

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.294 of 2005

Vijay Kumar Choubey, aged about 23 years, S/o Shri A.N. Choubey,
Laboratory Assistant, Govt. Higher Secondary School, Wadrafnagar,
District Sarguja

---- Petitioner

Versus

1. The State of M.P., through the Secretary, Govt. of M.P., Tribal and Harijan Welfare Department, Bhopal
2. The Collector, Tribal Welfare Department, Ambikapur, District Sarguja.
3. The Assistant Development Commissioner, Tribal Welfare, Ambikapur, District Sarguja
4. The Principal, Govt. Higher Secondary School, Wadrafnagar, District Sarguja

---- Respondents

For Petitioner: Mr. Rakesh Kumar Jha, Advocate.

For Respondent No.1 / State of M.P.: -

None present.

For Respondents No.2 to 4 / State of Chhattisgarh: -

Mr. Sunil Otvani, Additional Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

22/09/2021

1. At the outset, Mr. Rakesh Kumar Jha, learned counsel for the petitioner, submits that by interim order dated 30-7-1990, the petitioner was working on the post of Lab Assistant and he has also been promoted as Head Master and thereafter, he has been promoted as UDT, as such, he may be allowed to file the orders of promotion subsequently passed in favour of the petitioner. He is permitted to file the same during the course of the day.
2. The petitioner has called in question the order of termination dated 18-

7-1990 by which his services on the post of Lab Assistant have been cancelled.

3. Mr. Rakesh Kumar Jha, learned counsel appearing for the petitioner, would submit that the petitioner was appointed on 6-1-1990 on ad hoc basis on vacant post till the regular appointment, but later-on, on the basis of the order of the Commissioner, Tribal Welfare, dated 12-3-1990 and on the basis of order dated 23-3-1990 passed by the Deputy Commissioner, Tribal Welfare, his services were terminated by the Assistant Commissioner for and on behalf of the Collector, by order dated 18-7-1990 without affording opportunity of hearing and the termination order so passed has been given effect to from 28-5-1990. Mr. Jha, learned counsel, would further submit that the petitioner continued by the interim order of the State Administrative Tribunal and thereafter, he has also been promoted and presently, he is working on the post of Head Master. He would also submit that by interim order dated 30-7-1990, the petitioner is still continuing on the promoted post, therefore, the orders impugned deserve to be set aside.
4. Mr. Sunil Otvani, learned State counsel, would submit that the orders impugned dated 18-7-1990 (Annexure A-3) and 20-7-1990 (Annexure A-4) passed by the Assistant Commissioner for and on behalf of the Collector and the Principal of Government Higher Secondary School, Wadrafnagar, respectively, have been passed strictly in accordance with law and no interference is called for in the order passed by the Assistant Commissioner cancelling the appointment of the petitioner on the post of Lab Assistant.
5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

6. True it is that the petitioner's appointment by order dated 6-1-1990 on the post of Lab Assistant was on ad hoc basis and it was cancelled pursuant to the order issued by the Assistant Commissioner for and on behalf of the Collector vide order dated 18-7-1990 finding it contrary to the instructions issued by the Commissioner, Tribal Welfare and the Deputy Commissioner, Tribal Welfare, and the appointment has been cancelled with effect from 28-5-1990, whereas the impugned order was passed on 18-7-1990. It is the case of the petitioner that thereafter, he has been promoted on the post of Head Master and he is working on the said post after being promoted. Since the petitioner by virtue of interim order dated 30-7-1990 is working since 18-7-1990 and he has also been promoted on the post of Head Master and is working as such on the said post and since the order of termination has been passed without affording opportunity of hearing to the petitioner, particularly though he was appointed on ad hoc basis, but he was appointed on the vacant post of Lab Assistant, opportunity of hearing ought to have been afforded to the petitioner before terminating his services. Even the order cancelling appointment of the petitioner on the post of Lab Assistant dated 18-7-1990 has been given effect to with retrospective date from 28-5-1990. As such, the order is in violation of the principles of natural justice, as no reasonable opportunity has been afforded to the petitioner.
7. By order dated 8-10-2008, the petitioner has been promoted on the post of Pradhan Pathak, Primary School, and thereafter, by order dated 18-2-2011, he has also been promoted to the post of Upper Division Teacher and it appears that he has also been holding the substantive post of UDT at present. As such, the impugned orders dated 18-7-1990 (Annexure A-3) and 20-7-1990 (Annexure A-4) are

hereby set aside. However, respondents No.2 to 4 are at liberty to proceed in accordance with law.

8. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma