

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.3839 of 2010**

Devchand Ram S/o Dhaneshwar Ram, aged about 39 years,
R/o village-Giriwarganj, Police Station – Chalgali,
District – Surguja (CG)

----- **Petitioner**

Versus

1. The State of Chhattisgarh through the Secretary,
Department of Forest, Mantralaya, D.K.S. Bhawan,
Raipur (CG)
2. The Collector, Surguja, Distt.-Surguja (CG)
3. The Managing Director, District Union Minor Forest
Produce, East Surguja, Ambikapur, Distt.Surguja (CG)
4. The President Prathmik Vanopaj Sahakari Samiti
Maryadit, Giriwarganj, Distt.Surguja (CG)
5. The Range Officer, Balrampur, Distt.-Surguja (CG)
6. Shri Birbal Yadav S/o Shri Rupchand Yadav, aged about
28 years, R/o village Shankerapur (Sondakhand), Police
Station-Chalgali, Post Office-Lurgikala, Distt.-
Surguja (CG)
7. Prathmik Vanopaj Sahkari Samiti Maryadit, Girwarganj,
Distt.-Surguja (CG) Through-the President, Prathmik
Vanopaj Sahkari Samiti Maryadit, Girwarganj, Distt.-
Surguja (CG)
8. The Governing Body (Prabandh Karini) of Prathmik
Vanopaj Sahkari Samiti Maryadit, Girwarganj, Distt.
Surguja (CG) Through-the President, Prathmik Vanopaj
Sahkari Samiti Maryadit, Girwarganj, Distt.-Surguja
(CG)

----- **Respondents**

For Petitioner	: Mr.Rishi Rahul Soni, Advocate
For Res.No.1, 2 and 5	: Mr.Avinash Singh, P.L.
For Res.No.3, 4, 7 & 8	: Mr.A.S. Kachhawaha, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board (Through Video Conferencing)

18.8.2021

1. The petitioner herein calls in question legality,

validity and correctness of the order dated 31.10.2009 (Annexure P-1) by which respondent No.3/Managing Director of District Laghu Vanopaj Sahkari Sangh Maryadit, East Surguja, Ambikapur, Distt. Surguja has rejected the representation of the petitioner finding no merit.

2. The petitioner was appointed on the post of Manager at Prathmik Vanopaj Sahkari Samiti Maryadit, Girwarganj, which was approved by respondent No.3 on 30.5.1997 which he joined on 8.6.1997 and he was continued in service. It is the case of the petitioner that in a false case, he was arrested on 28.5.2006 for offence punishable under Sections 147, 148 and 307, in alternate, Sections 307/149, 186 and 353 of the IPC, Sections 25 & 27 of the Arms Act and Sections 3, 5 and 7 of the Explosive Substance Act and ultimately, he was acquitted on 21.8.2008 (Annexure P-4). After acquittal, when the petitioner requested for joining to respondents No.7 and 8, they refused to accept his joining leading to filing of WPS No.844/2009 before this Court, in which this Court on 31.8.2009 directed the petitioner to make a representation to respondents No.3 and 4, which has been made by the petitioner and now by the impugned order, his representation has been rejected by respondent No.3.

3. Mr. Rishi Rahul Soni, learned counsel for the petitioner, would submit that though respondent No.7 passed a resolution dated 2.6.2006 resolving to remove the petitioner, but no consequential order of removal was passed at any point of time and the resolution cannot take place the shape of order, therefore, the petitioner was never removed from the post of Manager and respondent No.3 by the impugned order rejected his representation on the ground that the petitioner was absconding and new manager namely respondent No.6 has been appointed on 15.6.2006, therefore, the petitioner is not entitled to reinstate on the post of Manager. He would further submit that since the petitioner has not been removed from service at any point of time and no order of termination has been passed, therefore, there is no reason not to give joining by respondent No.7 and even before the order impugned, no notice was served to the petitioner and merely on the submission of the representation, the impugned order has been passed, as such, it could have been passed only after hearing the petitioner and respondent No.4/7, as such, the impugned order deserves to be dismissed.

4. On the other hand, Mr. A.K. Kachhawaha, learned counsel for respondents No.3, 4, 7 and 8, would support the impugned order and submit that it has rightly been

passed by respondent No.3 after considering the facts and circumstances of the case, it is in accordance with law and no interference is called for.

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

6. It is not in dispute that the petitioner was appointed by respondents No.3 and 7/8 by resolution dated 19.12.96 on the post of Manager, which was approved by respondent No.3 on 30.5.97 (Annexure P-2). It is the case of the petitioner, he was involved in criminal case and ultimately, he was arrested on 28.5.2006 and he was acquitted on 21.8.2008 (Annexure P-4) and when he submitted his joining, it was not accepted. It is further case of the petitioner that though the resolution dated 2.6.2006 has been passed appointing respondent No.6 in his place, but no order has been passed removing the petitioner from the post of Manager except the resolution dated 2.6.2006 and the resolution cannot take place the shape of order. In fact, there is no order of termination passed against the petitioner as on date, therefore, there is no reason not to accept the joining of the petitioner.

7. In the order impugned, the facts of the case has

clearly mentioned by respondent No.3, but there is no discussion and no finding has been recorded that whether any order of removal was passed pursuant to the resolution dated 2.6.2006 by respondents No.4/7 and 8, whereas it could have been considered and finding could have been recorded by respondent No.3 that whether the petitioner at any point of time in accordance with law and after affording a reasonable opportunity of hearing has been removed from his post or not. The order impugned is absolutely silent on this point.

8. In order to reject the representation of the petitioner, it was absolutely necessary for respondent No.3 to clearly record a finding that whether the petitioner has been dismissed from service after giving an opportunity of hearing and after holding an enquiry, if any, in accordance with law from the post of Manager, which is absolutely lacking in the impugned order, as such, the impugned order is liable to be set aside on this ground alone.

9. The finding of respondent No.3 that merely because respondent No.6 has already been appointed on the post of Manager on 15.6.2006, which has been approved by respondent No.3 on 23.6.2006 is not a ground to dislodge the case of the petitioner. Once he is duly

appointed on the post of Manager by respondent No.4/7 and unless he has been removed from the post in accordance with law, same cannot be rejected merely on the ground that other officer has been appointed.

10. In that view of the matter, the impugned order dated 31.10.2009 (Annexure P-1) rejecting the petitioner's representation is hereby set-aside. The matter is remitted to respondent No.3, who will consider the case of the petitioner and respondent No.4/7 and to hear respondent No.6 and record a finding that whether the petitioner has been removed from service in accordance with law or not and thereafter to pass a reasoned and speaking order within three months from the date of receipt of a copy of this order after hearing the parties.

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

Sd/-

(Sanjay K.Agrawal)
Judge

B/-