

HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on:16.9.2021****Order delivered on:04.10.2021****Writ Petition (S) No.30 of 2012**

Sewak Ram Purena, S/o R.K.Purena, aged about 40 years,
R/o Village-Dighari, Tahsil-Arang, District – Raipur
(CG)

---Petitioner***Versus***

1. State of Chhattisgarh, Through the Secretary, Law & Legislative Affairs Department, D.K.S. Bhawan, Mantralaya, Raipur (Chhattisgarh)
2. The Chhattisgarh Madhyastham Adhikaran, Through: The Registrar, Chhattisgarh Madhyastham Adhikaran, Raipur, Abhyodaya Parisar, Nagar Ghadi Chowk, Raipur (Chhattisgarh)

---Respondents

For Petitioner	: Mr.Harshwardhan Parghania, Advocate
For Res.No.1/State	: Mr.Animesh Tiwari, Dy.A.G.
For Respondent No.2	: Mr.Pawan Shrivastava, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Order**

1. The petitioner herein calls in question his order of removal dated 15.12.2011 (Annexure P-1) passed by respondent No.2 removing him from the post of Peon appointed on 25.1.2008 ((Annexure P-2) against SC category on collectorate rate and also calls in question the order dated 04.06.2011 (Annexure P-7) as arbitrary and illegal.
2. It is the case of the petitioner that he was appointed on 25.1.2008 on the vacant and sanctioned post of Peon by the order of the competent authority on temporary basis on probation of two years and upon completion of

period of probation, the petitioner was confirmed by express order in writing dated 21.4.2010 (Annexure P-3) in accordance with the Chhattisgarh Civil Services (General Conditions of Service) Rules, 1961 (hereinafter called as 'Rules of 1961'). Thereafter the petitioner was served with the notice on 20.9.2011 that his behaviour has been objected by one of the Judicial Member of Administrative Tribunal and his explanation was called, which he submitted on 23.9.2011 vide Annexure P-5. Thereafter, on 17.11.2011 (Annexure P-6) again he was served with show-cause notice for certain act of indiscipline for seeking leave of 3 days in writing whereas he has obtained 1 day leave and thereafter by order dated 15.12.2011 (Annexure P-1) his services have been terminated, which has been called by the petitioner as arbitrary, unsustainable, without jurisdiction and without authority of law.

3. Return has been filed by respondent No.2 particularly holding that on 4.6.2011 corrigendum / order has been issued omitting the word 'probation' in order of appointment dated 25.1.2008 as well as order dated 21.4.2010 confirming the petitioner after the period of probation, as such, the petitioner has been found guilty of grave misconduct, therefore, his services have been terminated after giving him one month salary in advance in lieu of notice.

4. Upon receipt of the return, the petitioner has called in question the order dated 4.6.2011 branding the same without jurisdiction and without authority of law.
5. Mr. Harshardhan Parghania, learned counsel for the petitioner, would submit that the petitioner was appointed vide order dated 25.1.2008 (Annexure P-2) subject to probation and he was confirmed on 21.4.2010 and simply seeking explanation on 17.11.2011, his services have been terminated by order dated 15.12.2011, which is totally unsustainable and bad in law in view of decisions rendered by the Supreme Court in the matters of Diljit Singh Bedi v. Shiromani Gurdwara Prabandhak Committee, Sri Amritsar¹ and Jagdish Singh v. Punjab Engineering College and others², as there is no such misconduct which would warrant inquiry against the petitioner. He would further submit that impugned order dated 4.6.2011 (Annexure P-7) amending his condition of service is totally violative of Article 14, 16 and 21 of the Constitution of India as confirmation is one of the condition of service, which cannot be altered without following the principles of natural justice. He would rely upon the judgment of the Supreme Court in the matter of H.L. Trehan and others v. Union of India and others³ and State of Punjab v. Kailash Nath⁴. Therefore, the impugned order dated 15.1.2011 (Annexure P-1) and

1 (2011) 5 SCC 417

2 (2009) 7 SCC 301

3 (1989) 1 SCC 764

4 (1989) 1 SCC 321

order dated 4.6.2011 (Annexure P-7) are liable to be set-aside.

6. On the other hand, Mr.Animesh Tiwari, learned Deputy Advocate General for respondent No.1/State, would submit that the impugned order has been passed by respondent No.2 as the State is formal party.
7. Mr.Pawan Shrivastava, learned counsel for respondent No.2, would submit that order dated 4.6.2011 has rightly been passed and the word 'probation' has rightly been omitted and as such, the petitioner was only an employee appointed on collectorate rate and by giving him one month's salary in lieu of notice his services have rightly been terminated, as such, the writ petitioner deserves to be dismissed.
8. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
9. In the present case, two questions arise for consideration,

(i) Whether, respondent No.2 is justified in altering the condition of service by order dated 4.6.2011 without affording an opportunity of hearing to the petitioner ?

(ii) Whether, the order of termination dated 15.12.2011 is in accordance with law ?

Answer to question No.1:-

10. The petitioner was appointed on the vacant and sanctioned post of Peon (collectorate rate) by order dated 25.1.2008 on probation of two years on which he joined on 1.2.2008 and thereafter by order dated 21.4.2010 his probation was confirmed in accordance with the provisions contained in the Rules of 1961 and thereafter order dated 4.6.2011 (Annexure P-7) came to be passed holding that the word 'probation' is omitted in appointment order dated 25.1.2008 and confirmation order dated 21.4.2010 and thereafter by order dated 15.12.2011 (Annexure P-1), the petitioner's services have been terminated, which has been called in question by the petitioner in this writ petition.

11. Rule 8 of the Rules of 1961 states as under:-

"8. Probation. - (1) A person appointed to a service or post by direct recruitment shall ordinarily be placed on probation for such period as may be prescribed.

(2) The appointing authority may, for sufficient reasons, extend the period of probation by a further period not exceeding one year.

(3) A probationer shall undergo such training and pass such departmental examination during the period of his probation as may be prescribed.

(4) The services of a probationer may be terminated during the period of probation if in the opinion of the appointing authority he is not likely to shape into a suitable Government servant.

(5) The services of a probationer who has not passed the departmental examination or who is found unsuitable for the service or post may be terminated at the end of the period of his probation.

(6) On the successful completion of probation: and passing of the prescribed departmental examination, if any, the probationer shall, if there is a permanent post available, be confirmed in the service or post to which he has been appointed, either a certificate shall be issued in his favour by the appointing authority to the effect that the probationer would have been confirmed but for the non-availability of the permanent post and that as soon as a permanent post becomes available he will be confirmed.

(7) A probationer, who has neither been confirmed, nor a certificate issued in his favour under sub-rule (6), nor discharged from service under sub-rule (4), shall be deemed to have been appointed as a temporary Government servant with effect from the date of expiry of probation and his conditions of service shall be governed by the Madhya Pradesh Government Servants (Temporary and Quasi-Permanent Service) Rules, 1960."

12. It appears that the petitioner's services were confirmed on 21.4.2010 after he has completed the period of two years on probation as he was appointed on the vacant post of Peon though on collectorate rate. Now the question is what constitutes the condition of service.
13. In the matter of Kailash Nath (supra) the Supreme Court has clearly held that confirmation is one of the conditions of service. It was observed as under:-

"7. In the normal course what falls within the purview of the term "conditions of service" may be classified as salary or wages including subsistence allowance during suspension, the periodical increments, pay scale, leave, provident fund, gratuity, confirmation, promotion, seniority, tenure or termination of service, compulsory or premature retirement, superannuation, pension, changing the age of superannuation, deputation and disciplinary proceedings. Whether or not a government servant should be prosecuted for an offence committed by him obviously cannot be treated to be something pertaining to conditions of service. Making a

provision that a government servant, even if he is guilty of grave misconduct or negligence which constitutes an offence punishable either under the Penal Code or Prevention of Corruption Act or an analogous law should be granted immunity from such prosecution after the lapse of a particular period so as to provide incentive for efficient work would not only be against public policy but would also be counter productive. It is likely to be an incentive not for efficient work but for committing offences including embezzlement and misappropriation by some of them at the fag end of their tenure of service and making an effort that the offence is not detected within the period prescribed for launching prosecution or manipulating delay in the matter of launching prosecution. Further, instances are not wanting where a government servant may escape prosecution at the initial stage for want of evidence but during the course of prosecution of some other person evidence may be led or material may be produced which establishes complicity and guilt of such government servant. By that time period prescribed, if any, for launching prosecution may have expired and in that event on account of such period having expired the government servant concerned would succeed in avoiding prosecution even though there may be sufficient evidence of an offence having been committed by him. Such a situation, in our opinion, cannot be created by framing a rule under Article 309 of the Constitution laying down an embargo on prosecution as a condition of service."

14. Similarly, in the matter of **H.L.Trehan** (supra), the Supreme Court has held that there can be no deprivation or curtailment of any existing right, advantage or benefit by a government servant without complying with the rules of natural justice by giving the government servant concerned an opportunity of being heard. It was observed as under:-

"11. One of the contentions that was urged by the respondents 1 to 4 before the High Court at the hearing of the writ petition, as noticed above, is that unguided and arbitrary powers

have been vested in the official by sub-section (1) of Section 11 for the alteration of the terms and conditions of service of the employees. It has been observed by the High Court that although the terms and conditions of service could be altered by CORIL, but such alteration has to be made 'duly' as provided in sub-section (2) of Section 11 of the Act. The High Court has placed reliance upon the ordinary dictionary meaning of the word 'duly' which, according to *Concise Oxford Dictionary*, means 'rightly, properly, fitly' and according to *Stroud's Judicial Dictionary*, 4th edn., the word 'duly' means 'done in due course and according to law'. In our opinion, the word 'duly' is very significant and excludes any arbitrary exercise of power under Section 11(2). It is now well established principle of law that there can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed by a Government servant without complying with the rules of natural justice by giving the Government servant concerned an opportunity of being heard. Any arbitrary or whimsical exercise of power prejudicially affecting the existing conditions of service of a government servant will offend against the provision of Article of the Constitution. Admittedly, the employees of CORIL were not given an opportunity of hearing or representing their case before the impugned circular was issued by the Board of Directors. The impugned circular was therefore, be sustained as it Offends against the rules of natural justice.

12. It is, however, contended on behalf of CORIL that after the impugned circular was issued, an opportunity of hearing was given to the employees with regard to the alterations made in the conditions of their service by the impugned circular. In our opinion, the post-decisional opportunity of hearing does not subserve the rules of natural justice. The authority who embarks upon a post-decisional hearing will naturally proceed with a closed mind and there is hardly any chance of getting a proper consideration of the representation at such a post-decisional opportunity. In this connection, we may refer to a recent decision of this Court in *K.I. Shephard v. Union of India*⁵. What happened in that case was that the Hindustan Commercial Bank, The Bank of Cochin Ltd. and

Lakshmi Commercial Bank, which were private Banks, were amalgamated with Punjab National Bank, Canara Bank and State Bank of India respectively in terms of separate schemes drawn under Section 45 of the Banking Regulation Act, 1949. Pursuant to the schemes, certain employees of the first mentioned three Banks were excluded from employment and their services were not taken over by the respective transferee Banks. Such exclusion was made without giving the employees, whose services were terminated, an opportunity of being heard. Ranganath Misra, J. speaking for the court observed as follows: (SCC pp. 448-49, para 16)

"We may now point out that the learned Single Judge of the Kerala High Court had proposed a post-amalgamation hearing to meet the situation but that has been vacated by the Division Bench. For the reasons we have indicated, there is no justification to think of a post-decisional hearing. On the other hand, the normal rule should apply. It was also contended on behalf of the respondents that the excluded employees could now represent and their case could be examined. We do not think that would meet the ends of justice. They have already been thrown out of employment and having been deprived of livelihood they must be facing serious difficulties. There is no justification to throw them out of employment and then give them an opportunity of representation when the requirement is that they should have the opportunity referred to above as a condition precedent to action. It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose."

13. The view that has been taken by this Court in the above observation is that once a decision has been taken, there is a tendency to uphold it and a representation may not yield any fruitful purpose. Thus, even if any hearing was given to the employees of CORIL after the issuance of the impugned circular, that would not be any compliance with the rules of natural justice or avoid the mischief of arbitrariness as contemplated by Article 14 of the Constitution. The High Court, in our opinion, was perfectly justified in quashing the impugned circular."

15. As such, the petitioner having been completed the period of probation on 31.1.2020 and having been found suitable for the post of Peon (collectorate rate) on 21.4.2010 and confirmed thereby and confirmation being condition of service, respondent No.2 could not have unilaterally withdrawn the fact of confirmation as admittedly he has held to have been confirmed on the post of Peon (collectorate rate), that too without affording an opportunity of hearing to him, as such, the order dated 4.6.2011 (Annexure P-7) deserves to be and is hereby set-aside as held by the Supreme Court in the matters of H.L.Trehan (supra) and Kailash Nath (supra). The question is answered accordingly.

Answer to question NO.2:-

16. The petitioner was confirmed employee as he has been confirmed by order dated 21.4.2010 after completion of period of probation. As already held in foregoing paragraphs that order dated 4.6.2011 is without jurisdiction and without authority of law the petitioner being confirmed employee on the date of termination dated 15.12.2011, his services could not have been terminated without holding regular departmental enquiry in accordance with Rule 14 (1) of the Chhattisgarh civil Services (Classification, Control and Appeal) Rules, 1966 (hereinafter called as 'Rules of 1966') as termination from service is major penalty within the

meaning of Rule 10 (viii) of the Rules of 1966 and as such, merely giving one month's salary in lieu of notice, the petitioner's services could not have been terminated.

17. Accordingly, the order dated 4.6.2011 (Annexure P-7) altering the condition of service and the order dated 15.12.2011 (Annexure P-1) terminating the services of the petitioner are hereby set-aside. Respondent No.2 is directed to reinstate the petitioner forthwith with all consequential service benefits except backwages. The question of backwages will be considered by respondent No.2 in accordance with applicable Rules on the basis of material available on record and to pass an order within two months from the date of a copy of this order. The petitioner is at liberty to file representation within two weeks claiming backwages.
18. The writ petition is allowed to the extent indicated hereinabove. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-