

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

WPS No. 6351 of 2019

Rohit Kumar Sahu & Ors. **Versus** State Of Chhattisgarh & Ors.

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08/11/2021	Shri Ashok Patil, counsel for the Petitioners. Shri Raghvendra Verma, G.A. for the State/ Respondent Nos. 1 and 2. None for Respondent Nos. 3 and 4, though served. Heard on I.A.No.1/2021, an application filed on 09.07.2021 praying for separation of the instant Writ Petition from Writ Petition (S) No.5125/2019. It is contended by learned counsel for the Petitioners that this matter has wrongly been tagged with Writ Petition(S) No.5125/2019 owing to certain inadvertent mistake, and therefore, it may kindly be delinked from the said matter. On due consideration, the application(I.A.No.1/2021) is allowed and instant Writ Petition is accordingly directed to be delinked from the said matter i.e. Writ Petition (S) No.5125/2019. Heard the matter finally with the consent of the parties. Order dictated in open Court, typed separately, signed and dated. Sd/- (Sanjay S. Agrawal) Judge

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HIGH COURT OF CHHATTISGARH, BILASPUR**WP(S) No. 6351 of 2019**

1. Rohit Kumar Sahu S/o Pardeshi Ram Sahu Aged About 42 Years R/o Village Mongri, Post Latabod, Tahsil And Police Station Gunderdehi, District- Balod, Chhattisgarh, District : Balod, Chhattisgarh
2. Smt. Giteshwari W/o Jageshwar Prasad Kaushal Kumar Sahu Aged About 37 Years R/o Village Khalari, Post Kalangpur, Tahsil And Police Station Gunderdehi, District Balod, Chhattisgarh, District : Balod, Chhattisgarh
3. Smt. Prabha Deshmukh W/o Tikendra Deshmukh Aged About 31 Years R/o Village Mundera, Post Kalangpur, Tahsil And Police Station Gunderdehi, District- Balod, Chhattisgarh., District : Balod, Chhattisgarh

---- Petitioners**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of Panchayat, Mahanadi Bhawan, Mantralaya, Capital Complex, Naya Raipur, District- Rapur, Chhattisgarh, District : Raipur, Chhattisgarh
2. Collector Kabirdham, District- Kabirdham, Chhattisgarh., District : Kawardha (Kabirdham), Chhattisgarh
3. Janpad Panchayat Bodla, Through Chief Executive Officer, Bodla, District- Kaibrdham, Chhattisgarh, District : Kawardha (Kabirdham), Chhattisgarh
4. Chairman Administrative Standing, Committee, Office Of The Janpad Panchayat Bodla, District- Kabirdham, Chhattisgarh, District : Kawardha (Kabirdham), Chhattisgarh

---- Respondents

For Petitioners	:	Shri Ashok Patil, Advocate
For State/Respondent Nos. 1 & 2	:	Shri Raghvendra Verma, G.A.
For Respondent Nos. 3 and 4	:	None, though served

Single Bench: Hon'ble Shri Justice Sanjay S. Agrawal
Order On Board

08.11.2021

1. The challenge in the present Writ Petition is to the order dated 29.6.2009 (Annexure P1), passed by the Collector, Kabirdham, whereby, the appeal (wrongly mentioned as Revision Petition) preferred by the Petitioners against the order passed by the Chief Executive Officer, Janpad Panchayat, Bodla on 27.9.2008,

rejecting the case of the Petitioners filed against the order of their termination, has been dismissed.

2. The facts of the case are that the Petitioners were appointed as Shiksha Karmi Grade III, at Primary School, Loop and Bairakh under Janpad Panchayat, Bodla, District Kabirdham (CG) vide order dated 17.12.2007 (Annexure P2). The Petitioners immediately assumed the office as Shiksha Karmi and continued to work till the services of the Petitioners were abruptly terminated vide order dated 27.9.2008 (Annexure P3), passed by the Chief Executive Officer, Janpad Panchayat, Bodla. The said order was questioned by the Petitioners before the Collector, Kabirdham in an appeal under Section 91 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 and the Collector vide his order dated 29.6.2009 dismissed the said appeal, leading to filing of the present Writ Petition.

3. The counsel for the Petitioners submits that the impugned order of termination as also the order passed by the Appellate Authority is bad in law for the reason that, the termination of the Petitioners was in total violation of Rule 7 of the Chhattisgarh Panchayat Services (Discipline and Appeal) Rules, 1999 (hereinafter referred to as 'the Rules of 1999'). He further submits that, the law in this regard is by now well settled by a catena of decisions wherein it has been held that for the purpose of terminating an employee whose services are governed under the Rules of 1999, the Respondent authorities are required to comply with the procedure prescribed under Rule 7. Having not done so, the impugned order is liable to be set-aside on this ground.

4. The State counsel, however, opposing the petition submits that, it is a case where there were large scale of irregularities detected at the time of appointment and on due verification since it was found that the Petitioners also have got

advantage of that irregularities, the services have been terminated. Therefore, the action of the Respondents cannot be said to be either malafides or in contravention to the provisions of law. He further submits that, since it was a question of appointment being obtained by playing fraud and mischief, the requirement of compliance of Rule 7 may not be required as it has been duly inquired into by the appointing authorities themselves and have found that there were certain lapses on part of the Petitioners on account of which they were not entitled for appointment and thus, prayed for rejection of the petition.

5. It appears that an identical set of facts, a bunch of Writ Petitions came up for hearing before this Court i.e. WPS No. 1420/2016 and other connected matters. This Court vide order dated 31.10.2018 decided the said Petitions and while deciding the same had considered the same issues which have been raised by the parties in the present case.

6. It would be relevant at this juncture to refer to the findings of this Court in the said order. For ready reference, paragraphs 9 to 12 is reproduced herein under:-

“9. Given the aforesaid admitted factual position of the case as also the judgment of this court in the case similarly situated persons belonging to the other Janpad Panchayat i.e. Janpad Panchayat Saja and also taking note that they were also terminated arising out of the same enquiry and in whose case there already is an order of setting aside of the termination order, this court in exercise of judicial discipline propriety and precedence is inclined to apply the same analogy in deciding the case of the petitioners as well. In the said judgment of Rohini Jha (Supra), this court has observed in paragraphs 3 to 5 as under :

(3) Admittedly, on certain allegations, show cause notice “was issued to the petitioners and when the respondent

authority was not satisfied with the reply of present petitioners, their services have been terminated. A Division Bench of this Court in the matter of Rooplal Nayak vs. State of Chhattisgarh and others, 2006(4) M.P.H.T. 99 (C.G.) has held that any of the major penalty prescribed under Rule 5(b) (iv) of the Rules, 1999 cannot be imposed on a member of Panchayat service to whom the said Rules are applicable without conducting regular Departmental Enquiry as envisaged under Rule 7 of the Rules, 1999.

(4) In the case at hand, no departmental enquiry has been held as contemplated under Rule 7. The said provisions uses the words 'formal inquiry' with further stipulation that when an order for 'formal enquiry' has been made, the disciplinary authority shall frame Definite charges, communicate the same to the delinquent along with the statement of allegations, requiring him to submit within the specified time a written statement of defence and also to state whether he desires to be heard in person. Thereafter, the defence is required to be permitted to inspect and take extracts from the records, which can be refused for reasons to be recorded in writing. On submission of reply by the delinquent, the disciplinary authority may himself enquire or appoint an enquiry officer. Appointment of Presenting Officer and seeking assistance of some other officers by the delinquent is also contemplated therein. The enquiry officer is also enabled to record evidence and thereafter, at the conclusion of the enquiry, the enquiry officer is supposed to prepare enquiry report, the copy of which is required to be furnished to the delinquent. Thus, the 'formal inquiry' envisaged under the Rules is akin to the procedure prescribed for a regular enquiry under Rule 14 of the C.G. Civil Services (Classification, Control and Appeal) Rules, 1966.

(5) The materials made available to this Court nowhere indicate that any enquiry as contemplated under Rule 7 has been initiated or conducted against the petitioner. Therefore,

the impugned order of termination is ex facie not sustainable in law and the same deserves to be set aside.

10. In the instant case also learned counsel for the respondents fairly submits that so far as the present petitioners are concerned, admittedly there has not been any Departmental Enquiry as such conducted. It was only a preliminary enquiry conducted and on the basis of the report of the preliminary enquiry the petitioners were issued with show cause notices and thereafter terminated. But, what is admittedly clear is that in the course of conducting of preliminary enquiry also the petitioners were not taken into confidence neither were they granted opportunity to disprove the contentions which had been raised by the department or which the department was investigating upon.

11. XXXXXXXXXX

12. Accordingly, all the writ petitions stand allowed and disposed of in terms of Rohini Jha's case. The impugned orders of termination, rejection of their appeals by the appellate authority as well as revisional authority all stand set aside/quashed for similar reasons as had been held in Rohini Jha's case, reserving the right of the department to proceed further, if they intend to do so, in accordance with provisions of law."

7. Having considered the view of this Court in the aforesaid order and the fact that it has based upon the earlier decision of this Court wherein it has been specifically held that for terminating an employee from service whose services are governed under the Rules of 1999, it is incumbent upon the Respondents to have initiated the proceedings as is required under Rule 7.

8. Non-compliance of the said rule vitiates the entire action on part of the Respondents. The impugned order in the instant case dated 29.06.2009 is, thus, unsustainable and the same deserves to be and is accordingly set-aside/quashed

with consequences to follow.

9. However, this Court is of the view that since the Petitioners have not discharged their duties during the intervening period, they would not be entitled for the wages for the intervening period. However, the said period would be counted for the purpose of continuity in service.

10. Needless to mention that since the Writ Petition is being allowed on the ground of non-compliance of Rule 7, the right of the department would stand reserved if they feel so may initiate appropriate proceedings in accordance with the said rules.

11. With the aforesaid observations, the Writ Petition stands allowed and disposed off.

Sd/-
(Sanjay S. Agrawal)
JUDGE