

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 196 of 2021**

Podiyami Hidma S/o Shri Podiyami Kosa Aged About 37 Years
 Panchayat Secretary (Suspended) Gram Panchayat Basedsatti, Janpad
 Panchayat Sukma, R/o 39, Rampuram, Gram Panchayat Jeerampal,
 District Sukma Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Panchayat And Rural Development, Mantralaya, Mahanadi Bhawan, P. O. And P. S. Rakhi, Atal Nagar, Nawa Raipur District Raipur Chhattisgarh
2. Chief Municipal Officer Jila Panchayat, Sukma District Sukma Chhattisgarh
3. Collector Sukma District Sukma Chhattisgarh
4. Chief Municipal Officer Janpad Panchayat Sukma District Sukma Chhattisgarh
5. Sub Divisional Officer (Revenue) Sukma District Sukma Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Atul Kumar Kesharwani, Advocate
For State	:	Mr. Kapil Maini, PL

Hon'ble Shri Justice P. Sam Koshy**Order on Board****02/02/2021**

1. The challenge in the present writ petition is to the show cause notice dated 08.06.2020 and also an order of recovery dated 01.12.2020 (Annexure P/7 & P/8 respectively).
2. The facts of the case is that the petitioner while working on the post of Panchayat Secretary, at Gram Panchayat, Basedsatti, District

Sukma was placed under suspension vide order dated 20.11.2019. Along with an order of suspension order, there was another order issued on the same date i.e. on 20.11.2019 ordering for recovery of an amount of about Rs.42 lakhs from the petitioner in respect of certain misappropriations and misconducts, which the petitioner has committed in the course of discharge of the duties as a Panchayat Secretary causing loss to the Gram Panchayat.

3. The petitioner challenged the order dated 20.11.2019, passed by the Chief Executive Officer before the Additional Commissioner by way of an appeal, which finally stood allowed vide the order dated 05.05.2020, whereby the learned Commissioner held that since the action on the part of the Chief Executive Officer in imposing penalty against the petitioner was without conducting of a departmental enquiry and was based only on the complaint and the preliminary enquiry and the preliminary enquiry report that was placed before him, the order of recovery could not be sustainable and the same was set-aside/quashed and the Commissioner thereby remitted the matter back to the Chief Executive Officer for taking an appropriate decision after conducting a departmental enquiry after giving a fair and reasonable opportunity to the petitioner.
4. It appears that subsequent to the order of the Commissioner dated 05.05.2020, the Chief Executive Officer again now vide Annexure P/7 dated 08.06.2020 have issued with a fresh show cause notice and on receiving the explanation from the petitioner, the order Annexure P/8 dated 01.12.2020 has been passed determining recovery of an amount of Rs. 42,28,469/- from the petitioner and

the said was to be deposited within a period of one month, failing which steps for removing the petitioner from service shall be initiated.

5. The counsel for the petitioner submits that even as on date the petitioner is continuing in service as a Panchayat Secretary. Only an order of suspension has till date been passed against the petitioner. No final order has been passed thereafter after Annexure P/8. The further contention of the petitioner is that impugned two orders are *per se* bad and illegal for the reason that once when there was a specific direction by the Commissioner to conduct a departmental enquiry, what was expected of the authority was to issue a formal charge-sheet to the petitioner and on the basis of the charge-sheet, call upon the explanation of the petitioner and thereafter conduct an inquiry wherein the petitioner would also get a chance of defending himself and would be able to adduce evidence in rebuttal to the evidence that the Department would be adduced. In the absence of any such inquiry, particularly in the light of an order passed by the Commissioner on 05.05.2020 passing of an order Annexure P/8 dated 01.12.2020 only on the basis of show cause notice issued, which again is based on an earlier preliminary enquiry conducted, would not be sustainable. It also would be in contravention to the order passed by the Commissioner in an earlier round of appeal, which the petitioner has preferred.
6. The provisions of the **Chhattisgarh Panchayat Service (Discipline and Appeal) Rules, 1999** specifically provides for the

procedure, under which the Panchayat Secretary can be removed. Rule 7 of the Rules of 1999 specifically raised on the procedure to be followed before imposition of a major penalty. There have been a catena of decisions by this Hon'ble Court dealing with the Rule 7 of the Rules of 1999 whereby it has been held that before imposition of a major penalty, the procedure as prescribed under Rule 7 has to be mandatorily followed. In the instant case, there does not seem to be any such procedure applied by the respondents before passing of the impugned order Annexure P/8 dated 01.12.2020.

7. For the aforesaid reasons, the said impugned order Annexure P/8 would not be sustainable and the same deserves to be and is accordingly set-aside, reserving the rights of the respondents to conduct a departmental enquiry as has been firstly ordered by the Commissioner and secondly as is envisaged under Rule 7 of the Rules of 1999 only thereafter appropriate decision be taken against the petitioner.
8. With the aforesaid observations, the present writ petition stands allowed. The impugned order Annexure P/8 stands set-aside/quashed.

Sd/-
(P. Sam Koshy)
Judge

Rohit