

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.1942 of 2013

Smt Gayatri Dewangan, aged about 38 years, W/o Deepchand Dewangan, R/o India Tailor, Balodabazar Road, Thana Kharora, Tahsil Tilda, Distt. Raipur

---- Petitioner

Versus

1. The State of Chhattisgarh, through its Secretary, Panchayat and Rural Department, Mantralaya, Naya Raipur
2. The Collector, Raipur
3. Chief Executive Officer, Zila Panchayat, Raipur
4. Block Development Education Officer, Tilda, Distt. Raipur
5. Head Master, Government Middle School, Keshla, Tahsil Tilda, Distt. Raipur

---- Respondents

For Petitioner: Mr. Parag Kotecha, Advocate.

For Respondents No.1, 2, 4 and 5 / State: -

Mr. Sunil Otvani, Additional Advocate General.

For Respondent No.3: -

Mr. Sabyasachi Bhaduri, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

22/09/2021

1. The petitioner herein calls in question legality, validity and correctness of order dated 27-11-2012 (Annexure P-7) by which the petitioner's services have been dismissed in accordance with the Chhattisgarh Panchayat Service (Discipline and Appeal) Rules, 1999 (for short, 'the Rules of 1999').
2. Mr. Parag Kotecha, learned counsel appearing for the petitioner, would submit that the petitioner was earlier working as Shiksha Karmi Grade-II, but, later-on, she has been absorbed as Teacher

(Panchayat) and her services have been dismissed in accordance with the Rules of 1999 which is major punishment in view of Rule 5(b) (vii) of the Rules of 1999 and therefore her services could have been dismissed only after holding formal enquiry as required under Rule 7(1) of the Rules of 1999. In that view of the matter, the order of dismissal of the petitioner from service deserves to be set aside and the writ petition deserves to be allowed.

3. Mr. Sabyasachi Bhaduri, learned counsel appearing for respondent No.3, would submit that the petitioner has already resigned from service but did not deposit the requisite amount and consequently, she has been noticed and vide order Annexure P-1, she has been dismissed from service.
4. Mr. Sunil Otwani, learned Additional Advocate General appearing for the State / respondents No.1, 2, 4 and 5, would support the order impugned.
5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
6. Admittedly, the petitioner was Shiksha Karmi Grade-II, though she was later-on absorbed as Teacher (Panchayat) and her services are governed by the Rules of 1999. Part-III of the Rules of 1999 provides for Discipline. Rule 5 of the Rules of 1999 provides for Penalties and clause (b) of Rule 5 provides for Major Penalties. Sub-clause (vii) of clause (b) of Rule 5 states as under: -

“5. Penalties.-The following penalties may, for good and sufficient reasons, and as hereinafter provided by imposed on a member of the Panchayat Service, namely:—

(a) Minor penalties—

(i) to (iii) xxx xxx xxx

(b) Major Penalties—

(iv) to (vi) xxx xxx xxx

(vii) Dismissal from service which shall ordinarily be a disqualification for future employment.”

7. As per the aforesaid provision, dismissal from service of the petitioner is major penalty. Procedure for imposing major penalties has been prescribed in Rule 7 of the Rules of 1999. Sub-rule (1) of Rule 7 of the Rules of 1999 states as under: -

“7. Procedure for imposing major penalties.-(1) No order, imposing on a member of the Panchayat Service, any of the penalties specified in clause (iv) to (via) of rule 5 shall be passed except after a formal inquiry is held as far as may be, in the manner hereinafter provided.”

8. It is admitted position on record that though the petitioner has been subjected to imposition of major penalty i.e. dismissal from service under Rule 5(b)(vii) of the Rules of 1999, but no formal enquiry has been held against her in the manner prescribed under Rule 7(1) of the Rules of 1999. Consequently, the order of dismissal from service of the petitioner has become vulnerable and thus, the dismissal of the petitioner from service is without jurisdiction and authority of law.
9. For the foregoing reasons, the order Annexure P-7 dated 27-11-2012 is set aside. However, the disciplinary authority is at liberty to proceed in accordance with law. Respondent No.3 is directed to reinstate the petitioner along with all service benefits except back-wages. The issue of back-wages shall be considered by the competent authority within a period of two months from the date of receipt of a copy of this order in accordance with the applicable rules and regulations after giving opportunity to the petitioner on the point whether she has been gainfully employed during the period of her dismissal from service.

The petitioner is also allowed to make representation claiming back-wages.

10. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma