.)
2. The Collector, Kabirdham, District Kabirdham (C.G.)
3. The Sub-Divisional Officer (Revenue), Kawardha, District Kabirdham (C.G.)
4. The Chief Executive Officer, Janpad Panchayat S. Lohara, District Kabirdham (C.G.)
5. The District Education Officer, Kawardha, District Kabirdham (C.G.)

---- Respondents

For Petitioner	:	Shri Rajkumar Pali, Advocate.
For Respondents/State	:	Shri Ravi Bhagat, Deputy Government Advocate.
For Respondent No. 4	:	Shri Akhilesh Kumar, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****29.07.2021**

1. Proceedings of this matter have been taken up through video conferencing.
2. The Petitioner calls in question the order dated 29.04.2010 (Annexure P/1) by which Petitioner's appeal has been dismissed affirming her order of termination dated 29.08.2008 (Annexure P/1-A) passed by the Respondent No. 4 terminating her service from the post of 'Shikshakarmi Grade-III'.

3. Shri Pali, the learned counsel for the Petitioner would submit that the order passed by the Respondent No. 2 affirming the order of Respondent No. 4 / CEO, Janpad Panchayat is violative of principles of natural justice.
4. Shri Bhagat, the learned Deputy Government Advocate for the State and Shri Akhilesh Kumar, Advocate for Respondent No. 4 support the impugned order.
5. I have heard the learned counsel for the parties, considered their rival submissions hereinabove and went through the records with utmost circumspection.
6. The Petitioner was appointed on the post of 'Samvida Shala Shikshak Grade-III' on 22.08.2003 (Annexure P/9) and thereafter Petitioner completed the period of prohibition and post of 'Samvida Shala Shikshak Grade-III' was converted to the post of 'Shikshakarmi Grade-III' by order dated 30.07.2005 vide Annexure P/12. On 21.04.2008, the Petitioner was confirmed on the said post and she was regularized on the post of 'Shikshakarmi Grade-III' vide Annexure P/13. But, a complaint made by the President of 'Gondwana Samaj' on 24.04.2008 upon which the Collector issued a memo to the Sub Divisional Officer for conducting enquiry against the Petitioner's appointment. A report dated 16.07.2008 was submitted vide Annexure P/16 and the Competent Authority recommended to the CEO, Janpad Panchayat for removal of the Petitioner on 16.07.2008. Accordingly, the order of removal was issued by Respondent No.4 on 29.08.2008 which was challenged by the Petitioner in Writ Petition (S) No. 5513 of 2008. The said petition was disposed off by this Court disposed off, directing the Petitioner to prefer an appeal before the Collector and meanwhile also granted interim protection, but her appeal has been dismissed on 29.04.2010 by the Collector holding that it is not maintainable. Against the said order, this writ petition has been preferred.

7. In the meanwhile, during the pendency of the writ petition, the Petitioner has been promoted to the post of 'Shikshakarmi Grade-II' and the Petitioner has also been absorbed from Panchayat Department to the State Government on the post of 'Shikshakarmi Grade-II' on 01.07.2018.
8. Admittedly, when the order dated 29.08.2008 (Annexure P/1-A) impugned order was passed, the Petitioner was working on the post of 'Shikshakarmi Grade-III', but no opportunity of hearing afforded to the Petitioner to submit her reply to explain her appointment on the post 'Samvida Shala Shikshak Grade-III / Shikshakarmi Grade-III'. As such, the Petitioner was terminated from the post without affording an opportunity of hearing and by that order, her right to hold the post was taken away and when Petitioner preferred an appeal before the Collector pursuant to the order of this Court dated 08.07.2009, the Additional Collector dismissed the appeal holding that the Collector has already recommended for removal of the Petitioner, therefore, the appeal is not maintainable. As such, the appeal has not been decided on merits of the matter.
9. Since the Petitioner has been removed from the service from the post of 'Shikshakarmi Grade-III' on which she was already confirmed vide order dated 21.04.2008 vide Annexure P/13, therefore, the service of Petitioner cannot be terminated without affording opportunity of hearing and without giving an opportunity to defend herself and justifying appointment on the post of 'Samvida Shala Shiksha Grade-III / Shikshakarmi Grade-III' by which prejudice has been caused and the impugned order dated 29.08.2008 is in violation of the principles of natural justice and is liable to be set aside.
10. If the Additional Collector was not competent to hear the appeal, the matter could have been brought to the notice of the Collector and some other Additional Collector could have given the job to hear the appeal. But, the appeal cannot be held as not maintainable merely because the Collector has

recommended for removal of the Petitioner. As such, the impugned order dated 29.08.2008 (Annexure P/1A) and the order of Collector dated 29.04.2010 (Annexure P/1) both are hereby set aside.

11. The writ petition is allowed to the extent indicated hereinabove.

Sd/-
(Sanjay K. Agrawal)
Judge