

HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION (SERVICE) NO. 1649 OF 2021**

- Krishano Prasad Kurre, S/o Late Shri Umathu Ram Kurre (Scheduled Caste), aged about 47 years, R/o Bansuladipa, Basna, District Mahsamund (CG)

... Petitioner**versus**

1. State of Chhattisgarh, through the Principal Secretary, Panchayat and Rural Development Department, Mahanadi Bhavan, Mantralaya, Atal Nagar, Naya Raipur, District Raipur (CG)
2. The Collector, Mahasamund, District Mahasamund (CG)

... Respondents

For Petitioner	:	Mr. T.K. Jha, Advocate.
For Respondents/State	:	Mr. V.R. Tiwari, Addl. A.G.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****09/04/2021**

1. Aggrieved of the Order dated 16.2.2021, the present Writ Petition has been filed by Petitioner.
2. Vide the impugned Order, the Petitioner has been placed under suspension.
3. The ground for placing the Petitioner under suspension seems to be not fulfilling the commitments in respect of various works which were being executed in the supervision of Petitioner.
4. Contention of learned Counsel for Petitioner primarily is that it is a case where the order of suspension has been issued by the Collector who is not either the Disciplinary Authority or the Appointing Authority and therefore he could not have placed the Petitioner under suspension. The second ground of challenge is one where according to Petitioner to a Show Cause Notice earlier issued, the Petitioner has given a detailed reply in respect of the works executed under his command and that he has given specific justification, particularly that of a long strike by the Panchayat Secretaries in the State, moreover, the effect of the Corona Virus also led to the work being done at a slow pace and there was other grounds also which were brought to the notice of the Authorities which they have not considered.

5. The impugned Order also has been challenged on the ground of the same being arbitrary for the reason that even before issuance of charge-sheet, the Collector has appointed an Inquiry Officer as also the Presenting Officer which would thus be a clear violation of the provisions of Rule 14 of the Rules under which the Petitioner has been placed under suspension and further shows that the authority is predetermined.

6. At the outset, this Court is of the opinion that the order of suspension is one which has been issued invoking Rule 9 of the Chhattisgarh Civil Services (Classification, Control & Appeal) Rules, 1966. Rule 23 of the said Rules provides for Appeal. Petitioner does not seem to have preferred an appeal against the impugned Order and has straight away approached this Court. Since the Petitioner has an alternative statutory remedy of appeal to the higher authorities in the Department, the Writ court would not be justified in entertaining the present Writ Petition at this juncture.

7. Accordingly, reserving the right of Petitioner, if he so wants, to prefer a departmental appeal against the impugned Order, the present Writ Petition at this juncture is disposed of.

8. Though this Court is reluctant to entertain the present Writ Petition on the ground of suspension, however, this Court is compelled to order that the action on the part of Respondent-Collector in appointing an Inquiry Officer and the Presenting Officer even before issuance of charge-sheet and calling reply to the charge-sheet of the delinquent employee is *per se* contrary to Rule 14 of the aforesaid Rules of 1966. It is a settled principle of law that at the time of initiating Departmental Enquiry the first thing that the Disciplinary Authority is to do is to issue a charge-sheet and call upon the reply of delinquent employee and only on the reply being found unsatisfactory should the Disciplinary Authority appoint an Inquiry Officer to enquire into the allegations and charges levelled against him. In the absence of such a procedure being followed, the decision of appointment of

the Inquiry Officer and the Presenting Officer even without issuance of a charge sheet, would not be sustainable and it is also bad in law.

9. The impugned Order therefore to that extent is not sustainable and the portion whereby the Collector has appointed the Inquiry Officer and the Presenting Officer is set aside, reserving the right of the Authorities to proceed further in accordance with law after a due charge-sheet has been issued.

10. Writ Petition accordingly stands disposed of with aforesaid observations.

sbarad

**Sd/-
(P. Sam Koshy)
JUDGE**