AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.916 of 2014

Siddhanath Mishra (dead) through LR's

Smt.Krishna Mishra W/o Late Siddhanath Mishra, aged about 60 years, R/o Street No.3, Mahamaya Vihar, Warehouse P.S. Civil Lines, Bilaspur, Dist.: Bilaspur (CG)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Urban Administration & Development, Mantralaya, Mahanadi Bhawan, Naya Raipur (CG)
2. Chhattisgarh Lok Ayog Through the Secretary, Chhattisgarh Lok Ayog, Raipur (CG)
3. Deputy Director (Pension), O/o. The Director, Urban Administration & Development, Civil Lines, Raipur (CG)

---- Respondents

For LR's of Petitioner	:	Mr.N.Naha Roy, Advocate
For Res.1&3/State	:	Mr. Ravi Bhagat, Dy.G.A.
For Respondent No.2	:	None present

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

15/7/2021

1. Proceedings of this matter have been taken-up through video conferencing.
2. The writ petitioner herein calls in question legality, validity and correctness of the order dated 17.1.2014 (Annexure P-1) passed by respondent No.3 by which respondent No.3 has directed the petitioner to deposit a sum of ₹29302/- as a consequence of charge having been proved in departmental enquiry held against him.

3. Mr.N.Naha Roy, learned counsel for legal representative of the petitioner, would submit that the petitioner was promoted on the post of Revenue Inspector in Nagar Panchayat and thereafter he was consciously posted on the post of In-charge Chief Municipal Officer till his date of retirement and the impugned order of recovery has been passed finding him guilty while he was working as In-charge, Chief Municipal Officer, Nagar Panchayat, Pithora in between 27.12.1995 to 30.5.1997. He would make two folds submissions, firstly, the writ petitioner was originally holding the post of Revenue Inspector which is post specified under Section 94(4) of the Chhattisgarh Municipalities Act, 1961 (hereinafter called as 'the Act of 1961') and secondly, though he was working as In-charge Chief Municipal Officer, but he was originally holding the post of Revenue Inspector, therefore, his appointing authority will be concerned Municipality within the meaning of Rule 51 of the Chhattisgarh Municipal Employees (Recruitment and Conditions of Service) Rules, 1968 (hereinafter called as 'the Rules of 1968') and therefore, the State Government has no power and jurisdiction to issue an order of recovery under Rule 10(iii) of the Chhattisgarh Civil Services (Classification, Control &

Appeal) Rules, 1966 (hereinafter called as 'the Rules of 1966'). Even otherwise, there is no finding in the impugned order dated 14.1.2014 (Annexure P-1) that loss has been caused by the petitioner to the Municipal Council by his negligence or breach of order as required under Rule 10(iii) of the Rules of 1966, as such, the impugned order deserves to be quashed.

4. On the other hand, Mr.Ravi Bhagat, learned Deputy Government Advocate appearing for respondents No.1 and 3/State, would submit that regular departmental enquiry has been held against the petitioner who at the relevant point of time was working in Nagar Panchayat Pithora as In-charge Chief Municipal Officer and finding him guilty, the order of recovery has been passed in accordance with Rules.

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

6. The writ petitioner was firstly appointed on the post of Moharrir and later on, he was promoted to the post of Revenue Sub-Inspector and lastly, he was promoted to the post of Revenue Inspector, which is post specified under Section 94(4) of the Act of 1961. It is the case of the petitioner that thereafter he was not promoted further and in various Municipal Councils / Nagar Panchayats he was transferred in the capacity of In-charge Chief Municipal Officer and at the relevant point of time, he was also posted in the office of Chief Municipal Officer, Nagar Panchayat Pithora as In-charge Chief Municipal Officer while he was holding substantive post of Revenue Inspector from 27.12.1995 to 30.5.1997 and he was said to have been committed misconduct and pursuant to which, in departmental enquiry, he has been imposed with minor penalty for recovery of ₹29,302/-.

7. Admittedly, the petitioner was holding substantive post of Revenue Inspector, which is post specified in Section 94(4) of the Act of 1961 and for Municipal employee/officer specified under Section 94(4) of the Act of 1961, the Rules of 1968 would be applicable. Rule 51 of the Rules of 1968 provides as under:-

> "**51. Disciplinary authorities.**-Subject to the provisions of the Act and these rules the Municipal Council shall have the powers to impose any of the penalties specified in Rule 49 on any Municipal employee holding post specified in sub-section (4) of Section 94 of the Act and in the case of other Municipal employees the Standing Committee shall have the power to impose any of the said penalties on him."

8. A careful perusal of the aforesaid provision (Rule 51 of the Rules of 1968) would show that the Municipal Council shall have the powers to impose any of the penalties specified in Rule 49 on any Municipal employee holding post specified in sub-section (4) of Section 94 of the Act of 1961.

9. Rule 49(iii) of the Rules 1968 states as under:-

> "**49. Penalties.**-The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Municipal employee, namely:-
>
> (i) and (ii) xxx xxx xxx
>
> (iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Council by negligence or breach of orders."

10. Section 94(4) of the Act of 1961 states as under:-

> "**94. Appointment of staff.**-
> (1) to (3) xxx xxx xxx
>
> (4) The appointment of Revenue Officer, Accounts Officer, Sanitary Inspector [Sub-Engineer], Revenue Inspector and Accountant shall be subject to confirmation by the State Government and no such post or the post of any other officer or servant as may be specified by the State Government in this behalf shall be created or abolished and no alteration in the emoluments thereof shall be made without the previous approval of the State Government, and every appointment to, and dismissal from such post, shall be subject to a like approval."

As such, the authority competent to order recovery from Municipal employee holding the post specified in sub-section (4) of Section 94 of the Act of 1961 would be Municipal Council or Nagar Panchayats as the case may be.

11. Admittedly, the writ petitioner at the relevant point of time was holding the post of In-charge Chief

Municipal Officer, but he was holding substantive post of Revenue Inspector under Section 94(4) of the Act of 1961 and therefore, his disciplinary authority would be concerned Municipal Council under Rule 51 of the Rules of 1968. Even otherwise, if the State Government is held to be the disciplinary authority, then also the order suffers from serious legal error.

12. Rule 10 (iii) of the Rules of 1966 states as under:-

> "**10. Penalties.**-The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely:-
>
> Minor penalties:-
>
> (i) to (ii)
>
> (iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of order."

13. A careful perusal of Rule 10(iii) of the Rules of 1966 would show that it is one of the minor penalty to be imposed on the Government servant. Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government can be recovered only if the finding is recorded that it is on account of negligence or breach of order. In the impugned order dated 17.1.2014 (Annexure P-1), it has only been recorded that loss is caused to the Government, but no further finding has been recorded that such a loss has been caused to the Government by negligence or breach of order, which is *sine-qua-non* for imposing minor penalty under Rule 10(iii) of the Rules 1966. As such, on any count, the impugned order cannot be sustained, it is without jurisdiction, it is passed in breach of the Rules and as such, it is hereby set-aside.

14. The writ petition is allowed to the extent indicated hereinavove. No order as to cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-