

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 2635 of 2017**

1. Khilendra Kumar Sahu S/o Shri Udholal Sahu, Aged About 46 Years
R/o Village Singarpur, Tahsil Chhuikhadan ----- **Petitioner**

Versus

1. State Of Chhattisgarh Through The Secretary, Panchayat And Rural Welfare Department, Mahanadi Bhawan, Mantralaya, New Raipur Chhattisgarh, Chhattisgarh
2. The Commissioner, Durg Division, Durg, Chhattisgarh
3. The Collector, Durg, District Durg Chhattisgarh.
4. The Chief Executive Officer, Janpad Panchayat, Chhuikhadan, District Rajnandgaon Chhattisgarh
5. The Block Education Officer, Chhuikhadan, District Rajnandgaon Chhattisgarh
6. Janpad Panchayat, Through Its Chief Executive Officer, Janpad Panchayat, Chhuikhadan, District Rajnandgaon Chhattisgarh

----Respondents

For Petitioner	:	Shri Goutam Khetrapal, Advocate.
For State	:	Ms. Sunita Jain, G.A.
For Respondents No. 4 & 6	:	Shri Rajnish Singh Baghel, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****15.06.2021**

1. Aggrieved by the decision of the Divisional Commissioner dated 01.12.2016 arising out of an order of termination from service dated 04.09.2015, the present writ petition has been filed.
2. The facts of the case in brief is that the petitioner was initially appointed as a Shiksha Karmi Grade-III vide order dated 25.08.2008 at the primary school at village Singarpur under Tahsil Chhuikhadan District Rajnandgaon. Serving the respondents for two years, the service of the

petitioner was regularized vide order dated 25.08.2010. However, on the allegation of unauthorized absence for a considerable period of time and also on account of a misconduct of being found in a drunken condition, the service of the petitioner was terminated vide order dated 04.09.2015 Annexure P/3 by the Chief Executive Officer Janpad Panchayat Chhuikhadan i.e. the respondent No. 4.

3. Aggrieved by the order of termination, the petitioner preferred an appeal before the Appellate Authority- the respondent No. 3 on 08.03.2016 and the Appellate Authority vide order dated 28.03.2016 (Annexure P/4) has rejected the appeal on the ground of limitation and also observing that there was no application for condonation of delay. The petitioner thereafter preferred a revision petition before the Divisional Commissioner, who inturn vide Annexure P/1 dated 01.12.2016 rejected the revision petition upholding the order of the Appellate Authority in dismissing the appeal on the ground of limitation.
4. Counsel for the petitioner relying upon a recent judgment of the Hon'ble Supreme Court in the case of **Sesh Nath Singh v. Baidyabati Sheoraphuli Co-operative Bank Ltd.** 2021 SCC On-Line SC 244 submitted that the authorities ought to have shown magnanimity in entertaining the appeal on merits, particularly when the order under challenge was an order of termination which otherwise amounts to a capital punishment. According to the counsel for the petitioner, even without an application for condonation of delay, the Appellate Authority so also the Revisional Authority could have ordered for the petitioner to submit plausible explanation for the delay caused in preferring the appeal and should have thereafter proceeded and decided the appeal

on merits ignoring the technicality of limitation.

5. Learned counsel for the petitioner further referring to the provisions of the Panchayat Raj (Discipline and Appeal) Rules submits that the authorities have been conferred with the power to condone the delay on sufficient cause being explained. That for all these reasons, the authorities should have considered and decided the appeal on its own merits instead of rejecting the case on the ground of limitation. The learned Counsel for the petitioner submits that if the appeal is not decided on its own merits, the petitioner would be put to irreparable loss as he would be remedy less to further challenge the order of termination which otherwise as a direct barring on the very livelihood of the petitioner and his dependents. For this reason also, the Appellate Authority should have sympathetically and orally entertained the application for condonation of delay and decided the appeal on merits.
6. It is the further contention of the counsel for the petitioner that on merits also the petitioner has a good case in as much as the order of termination has been passed without conducting a departmental enquiry, without granting an opportunity of hearing, without making known to the petitioner the specific nature of misconduct that he has committed and thus, the entire action becomes in direct contravention to the service regulations governing the field of Shiksha Karmi. The contention of the petitioner further is that both under the provisions of Panchayat Raj Adhiniyan as also under the provision of the rules governing the service condition of the Shiksha Karmi, it requires that a person against whom an adverse order is passed, should always be given an opportunity of hearing which in the instant case has not been

done so.

7. Learned counsel for the State as also the counsel for the Janpad Panchayat on the other hand submitted that it is a case where there was gross misconduct committed by the petitioner in as much as he remained for unauthorized absence for a considerable long period and was always found under inebriated condition.
8. It was also the contention of the counsel for the respondents that the entire action has been initiated at the resolution of the General Administrative Committee which inturn had taken the decision at the behest of a recommendation made by the Block Education Officer, therefore there is hardly any scope of interference left.
9. Having heard the contentions put forth on either side and on perusal of records particularly taking note of the two orders one passed by the Collector on 28.03.2016 (Annexure P/4) and the other passed by the Commissioner on 01.12.2016 (Annexure P/1), this Court is of the opinion that admittedly both these orders were passed without considering the merits of the case and have been only dealing with the aspect of limitation. Admittedly, the rules provide for the powers of the Appellate Authority to condone the delay while entertaining an appeal. One must not forget that the order under challenge in an appeal was an order of termination.
10. From the pleadings enclosed along with writ petition particularly the return filed by the respondents, there does not seem to have been any opportunity of hearing given to the petitioner before the impugned order was passed nor has the reply of the respondents been able to substantiate, even an explanation has not been called from the

petitioner before the impugned order was passed. The rule governing the field specifically provides for an opportunity of hearing to be given before a decision is taken. These facts ought to have been considered by the Appellate Authorities who have not considered the same.

11. Moreover, considering the facts that the entire reply put forth by the respondents respectively are totally silent on the aspect of the specific period of unauthorized absence, the specific incident on which the petitioner was found to be in an inebriated condition etc. Even if the petitioner was unauthorizedly absent at least when the General Administrative Committee intended to proceed against the petitioner and passed a resolution, they ought to have been very specific in respect of the allegations that were made against the petitioner, it should have been reflected in the resolution, particularly the long period of absence as alleged the nature of other misconduct as reflected from the order of termination. The resolution also on perusal is found to be either vague or baldly worded keeping material details in respect of the allegations and charges against the petitioner.

12. In view of the aforesaid facts and circumstances of the case, this Court has no hesitation in reaching to the conclusion that the impugned order of termination Annexure P/3 dated 04.09.2015 is not sustainable in the eye of law and the impugned orders passed by the Collector as also by the Commissioner Annexure P/4 and P/1 respectively are also not sustainable, the three orders are set-aside/quashed and the matter stands remitted back to the disciplinary authority and the petitioner as a result would be entitled for reinstatement in service.

13. However, it is made specific that applying the doctrine "No Work

No Pay”, the petitioner would not be entitled for the wages for the intervening period, however there shall be the benefit of continuity of service provided to the petitioner for the intervening period. It is also ordered that the liberty shall stand reserved for the respondents to initiate appropriate disciplinary proceedings against the petitioner for the specific misconduct that he has committed for which he has been terminated vide order dated 04.09.2015 after following the due procedure of law and also in compliance of the principle of natural justice.

- 14.** In the event if the respondents initiated any action, they are expected of concluding the proceedings at the earliest preferably within a period of 120 days from the date of receipt of copy of this order.
- 15.** With the aforesaid observations and directions, the writ petition stands partly allowed and disposed of.

Sd/-

P. Sam Koshy
Judge