**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Writ Petition (S) No.2781 of 2011**

Siddhanath Mishra (dead) through LR's

Smt.Krishna Mishra W/o Late Siddhanath Mishra, aged about 60 years, R/o Street No.3, Mahamaya Vihar, Warehouse P.S. Civil Lines, Bilaspur, Dist.: Bilaspur (CG)

**---- Petitioner**

**Versus**

1. State of Chhattisgarh, Through the Secretary, Department of Urban Administration & Development, Mantralaya, Mahanadi Bhawan, Naya Raipur (CG)
2. The Collector, Bilaspur, Dist: Bilaspur (CG)
3. Deputy Director, O/o. The Regional Deputy Director, Local Fund Audit, Bilaspur, Dist.: Bilaspur (CG)

**---- Respondents**

| | | |
|---|---|---|
| For LR's of Petitioner | : | Mr.N.Naha Roy, Advocate |
| For Respondents/State | : | Mr.Siddharth Dubey, Dy.G.A. |

**Hon'ble Shri Justice Sanjay K. Agrawal**

**Order on Board**

**6/9/2021**

1. The writ petitioner (who died during the pendency of this writ petition and his LR's was brought on record) herein calls in question legality, validity and correctness of the order of suspension dated 30.4.2011 (Annxure P-1) passed by the State Government and also eventually calls in the question the order dated 28.6.2011 (Annexure P-9) initiating departmental enquiry against him alleging that though he was holding the post of Revenue Inspector, but he has

drawn the salary of Chief Municipal Officer and thereby he has misappropriated the governmental money.

**2.** Mr.N.Naha Roy, learned counsel for the petitioner, would submit that as per own showing of the State Government, the petitioner's disciplinary authority was Nagar Panchayat and he was holding the post of Revenue Inspector in Nagar Panchayat, which is post specified under Section 94(4) of the Chhattisgarh Municipalities Act, 1961 (hereinafter called as 'the Act of 1961'), therefore, neither he could be suspended by the State Government nor he could be proceeded departmentally by the State Government, as such, order of suspension dated 30.4.2011 (Annxure P-1) and order of initiating departmental enquiry dated 28.6.2011 (Annexure P-9) both deserve to be set aside.

**3.** On the other hand, Mr.Siddharth Dubey, learned Deputy Government Advocate for the respondents/State, would support the impugned orders and submit that the petitioner was taking salary of the post, which he was not entitled while holding the post of Revenue Inspector, therefore, the writ petition deserves to be dismissed.

**4.** I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

**5.** Admittedly, the petitioner was holding substantive post of Revenue Inspector at the relevant point of time, though discharging the duties of acting Chief Municipal Officer as directed by the State Government, which is post specified in Section 94(4) of the Act of 1961 and for Municipal employee/officer specified under Section 94(4) of the Act of 1961, the Rules of 1968 would be applicable. Rule 51 of the Rules of 1968 provides as under:-

> "**51. Disciplinary authorities.**-Subject to the provisions of the Act and these rules the Municipal Council shall have the powers to impose any of the penalties specified in Rule 49 on any Municipal employee holding post specified in sub-section (4) of Section 94 of the Act and in the case of other Municipal employees the Standing Committee shall have the power to impose any of the said penalties on him."

**6.** A careful perusal of the aforesaid provision (Rule 51 of the Rules of 1968) would show that the Municipal Council shall have the powers to impose any of the penalties specified in Rule 49 on any Municipal employee holding post specified in sub-section (4) of Section 94 of the Act of 1961.

**7.** Rule 49(iii) of the Rules 1968 states as under:-

> "**49. Penalties.**-The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Municipal employee, namely:-
>
> (i) and (ii)      xxx      xxx      xxx

> (iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Council by negligence or breach of orders."

**8.** Section 94(4) & (5) of the Act of 1961 states as under:-

> "**94. Appointment of staff.-**
> (1) to (3) xxx xxx xxx
>
> (4) The appointment of Revenue Officer, Accounts Officer, Sanitary Inspector [Sub-Engineer], Revenue Inspector and Accountant shall be subject to confirmation by the State Government and no such post or the post of any other officer or servant as may be specified by the State Government in this behalf shall be created or abolished and no alteration in the emoluments thereof shall be made without the previous approval of the State Government, and every appointment to, and dismissal from such post, shall be subject to a like approval.
>
> (5) xxx xxx xxx.
>
> (6) Unless the State Government otherwise directs the power of appointing Municipal Officers and servants other than those mentioned in or specified under sub-section (4) shall vest in the President-in-Council."

As such, the authority competent to initiate disciplinary proceeding against Municipal employee holding the post specified in sub-section (4) of Section 94 of the Act of 1961 would be Municipal Council or Nagar Panchayats as the case may be.

**9.** Admittedly, the writ petitioner at the relevant point of time was though holding the post of In-charge Chief Municipal Officer, but he was holding substantive post of Revenue Inspector, a post specified, under Section 94(4) of the Act of 1961 and therefore, his disciplinary authority would be concerned Municipal Council under Rule 51 of the Rules of 1968.

**10.** Reverting to the facts of the present case in the light of aforesaid legal position, it is quite vivid that since the petitioner's (Revenue Inspector) disciplinary authority was Municipal Council / Nagar Panchayat, therefore, he could not have been subjected to suspension as well as departmental proceedings by the State Government under Rule 36 of the The Chhattisgarh Municipal Service (Executive) Rules, 1973 (hereinafter called as 'Rules of 1973'), as such, Rule 36 of the Rules of 1973 would not be applicable and Rule 51 of the Chhattisgarh Municipal Employees (Recruitment and Conditions of Service) Rules, 1968 would be applicable as the petitioner's disciplinary authority was Nagar Panchayat / Municipal Council. Therefore, the order placing the petitioner under suspension and instituting departmental enquiry against him by the State Government under Rule 36 of the Rules of 1973 are without jurisdiction and without authority of law.

**11.** Accordingly, the order of suspension dated 30.4.2010 (Annexure P-1) and the order initiating departmental enquiry dated 28.6.2011 (Annexure P-9) both are hereby quashed. The order of suspension has already come to an end as the petitioner has been retired and died and liberty is not being granted to the respondent-Municipal Council / Nagar Panchayat to initiate fresh proceeding due to death of original petitioner.

**12.** The writ petition is allowed to the extent indicated hereinabove. No order as to cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-