

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2911 of 2020**

- Aadil Rashid Khan S/o Late Bashir Khan Aged About 50 Years R/o Ward No. 7 Dhaura Tikura Road Baikunthpur District Korea Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Woman And Child Development, Mahanadi Bhavan, Atal Nagar Raipur Chhattisgarh.
2. Collector Korea, District Korea Chhattisgarh.
3. District Programme Officer Department Of Women And Child Development, Baikunthpur District Korea Chhattisgarh
4. District Child Protection Officer District Korea Chhattisgarh.

---- Respondent

For Petitioner : Shri Aniket Verma, Advocate

For Respondent/ State : Shri Gagan Tiwari, Dy. G.A.

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****02.03.2021**

Heard.

1. The instant petition is against the dismissal of the petitioner from the member of the Child Welfare Committee (CWC) by order dated 19.10.2020 (Annexure P-1).
2. Learned counsel for the petitioner would submit that the petitioner was appointed on 11.04.2018 for 3 years and by order dated 19.10.2020 his services were removed as a member of Child Welfare Committee on the ground that he was working contrary to the terms of the appointment thereby

he was taking double benefit. He further submits that though the removal order Annexure P-1 is passed in exercising the power of Section 27 (7) of the Juvenile Justice (Care and Protection of Children) Act, 2015 however the reply says otherwise. Consequently, the State cannot change its stand. He further placed his reliance in the case of ***East Coast Railway and another VS. Mahadev Appa Rao and Others reported in (2010) 7 SCC 678*** and would submit that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise, therefore, the reason which is stated in the reply cannot be taken into consideration. He further submits that the petitioner never appeared before the Juvenile Justice Board after 13.06.2018 and 21.06.2018 whereas the administrative instructions were issued on 08.08.2018 by the State therefore that administrative instructions would not be applicable. He further submits that the petitioner was never heard before the removal order was passed therefore the order of removal is bad in law.

3. On the other hand, learned State counsel opposes the argument and would submit that the appointment of the petitioner was under certain conditions and one of the condition was that the petitioner will not engage himself in any other job other than being the member of Child Welfare Committee and since the petitioner was engaged in the profession of advocacy he was not able to provide sufficient time to Child Welfare Committee. Therefore, initially after a compliant was received, the petitioner along with other Child Welfare Committee members was given the notice on 29.08.2018, however, when the petitioner did not restrain himself to appear as an advocate in certain case before the Juvenile Justice Board an affidavit was submitted that he would not appear on the date before any Court when meeting of Child Welfare Committee is fixed, the said reply was not found proper and eventually he

was dismissed.

4. Heard learned counsel for the parties and perused the documents.
5. Perusal of the documents would show that the appointment of the petitioner to the Board of Child Welfare Committee was on 11.04.2018 vide Annexure P-2 for 3 years meaning thereby his tenure was to be ended on 10.04.2021. The clause 8 of the appointment order reads as under:-

"(8) यदि चयनित सदस्य, किसी ऐसे व्यवसाय/ सेवा में है, जो बालक कल्याण समिति के सदस्य के रूप में उनके कार्यों को प्रभावित कर सकते हैं, तो उन्हें अपनी वर्तमान सेवा/व्यवसाय का कार्य स्थगित करना होगा।"

6. The document would show that certain complaint were received that the petitioner was not able to devote time to Child Welfare Committee meetings, as such general instructions were issued by the respondent. The order sheet which is filed before the Court as Annexure R- 3 is of the Criminal Case No. 32 of 2018, the report of the Child Welfare Committee Officer would show that Aadil Rashid Khan the petitioner appeared as advocate for the boy who was in conflict with the law which was in respect of the POSCO Case and in the POSCO case the hearing of the POSCO victim child was also done by the Child Welfare Committee members wherein the petitioner was one of them. Thereby, admittedly on fact that the petitioner was appearing for a boy in conflict with law in one case and in the same case for the victim he has to hear in capacity of Child Welfare Committee member. Therefore apparently conflict of interest came to fore. The affidavit of petitioner would show that the guarded statement was made that on the date of meetings of Child Welfare Committee he would not appear as advocate, therefore such guarded statement cannot absolve the petitioner from the responsibility which was casted on him as Child Welfare Committee member. Apparently, the clause 8

of the appointment which purports that the person who is appointed as Child Welfare Committee member would refrain from any personal service or job would come into play as otherwise it would lead to conflict of interest in a given case when for the victim under the POSCO case the hearing is done while in same case for accused one appears. This would lead to draw an inference of conflict of interest & object of Juvenile Justice (Care and Protection of Children) Act, 2015.

7. Considering the admitted facts of this case, *prima facie* it appears that the petitioner worked against the clause 8 of the appointment which is reproduced in the foregoing para and as a result order dated 19.10.2020 (Annexure P-1) cannot be stated to be illegal or arbitrary.
8. In view of this, the petition sans merit is liable to be and is hereby dismissed.

Sd/-
(Goutam Bhaduri)
Judge

Jyoti