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HIGH COURT of CHHATTISGARH, BILASPUR**WA No. 419 of 2020****Judgment reserved on 18.11.2020****Judgment delivered on 06.01.2021**

(Arising out of order dated 27.02.2020 passed by learned Single Judge in WP(S) No. 2140 /2009)

- Sajjanlal Chakradhari, aged about 62 years, S/o Shri Jageshar Prasad (Dissisted Civil Judge Class-II) R/o Bajrangipara behind Ganesh Talkies Janjgir, District Janjgir-Champa C.G.

-----Appellant/ Petitioner**VERSUS**

1. State of Chhattisgarh, through Chief Secretary Law and Legislative Affairs Department, Secretariat, Mahanadi Bhawan, Police Station and Post Rakhi, Naya Raipur, District Raipur C.G.
2. The High Court of Chhattisgarh through the Registrar General, High Court of Chhattisgarh at Bilaspur C.G.

-----Respondents

For Appellant	:	Mr. Ramkumar Tiwari, Advocate
For Respondent-State	:	Mr. Sudeep Agrawal, Deputy Adv. Gen.
For Respondent 2	:	Mr. Amrito Das, Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****C.A.V. Order****Per Parth Prateem Sahu, J.**

1. Declining interference with the order of termination of appellant from his services *vide* impugned order dated 27.02.2020 passed in WPS No. 2140/2009 is the subject matter of this appeal.
2. Necessary facts for disposal of this appeal are that the appellant was appointed as Civil Judge, Class II on 17.10.1994. When the appellant was posted as 1st Civil Judge, Class II and Judicial Magistrate, I-Class (JMFC), Dantewada, some complaints were made against him by the employee namely Mr. Jitendra Mahapatra, Reader to Court of Judicial Magistrate,

Dantewada and one Mr. Ashok Jain, Advocate, stating therein that the appellant was abusing in filthy language, wrote objectionable language in the Court record, along with other allegations. Based on the complaint, appellant was put under suspension *vide* order dated 01.09.2005 in contemplation of departmental enquiry. Charge-sheet was issued to him, after completion of the departmental enquiry, in accordance with law, enquiry report was placed before the Full Court. Upon going through the entire records of the departmental enquiry, Full Court recommended for termination of services of the appellant. Based on the recommendation order Annexure P-1 dated 16.11.2007 was passed by order and in name of the Governor, dismissing the appellant from services with a disqualification for future employment. Against the order of punishment, appellant preferred an appeal under Rule 23 of Chhattisgarh Civil Services (Classification, Control and Appeal) Rule, 1966 (for short "CCS Rule, 1966") which came to be dismissed on 22.10.2008. Against the dismissal of the departmental appeal, appellant filed a writ petition before the High Court challenging the order of punishment dated 16.11.2007 and order passed in appeal dated 21.10.2008. Learned Single Judge, upon considering the material placed on record dismissed the writ petition *vide* order dated 27.02.2020 (Annexure P-1).

3. Mr. Ramkumar Tiwari, learned counsel for the appellant submits that learned Single Judge has not taken into consideration entire grounds raised in the writ petition, hence, order Annexure A-1 is not sustainable. He submits that very specific ground was raised with regard to the authority of the Chief Secretary of Law and Legislative Affairs Department, issuing the order of dismissal from services but that has not been considered. He further submits that the appellant has further raised a ground that the order of termination from services could not have been passed by the authority as the Principle Secretary who is a Sub-ordinate Officer

to the appointing authority of the appellant. Mr. Tiwari also argued that before termination of the service of appellant, Public Service Commission has not been consulted, hence there is violation of Rule 15 of CCS Rule, 1966 and also violative to Article 320(3) of Constitution of India. It is also argued that the petitioner has been terminated on the basis of false and fabricated complaint, and submits that the impugned order to be set aside and appropriate order(s) be passed.

4. Mr. Amrito Das, learned counsel representing Respondent 2 controverting the submissions made by the learned counsel for the appellant submits that the complaint has been made against the appellant not only by employees of Court but also by the President of Bar Association, District Court, Dantewada, levelling serious allegations against him. Based on the complaint, charge-sheet was issued and a full fledged enquiry was conducted against him. Based on the enquiry report, Full Court has passed a resolution concluding to dismiss the appellant from services under Sub-Rule IX of Rule 10 of CCS Rules 1996 and based on the recommendation, Annexure P-1 order was passed by the Competent Authority of dismissal from services. He further contended that the departmental enquiry has been conducted strictly in accordance with law and based upon which the petitioner was served with the order Annexure P-1. Learned Single Judge upon considering the entire facts and circumstances of the case has passed the impugned order which does not call for any interference. Appellant has not raised any ground with regard to any irregularity or illegality committed by the Enquiry Officer during the course of Departmental Enquiry. He submits that the appeal is devoid of any merit and it is to be dismissed.
5. We have heard learned counsel for the respective parties and also perused the record.

6. So far as the ground raised by the learned counsel for the appellant with regard to the authority of Principal Secretary in issuing Annexure P-1 ie. order of dismissal from services, perusal of order Annexure P-1 would clearly show that it is not the Principal Secretary who passed the order but he has signed the order to be and in the name of his excellency Governor who is the appointing authority. In view of the above, the first ground raised by the learned counsel for the appellant that the impugned order Annexure P-1 is passed by the authority subordinate to appointing authority is not correct and is misconceived. The first ground raised by the learned counsel for the appellant for the reasons mentioned therein is hereby repelled. The second ground raised by the learned counsel for the appellant that the committee of Three-judge has not taken any decision but it is the Full Court, resolved for dismissal of the appellant is contrary to law. Article 235 of the Constitution of India envisages for control of subordinate Court wherein the entire control including posting, promotion etc. belonging to the Judicial Services of a State is vested in the High Court.
7. In this case, as per Annexure R-2/8 and R-2/9 placed on record shows that the Full Court resolved for dismissal of the appellant from services and that order is in consonance with Article 235 of Constitution of India. So far as the other ground raised by the learned counsel for the appellant with regard to Rule 15(3) of CCS Rule 1966 that before passing an order of dismissal, Public Service Commission was not consulted. When there is resolution passed by the Full Court in exercise of its power under Article 235, then there is absolutely no requirement for the appointing authority to re-consult with the PSC. The issue with regard to consultation with PSC was considered by the Supreme Court in the case of **Baldev Raj Guliani & Others vs The Punjab & Haryana High Court** reported in **AIR 1976 2490** and held thus:

“31. It is true that under Article 235 as well as under the Appointment and Punishment Rules the Governor is the appointing and punishing authority. But under Article 235 the High Court is the sole custodian over the discipline of the judicial officers. There is no warrant for introducing another extraneous body between the Governor and the High Court in the matter of disposal of a disciplinary proceeding against a judicial officer. It is submitted on behalf of the appellants that Article 320(3)(c) provides that the Public Service Commission shall be consulted on all disciplinary matters affecting a person serving under the Government of a State in a civil capacity. Judicial Officers although holding posts in civil capacity are not serving under the Government of a State. They hold posts in connection with the affairs of the State but are entirely under the jurisdiction of the High Court for the purpose of control and discipline. There is, therefore, no constitutional justification or sanction for the Governor, even if he wishes, to consult the Public Service Commission under Article 320(3) (c) in respect of judicial officers. Consultation with the Public Service Commission in this case and preference accorded to its advice ignoring the recommendation of the High Court have introduced a serious constitutional infirmity in the final order of reinstatement passed by the Governor.

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35. The matter should not be considered from the angle of supremacy of one organ over the other. That will be an entirely erroneous approach. The Constitution reposes certain power in the Governor even under Article 235. He is the authority to pass the order of removal, albeit, on the recommendation of the High Court. That is the constitutional scheme. The Governor, however, cannot pass any order, as has been done in this case, without reference to the High Court and except on its recommendation. Solution must be found in harmony and not in cold war between the two organs.

36. The Governor could not have passed any order on the advice of the Public Service Commission in this case. The advice should be of no other authority than the High Court in the matter of judicial officers. This is the plain implication of Article 235. Article 320(3)(c) is entirely out of place so far as the High Court is concerned dealing with judicial officers. To give any other interpretation to Article 320(3)(c) will be to defeat the supreme object underlying Article 235 of the Constitution specially intended for protection of the judicial officers and necessarily the independence of the subordinate judiciary. It

is absolutely clear that the Governor cannot consult the Public Service Commission in the case of judicial officers and accept its advice and act accordingly to it. There is no room for any outside body between the Governor and the High Court.”

8. In the light of aforementioned law declared by the Supreme Court, the ground raised with regard to Rule 15(3) of CCS Rule, 1966 is also not sustainable and it is hereby repelled. The learned Single Judge had considered the manner in which the Departmental Enquiry has been conducted in paragraphs 4 and 5 of its order which is extracted below for ready reference.

“4. Along with the above charge sheet, the petitioner was served with list of witnesses and list of documents. Petitioner submitted his reply vide Annexure – P/10 and denied the charges. In course of departmental enquiry the Presenting Officer examined (1) Shri Pooran Singh Yadav, Peon of CJM, Dantewada; (2) Shri Murali Chandrawanshi, Deposition Writer of CJM, Dantewada; (3) Shri Rajendra Vaid, AG III, Court of ADJ, Dantewada; (4) Shri Ashok Jain, Advocate; (5) Shri Jitendra Kumar Mahapatra, the then Reader of CJM, Dantewada; (6) Shri M.S. Pare, the then Court Superintendent; (7) Shri T.K. Jha, 1st Addl. District & Sessions Judge, Dantewada; and (8) Shri C.B.S. Patel, District & Sessions Judge, South Bastar, Dantewada. The complaints lodged by Shri Ashok Jain, Advocate and Shri Jitendra Mahapatra, memo written by Shri T.K. Jha to the High Court over the said complaint, complaint filed by Shri Murli Chandrawanshi and the preliminary report of Shri C.B.S. Patel, District & Sessions Judge were also proved in course of enquiry, however, the petitioner has challenged the contents of complaints and the reports.

5. Based on statement of witnesses and the documents referred above the Enquiry Officer concluded that the petitioner was fully drunk/intoxicated while on duty as Civil Judge Class-II/JMFC, Dantewada and has filthily abused and misbehaved with the Deposition Writer and Reader of CJM, Dantewada as also with Shri Ashok Jain, Advocate. These witnesses have fully supported the charge against the petitioner.

9. Learned Single Judge has also perused the entire record of the Departmental Enquiry and satisfied that there is no perversity in the finding of the guilt recorded by the Enquiry Officer and taking note of the judgment passed by the Supreme Court in the case of **General Manager, (Operations) State Bank of India and another v. R. Periyasamy** reported in **(2015) 3 SCC 101** declined interference with the order Annexure P-1. The impugned order passed by the learned Single Judge is well reasoned which in the opinion of this Court does not call for any interference.
10. For the foregoing reasons, we do not find any tenable ground in the appeal which is liable to be and is hereby dismissed accordingly.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge