

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 345 of 2010**

Ashesh Khare S/o Shri Har Pd. Khare, Aged about 29 years, Second Grade Clerk (Govt. High School Potanar, Distt. Bastar) Presently posted at O/o Asstt. Commissioner, Tribal Development, Shahdol.

---Petitioner

Versus

1. The State of M.P. through the Secretary, SC & ST Welfare Deptt., Mantralaya, Bhopal.
2. The Commissioner, Tribal Development, M.P., Bhopal.
3. The Collector, (Tribal Development Branch), Bastar.
4. The Asstt. Commissioner, Tribal Development, Bastar, Jagdalpur.

--- Respondents

For Petitioner	:-	Mr. Harshmander Rastogi, Advocate
For State	:-	Mr. Soumya Rai, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board (Through Video Conferencing)

10/08/2021

1. Petitioner herein calls in question the decision taken by the then State of M.P. on 12/06/1997 (Annexure A-3) by which the State Government has

directed the Collector, Bastar, Jagdalpur to cancel the appointment of petitioner on the post of Assistant Grade II under the physically handicapped category holding that he does not belong to that category.

2. Mr. Harshmander Rastogi, learned counsel for the petitioner, would submit that the State Government has firstly taken the decision on 12/06/1997 (Annexure A-3) and directed the Collector, Bastar-Jagdalpur to cancel the appointment of the petitioner on the post of Assistant Grade II made on 27/01/1994 and thereafter, in compliance of that order, on 05/07/1997 (Annexure A-4) the Collector has issued show cause notice to the petitioner to which petitioner has replied by submitting the necessary certificates, but they have not been considered in accordance with law and his order of termination has been passed. Since the Government had already taken the decision, the show cause notice is merely a formality to terminate the petitioner as nothing is required to be considered and the Collector had already made up his mind while issuing show cause notice,

as such, the order dated 12/06/1997 (Annexure A-3) deserves to be quashed.

3. Mr. Soumya Rai, learned State counsel, would submit that show cause notice has already been issued to the petitioner and his reply has been considered in accordance with law and thereafter, the impugned order (Annexure A-3) has been passed.

4. I have heard learned counsel for the parties at length and perused the record.

5. It is the contention of the respondents/State that only after issuing show cause notice to the petitioner and considering his reply in accordance with law, his service has been terminated, therefore, the instant writ petition is not maintainable.

6. A careful perusal of memo of respondent No. 1 dated 12/06/1997 (Annexure A-3) would show that the Government has already taken the policy decision holding that petitioner was though appointed on the post of Assistant Grade II under the physically handicapped category but he does not actually belong to that category, therefore, his appointment be cancelled and thereafter, show

cause notice has been issued to the petitioner. AS such, the show cause notice issued to the petitioner before terminating his service is only a formality in compliance of the order of the State Government and petitioner's termination, ever after reply, is inevitable as without hearing the petitioner, the State has already prejudged the issue.

7. In view of the aforesaid, memo of respondent No. 1 dated 12/06/1997 (Annexure A-3) and the subsequent proceedings are hereby quashed. However, the respondents/State is at liberty to proceed in accordance with law.

8. With the aforesaid observation, the writ petition is allowed to the extent indicated herein-above. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet