NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No. 5191 of 2011

Raja Kumar Kashyap S/o Shri Niranjan Kashyap, Panchayat Sachiv, Gram Panchayat Bhatlikala, Block Mungeli, Tehsil Mungeli, District Bilaspur C. G.

---- Petitioner

Versus

1. State Of Chhattisgarh, Through The Secretary, Panchayat And Rural Development Department, D. K. S. Bhawan, Raipur, Chhattisgarh
2. Joint Director, Panchayat and Rural Development Department, Bilaspur, District Bilaspur, Chhattisgarh
3. Chief Executive Officer, Janpad Panchayat Mungeli, District Bilaspur, Chhattisgarh
4. Gram Panchayat Bhatlikala through the Sarpanch, Gram Panchayat Bharlikala, Block Mungeli, District Bilaspur, Chhattisgarh
5. Biharilal Sahu Son of Shri Sukenram Sahu, resident of village Bhatlikala, Tahsil Mungeli, District Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. C. Jayant K. Rao, Advocate
For State/Respondents 1 & 2	:	Mr. Suyash Dhar, P.L.
For Respondent no.4	:	Mr. Pallav Mishra, Advocate
For Respondent no.5	:	Mr. Shubham Karmanja on behalf of Ms. Renu Kocher, Advocate

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Hon'ble Shri Justice P. Sam Koshy

Order On Board

18.11.2021

1. Aggrieved by the two orders Annexures P-11 and P-12 the present writ petition has been filed. Vide Annexure P-11 dated 12.01.2007 the services of petitioner as a Panchayat Secretary have been

terminated by the Sarpanch of Gram Panchayat Bhatlikala and subsequently vide Annexure P-12 dated 29.08.2007 respondent no.5 has been appointed in place of petitioner as a Panchayat Secretary by the same Sarpanch, Gram Panchayat, Bhatlikala.

2. The brief facts relevant for disposal of the present writ petition are that the petitioner was appointed as a Panchayat Secretary of Gram Panchayat, Bhatlikala, district Mungeli vide Annexure P-1 dated 03.09.2004 and since then the petitioner had been discharging his duties as a Panchayat Secretary in Gram Panchayat, Bhatlikala till abruptly the impugned order Annexure P-11 dated 12.01.2007 was passed. The order dated 12.01.2007 was passed on the basis of the resolution of Gram Panchayat dated 08.01.2007 on certain allegations of misappropriation of Panchayat fund levelled against the petitioner. The resolution was passed for terminating the services of petitioner and the Sarpanch of the said Gram Panchayat vide Annexure P-11 dated 12.01.2007 ordered for termination of the services of petitioner which is under challenge in the present writ petition. In addition, the petitioner has also challenged the impugned order Annexure P-12 dated 29.08.2007 which again is an order passed by the same Sarpanch of Gram Panchayat, Bhatlikala whereby a new Panchayat Secretary has been appointed i.e. respondent no.5 replacing the petitioner.

3. The two substantive grounds that the petitioner has raised in the present writ petition challenging the impugned order are that firstly the impugned order Annexure P-11 has been passed not by a disciplinary authority and therefore the impugned order has to be treated to be

passed by an incompetent authority in contravention to the rules governing the field and hence it deserves to be set aside. The second ground raised by the petitioner is that of the authorities having violated the statutory provisions required before terminating the services of Panchayat Secretary. According to the petitioner, there is a clear-cut violation of Rule-7 of the Chhattisgarh Panchayat Service (Discipline and Appeal) Rules, 1999 (in short “the Rules of 1999”.

4. Learned counsel for petitioner relied upon the order passed by this Court in the case of Aghan Singh Jangade Vs. State of Chhattisgarh and others, 2009 (3) CGLJ 72 in respect of his contention.

5. Learned counsel appearing for respondent no.4 i.e. Gram Panchayat, Bhatlikala opposing the petition submits that it is a case where there was a serious allegation of misappropriation of funds by the petitioner in connivance with the Sarpanch and therefore the matter was placed before the Gram Panchayat in a general body meeting whereby the allegation levelled against the petitioner was found to be proved. Subsequently, the impugned order Annexure P-11 dated 12.01.2007 was passed by the Sarpanch terminating the services of petitioner.

6. The issue involved in the present writ petition is no longer res integra for the reason that there has been a series of decisions passed by this Court starting from the case of Dhaluram Kosaria Vs. State of CG & others, 2006 (2) CGLJ 186 which has been reiterated on numerous occasions by this Court whereby under similar circumstances it has been categorically held that not following the mandatory requirement as is required under Rule 7 of the Rules of 1999 the order would stand vitiated holding it to be violative of Rule7 of the Rules of 1999.

7. Similarly, it would be relevant at this juncture to take note of the fact that under the Gram Panchayat (Powers and Functions of the Secretary) Rules 1999, there is an appendix provided in the said rules prescribing the disciplinary authority. For Class 3rd and 4th employees of Zila Panchayat and Janpad Panchayat, the disciplinary authority for a minor punishment is the Chief Executive Officer and for a major penalty it is the General Administrative Committee.

8. Coming to the impugned order Annexure P-11, it does not reflect that the impugned order to have been passed by the General Administrative Committee or even at the behest of the General Administrative Committee. A plain perusal of the impugned order would reflect that the same has been passed purely on the basis of the resolution passed by the special general body meeting and based upon the said resolution, the Sarpanch has issued the impugned order. Thus, the ground of the petitioner that the impugned order has been passed by an incompetent authority stands established.

9. As regards the provisions of Rule-7 of the Rules of 1999, Rule-7 specifically provides the procedure for imposing major penalty. Dealing with the said issue this Court in the case of Suresh Kumar Vs. State of Chhattisgarh, WPS No. 264/2010 decided on 04.09.2015 in paragraphs-7 to 9 has held as under:

> " Rule 7 of the Rules, 1999 provides for procedure before terminating services of a member of Panchayat. In the instant case though some preliminary exercise has been done but admittedly the requirement under Rule 7 were not followed.
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> 8. Some of the decisions dealing with Rule 7 of the Rules, 1999 passed by this High Court are
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> i. Ilesh Kumar Sahu Vs State of C.G. & Ors, 2010(2) CGLJ 76

ii. Aghan Singh Jangade Vs State of C.G. & Ors, 2009 (3) CGLJ 72

iii. Chandikeshwar Singh Vs State of C.G. & Ors, 20007(3) MPHT 106 CG

iv. Dhaluram Kosaria Vs State of C.G. & Ors, 2006(2) CGLJ 186

v. Ravindra Kishore Chandra Vs State of C.G. & Ors WP(S) 2527/08 decided on 06.01.2010.

9. In view of the law laid down in the aforementioned cases, admittedly when the provisions required under Rule 7 of the Rules, 1999 having not been followed, the order of termination and the subsequent orders upholding them gets vitiated and is bad in law. Further it is just not non-compliance of the statutory provisions but is also violation and denial of the principles of natural justice. It amounts to infraction not only of Rule 7 of the Rules, 1999 but also of Article 311(2) of the Constitution of India."

10. The same view has also been taken by this Court in the case of Parikshit Sahu Vs. State of CG in WPS No. 3553/07 decided on 08.12.2015 reiterating the fact that violation and denial of the statutory compliance as is required under Rule-7 would amount to infraction of Rule-7 of the Rules of 1999 and also is violative of Article 311(2) of the Constitution of India.

11. Given the aforesaid facts and circumstances of the case, the objections raised by the learned counsel for respondent no.4 would not be tenable for the reason that the impugned order is not being challenged on the merits of the allegations but the same has been questioned in respect of competency and the jurisdiction of the authority passing the order and also the ground of it being in violation of the statutory provisions otherwise provided.

12. In view of the same, this Court is inclined to allow the writ petition and hold that the impugned order Annexure P-11 dated

12.01.2007 to be bad in law and the same deserves to be and is accordingly set aside.

13. Considering the fact that it is about 10 years time that the petitioner has been deprived of his claim for reinstatement in service coupled with the fact that he is out of employment for all these period, this Court is inclined to accept the principle and ratio laid down in the case of Aghan Singh Jangde (supra) so far as granting of consequential benefits is concerned.

14. Accordingly, it is ordered that the petitioner would be entitled for 30% of the back wages for the period he was out of employment till he is taken back in service.

15. So far as the appointment of respondent no.5 is concerned, since the order of appointment of respondent no.5 does not reflect that the respondent no.5 has been appointed replacing the petitioner, the said issue is left open for the concerned Gram Panchayat to take an appropriate decision in respect of respondent no.5.

16. However, so far as the petitioner is concerned, since the impugned order Annexure P-11 is getting set aside/quashed, the respondent no.4 is directed to forthwith reinstate the petitioner with 30% of back wages. The order be complied with within a period of 60 days from the date of receipt of copy of this order.

17. The writ petition accordingly stands allowed.

Sd/-
(P. Sam Koshy)
Judge

Khatai

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCC No. 62 of 2022

1. Raja Kumar Kashyap S/o Shri Niranjan Kashyap, Panchayat Sachiv, Gram Panchayat Bhatlikala, Block Mungeli, Tehsil Mungeli, District Bilaspur, Chhattisgarh, Now District Mungeli, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Panchayat And Rural Development Department, D.K.S. Bhawan, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

2. Joint Director Panchayat And Rural Development Department, Bilaspur, District Bilaspur, Chhattisgarh, Now District Mungeli, Chhattisgarh.

3. Chief Executive Officer Janpad Panchayat Mungeli, District Bilaspur, Chhattisgarh, Now District Mungeli, Chhattisgarh., District : Mungeli, Chhattisgarh

4. Gram Panchayat Bhatlikala Through The Sarpanch, Gram Panchayat Bhatlikala, Block Mungeli, District Bilaspur, Chhattisgarh, Now District Mungeli, Chhattisgarh., District : Mungeli, Chhattisgarh

5. Biharilal Sahu S/o Shri Sukenram Sahu R/o Village Bhatlikala, Tahsil Mungeli, District Bilaspur, Chhattisgarh, Now District Mungeli, Chhattisgarh.

----Respondent

For Applicant : Shri Shobhit Koshta, Advocate
For State : Shri Rahul Jha, G.A.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

08.02.2022

1. The present MCC has been filed seeking for modification of the order dated 18.11.2021 passed in WP(S) No. 5191 of 2011.

2. The modification sought for by the petitioner in the present MCC is to the extent that the direction for compliance of the order has been

given to the respondent No. 4 whereas it ought to have been the Respondent No. 3 who would be the Competent Authority so far as the petitioner is concerned since he was working on the post of Panchayat Secretary.

3. Considering the entire facts and circumstances of the case, particularly, taking note of the fact that the order of this Court was finally allowing the writ petition and quashing of Annexure P-11 in the writ petition dated 12.01.2007. The only issue is as to who would be the executing agency for compliance of the order passed by this Court.

4. Given the said facts that the order stands modified to the extent that in Paragraph -16 wherein the direction for compliance has been given to the Respondent No. 4, it shall be read as "**Respondents No. 3 & 4"** instead of Respondent No. 4 alone.

5. With the aforesaid modification, the present MCC stands allowed and disposed of.

6. Let a copy of this order be made part of the records of the WP(S) No. 5191 of 2011.

Sd/-
P. Sam Koshy
Judge

Jyoti