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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 87 of 2014**

Smt. Kirti Tamrakar W/o Sunil Tamrakar, working on the post of Shiksha Karmi Grade-II, permanent resident of Shri Jamuna Prasad Kasar, Freedom Fighter, 52, Prem Nagar, Sikolabhatha, Durg, Police Station, Tahsil & District Durg (Chhattisgarh)

---- Petitioner**Versus**

1. State of Chhattisgarh through the Secretary, Department of Panchayat & Rural Development, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur, District Raipur (Chhattisgarh)
2. The Commissioner, Raipur Division, Raipur, District Raipur (Chhattisgarh)
3. Chief Executive Officer, Jila Panchayat, Durg, District Durg (Chhattisgarh)
4. The Principal, Government Higher Secondary School, Borai, District Durg (Chhattisgarh)

---- Respondents

For Petitioner: Mr. V. K. Pandey, Advocate
 For State : Mr. Sudeep Verma, Dy. G.A. & Mr. S. S. Thakur, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****27.01.2021**

1. The challenge in the present writ petition is to the order Annexure P-11 dated 28.04.2010 whereby the services of the petitioner were terminated by the respondent no.3. The petitioner thereafter preferred

an appeal before the Commissioner which also stood rejected vide order dated 23.11.2013.

2. The facts of the case are that the petitioner was initially appointed as Shiksha Karmi Grade-II vide order dated 20.08.1998 under the erstwhile state of Madhya Pradesh. On account of the establishment of the State of Chhattisgarh, the petitioner's service stood allocated to the State of Chhattisgarh vide order dated 09.07.2003. According to the petitioner, though she was allocated to the State of Chhattisgarh in July, 2003, she was finally relieved on 04.10.2004 on which she gave joining under the respondents on 18.10.2004.
3. The further contention of the petitioner is that though she had given joining on 18.10.2004, she was not allotted any school to discharge duty and she was finally allotted Govt. Higher Secondary School, Borai, District Durg on 29.04.2005 which she readily accepted and resumed her duty. However, on account of certain personal difficulties the petitioner went on leave on 10.07.2008 and remained on leave for some time when a show cause notice was issued to the petitioner in respect of her unauthorized absence for an inordinate long period. The petitioner immediately gave a reply to the show cause notice vide Annexure P-10 dated 01.08.2009 giving some justification for the period of absence and also contended that in between she had tried to resume her duty but the Principal did not provide joining to her. Thereafter without any further inquiry of any nature abruptly the impugned order of termination Annexure P-11 dated 28.04.2010 was passed terminating the petitioner from service. The petitioner immediately thereafter preferred an appeal to the Commissioner which

stood rejected vide order dated 23.11.2013 leading to the filing of the present writ petition.

4. At the outset, counsel for the petitioner submits that the impugned order of termination is in clear violation to Rule 7 of the Chhattisgarh Panchayat Service (Discipline & Appeal) Rules, 1999 (hereinafter referred as "the Rules of 1999") which clearly lays down the procedure to be adopted before imposition of any major penalty which in the instant case has been clearly violated.
5. A plain perusal of the reply that the petitioner has submitted would clearly indicate that there is a defence taken by the petitioner of firstly that she had taken leave w.e.f. 10.07.2008 but according to her explanation she had tried to resume her duty on 29.04.2009 on which date the Principal refused to give joining to the petitioner. Thereafter she has been continuously pursuing the authority for giving joining. This aspect would reduce the gravity of charges for an absence from 10.07.2008 till the date of show cause notice and which needed to be inquired upon.
6. Another aspect which needs to be considered at this juncture is the procedure which is prescribed under the Rules before imposition of a major penalty. Rule 7(1) & (2) of the Rules of 1999 clearly envisages that an inquiry has to be conducted before passing of a final order of major penalty. For ready reference Rule 7 (1) & (2) is quoted hereinunder:

"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.

(2) When an order for formal inquiry has been made, the disciplinary authority shall frame Definite charges on the basis of allegations and shall communicate such charges, along with the statement of the allegations, to the member of the Panchayat Service and also require him to submit, within such time as may be specified a written statement of defence and also to state whether he desires to be heard in person.”

7. From the reply that has been filed on behalf of the respondent no.3 and also that of the State it clearly reflects that the impugned order of termination has been passed purely on the basis of the reply that the petitioner has filed to the show cause notice and on finding the reply being unsatisfactory. However, such a power is not conferred upon the authorities under Rule-7 which otherwise prescribes for conducting a formal inquiry before passing of an order of major penalty. This Court in a catena of decisions has held that before terminating an employee under regular service governed by the Chhattisgarh Panchayat Service (Discipline & Appeal) Rules 1999 a formal inquiry ought to be conducted. In the absence of any inquiry, the decision taken by the respondent no.3 cannot be sustained and the same deserves to be and is accordingly set aside.
8. Further from the reply of the petitioner to the show cause notice there appears to be an admission to some extent so far as the period of absence is concerned and the said explanation cannot be accepted to be a plausible explanation or a justifiable reason for remaining absent

for a considerable period of time for the reason that there was a deliberate lapse on the part of the petitioner for the intervening period. Thus, applying the principle of “No Work No Pay” the petitioner would not be entitled for any back wages except for continuity of service for the intervening period.

9. Since this Court is interfering with the impugned order of termination on the technical ground of non-compliance of the statutory requirement under Rule-7 of the Rules of 1999, the right of the respondents stands reserved if the respondents so want to initiate appropriate proceeding against the petitioner in accordance with the rules governing the field after giving a fair and reasonable opportunity of defence to the petitioner.
10. The writ petition therefore stands allowed in part. The impugned order of termination and the affirmation of the same by the Commissioner vide Annexures P-11 & P-1 dated 28.04.2010 and 23.11.2013 respectively stands set aside/quashed. The petitioner would be entitled for reinstatement in service without back wages with continuity of service and also liberty to the respondents to initiate appropriate proceeding if they so want in accordance with the rules.
11. Counsel for the petitioner at this juncture submits that in between the petitioner has for a considerable period of time discharged her duty for which she has not been paid any salary. This aspect would also be looked into by the respondent no.3. It goes without saying that for the period the petitioner has discharged duty, she would definitely be entitled for the wages. Accordingly, let necessary wages be calculated and processed and the payment be made to the petitioner for the

period she has worked subject to verification of the same, within a period of 90 days from the date of receipt of copy of this order.

**Sd/-
P. Sam Koshy
Judge**

Khatai