

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 5789 of 2019

1. Bhuneshwar Kashyap S/o Shri Barnauram Kashyap Aged About 34 Years
R/o Gram Mandar Post Taragaon, Tehsil Lohandiguda District Bastar,
Chhattisgarh.

---Petitioner(s)

Versus

1. State of Chhattisgarh Through Its Secretary, Department of Panchyat and
Rural Development, Mantralaya Mahandi Bhavan, Atal Nagar, Raipur,
Chhattisgarh.
2. The Commissioner Bastar Division, Jagdalpur, Chhattisgarh.
3. The Chief Executive Officer Jila Panchyat, Bastar Jagdalpur, Chhattisgarh.

---Respondents

For Petitioner	:	Shri Shailendra Dubey, Advocate.
For State	:	Shri Suyash Dhar, Panel Lawyer.
For Respondent No.3	:	Shri CJK Rao, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

28.09.2021

1. Aggrieved by the impugned order Annexure P/1 dated 22.06.2019 the
present writ petition has been filed. Vide the impugned order the
respondent No.3 has dismissed the petitioner from service.
2. Brief facts relevant for the disposal of the writ petition is that the petitioner
was initially appointed as Panchayat Karmi in the year, 2006. Down the
line, the petitioner got appointed as Panchayat Secretary on 11.02.2008.
Discharging the duties of Panchayat Secretary, the petitioner was placed
under suspension for the alleged misconduct in the course of discharging
his duties on 09.06.2016. The petitioner was issued with charge sheet on
07.09.2016 and finally the disciplinary authority i.e. the respondent No.3
vide order dated 08.11.2016 dismissed the petitioner from service.
3. The petitioner, delinquent employee, preferred an appeal under Rule 15 of
the Panchayat Secretary (Appeal and Revision) Rules, 1999 (in short, the
Rules, 1999) before the divisional Commissioner. The Divisional

Commissioner finally vide order dated 12.06.2018 allowed the appeal, set aside the order of dismissal and remitted back the matter to the respondent No.3 leaving it open for the respondent No.3 to conduct disciplinary proceeding afresh after giving fair and reasonable opportunity of hearing to the petitioner. The order dated 12.06.2018 passed by the Commissioner was partly complied inasmuch as the petitioner was permitted to rejoin his duties on 20.06.2018 and the petitioner was discharging his duties continuously when abruptly the impugned order dated 22.06.2019 was passed discontinuing the services of the petitioner. The impugned order now has been passed on the ground that the appeal preferred by the petitioner was not before the appropriate forum under the provisions of the Rules, 1999 and since it was not decided by a proper appellate authority, the services of the petitioner was again dismissed.

4. The issue involved in the present writ petition to be considered is that as to what would be the effect of order of the Commissioner when it is assailed that the Commissioner did not have the jurisdiction and authority to decide the appeal under Rule 15 of Rules, 1999.
5. All said and done, the undisputed factual backdrop in the given case is that the petitioner's services were initially dismissed on 08.11.2016 by the order passed by the Chief Executive Officer, Zila Panchayat, the respondent No.3. The petitioner preferred an appeal before the Commissioner which stood allowed on 12.06.2018. It also stands established and admitted that the order dated 12.06.2018 has also been complied with inasmuch as the petitioner was taken back in service. Now if at all if the respondent No.3 was of the opinion that the order passed by the Commissioner was not proper, legal and justified, the only recourse available to the respondent No.3 was either to challenge the same before

any authority or court or competent court of law or to move an application for recalling or review of the order passed by the Commissioner highlighting the aspect of competency and jurisdiction and get the order recalled and then to take an appropriate remedial step, as the case may be. Unless the order of the Commissioner is held to be bad in law by any superior forum or the court the law particularly when it has already been complied with. The same disciplinary authority even otherwise cannot sit over the order of the Commissioner and hold it to have been issued by an incompetent authority or without jurisdiction and again terminate the services of the petitioner. This would be setting a wrong precedent in the course of execution of the orders passed by the higher authorities in the department and also in the course of incumbent employees resorting to remedies which are otherwise available under the rules.

6. In the instant case the respondent No.3 has not taken any steps either for review or recall of the order passed by the Commissioner which he ought to have been exercised, more so, for the reason that the order of the Commissioner in the appeal being a bi-partite order.
7. Given the said facts and circumstances of the case, the impugned order dated 22.06.2019 (Annexure P/1) therefore is not sustainable and the same deserves to be and is hereby set aside. However, it goes without saying that liberty which was reserved by the Commissioner in the course of passing of the order dated 12.06.2018 would still be open for the respondent No.3 to resort to if at all if the respondent No.3 so wants.
8. The writ petition therefore stands allowed. The petitioner shall be taken back in service immediately on the post that he was working prior to issuance of the impugned order dated 22.06.2019. As regards consequential benefits are concerned, this court is of the opinion that

applying the principle of no work no pay the petitioner would not be entitled for any back wages, however the intervening period shall be treated as period spent on duty for all other purposes.

9. Writ Petition is allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge

inder