

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 527 of 2013**

G.P. Chouhan, S/o Late Shri Amali Ram Chouhan,
Aged about 59 years, Presently Working as
Assistant Manager, Manure Stocking Center
Kunkuri, Post and Thana Kunkuri, Distt. Jashpur,
Chhattisgarh.

---Petitioner

Versus

1. Chhattisgarh State Co-operative Marketing
Federation Ltd., 880, Civil Lines, Thana and Post
Civil Line Raipur, Through the Secretary.
2. District Marketing Officer, Chhattisgarh, State
Co-operative Marketing Federation Ltd. Jashpur,
Post, Thana and Tahisl Jashpur, Distt. Jashpur,
Chhattisgarh.
3. Distt. Marketing Officer, Chhattisgarh, State Co-
opearative Marketing Federation Ltd. Raigarh,
Post, Thana and Tahsil Raigarh, Distt. Raigarh,
Chhattisgarh.

---Respondents

For Petitioner	:-	Mr. Manoj Chouhan, Advocate
For Respondents	:-	Mr. Ashish Surana, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

22/09/2021

1. Petitioner herein calls in question the legality, validity and correctness of order dated 31/01/2013 (Annexure P/1) by which his promotion on the post of Assistant Manager has been cancelled and he has been reverted to the post of Senior Assistant.
2. Mr. Manoj Chouhan, learned counsel for the petitioner, would submit that the impugned order is in violation of principles of natural justice as without affording any opportunity of hearing to the petitioner, his promotion on the post of Assistant Manager has been cancelled and he has been reverted to the post of Senior Assistant which runs contrary to the decision rendered by the Supreme Court in the matter of **Rajnish Kumar Mishra and Others v. State of Uttar Pradesh and Others**¹.
3. Mr. Ashish Surana, learned counsel for the respondents, would submit that since the petitioner did not follow the promotional order dated 07/07/2008, therefore, his promotional order has been cancelled. The petitioner has been inflicted with punishment on 22/02/2012 for non-compliance of the directions and that order has

¹ (2019) 17 SCC 648

attained finality, as such, the instant writ petition deserves to be dismissed.

4. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.
5. True it is that petitioner was promoted on the post of Assistant Manager vide order dated 07/07/2008 and he is said to have joined the promotional post on 17/07/2008. Thereafter, on 31/01/2013 (Annexure P/1), petitioner's order of promotion has been cancelled after he has worked on the promotional post for more than 4 years and he has been reverted to the post of Senior Assistant.
6. A careful perusal of the impugned order dated 31/01/2013 (Annexure P/1) would show that it is the case of the respondents that the order of promotion dated 07/07/2008 has not been followed by the petitioner and it runs contrary to Clause 18 and 23 of Karmchari Sewaniyam applicable to the petitioner and it amounts to a serious misconduct and he has been inflicted with punishment on 22/02/2012, as such, his promotion on the post of Assistant Manager has been

cancelled and he has been reverted to the post of Senior Assistant.

7. The Supreme Court, in the matter of Rajnish Kumar Mishra (supra), has held that even before cancellation of regularisation, the opportunity of hearing is necessary. Paragraph 17 of the judgment states as under :-

"17. As such, apart from the circular issued by the Registrar General of the High Court dated 05.11.2009, the appellants' cases were also required to be taken into consideration in view of the exception carved out in the case of State of Karnataka v. Umadevi². We find that the Committee under the chairmanship of the Additional District Judge had rightly submitted its report dated 12.07.2012 and the then District Judge had rightly passed the order of regularization on 09.11.2012 granting regularization from 01.06.2012. We find, that while considering the representation of some of the employees for promotion, the successor in the office of the District Judge could not have annulled the order of the regularization of the appellants which was done after following the proper procedure. The least that was required to be done was to follow the principles of natural justice by giving an opportunity of being heard to the appellants. We find, that the three orders passed by the District Judge dated 16.08.2014 also suffer from violation of the principles of natural justice. "

8. In the instant case though the petitioner has been promoted on the post of Assistant Manager and he has been working on the promotional post for more than four years, but by impugned order dated 31/01/2013 (Annexure P/1) holding him

guilty of certain misconduct, his order of promotion has been cancelled without affording him any opportunity of hearing and without conducting any departmental enquiry, which is in violation of principles of natural justice and principles of law laid down by the Supreme Court in Rajnish Kumar Mishra (supra). Apart from that, petitioner has also been reverted to the post of Senior Assistant without following the applicable conduct rules.

9. Consequently, the impugned order dated 31/01/2013 (Annexure P/1) is hereby set aside. However, this will not bar the respondents to proceed in accordance with law. Since the petitioner has already retired in the year 2016, he will be entitled for all the service benefits of the promotional post till the date of his superannuation/entitlement which will be paid to him within three months from the date of receipt of a copy of this order.

10. Accordingly, this writ petition is allowed to the extent indicated herein-above. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge