
(2010) 02 CHH CK 0013
In the Chhattisgarh High Court

Anil Kumar Ahirey

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 25-02-2010

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2010) 2 MPHT 105

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—By this petition, the petitioner seeks to challenge the legality and validity of the order dated 14-11-2002 (Annexure P-I) passed by the Additional Collector, Bilaspur and the order dated 10-12-2002 (Annexure P-2) passed by the Sarpanch, Gram Panchayat, Nagopahari, pursuant to the order dated 14-11-2002.

2. The facts, in nutshell, for disposal of the case, are that the petitioner was appointed as Panchayat Karmi on 24-11-1995. All of a sudden by order dated 14-11-2002 (Annexure P-I), on the basis of some complaints made by the villagers, the Additional Collector, Bilaspur, directed the Gram Panchayat, Nagopahari to remove the petitioner from the post of Panchayat Karmi. On the basis of the said order, the Sarpanch, Gram Panchayat, Nagopahari, passed the impugned removal order dated 10-12-2002 (Annexure P-2). Thus, this petition.

3. Shri Shastri, learned Counsel appearing for the petitioner would submit that since the mandatory, statutory provisions of Rule 7 of the Chhattisgarh Panchayat Service (Discipline and Appeal) Rules, 1999, (for short "the Rules, 1999") were not followed before removing the petitioner from the post of Panchayat Karmi, the impugned removal order was illegal and bad on the ground that the petitioner was not afforded any opportunity of hearing. To buttress his submission, learned Counsel appearing for the petitioner cited the decisions of

this Court rendered in *Raj Kumar v. State of Chhattisgarh and Ors.* W.P. No. 1850 of 2001, decided on 15-11-2006, *Dhaluram Kosaria v. State of C.G. and Ors.* 2006 (2) CGLJ 186, which was relied on in *Anjordas v. State of Chhattisgarh and Ors.* 2008 (III) MPJR-CG 110.

4. On the other hand, Shri Dubey, learned Counsel appearing for the respondent Nos. 3 and 5, would submit that a show-cause notice containing charges was issued to the petitioner on 26-11-2002 and response thereon was filed by the petitioner that satisfies the requirement of principles of natural justice and thereafter, the impugned order was passed, which is legal, just and proper.

5. I have heard learned Counsel appearing for the parties, perused the pleadings and the documents appended thereto.

6. Indisputably, a show-cause notice was issued containing certain charges, but the definite charges on the basis of allegations was never communicated and thereafter, no enquiry as contemplated under the provisions of the Rules, 1999 was held. The impugned order was passed on the basis of several complaints as stated by the respondent Nos. 3 and 5 in their return without scrutiny and examination of the so called complaints. Thus, it cannot be held that the basic principle of audi alterant partem was followed. Even otherwise, there is a violation of Statutory Rules, 1999, which lay down the procedure before imposition of penalty of removal from service on Panchayat Karmi.

7. Rule 7 of the Rules, 1999 provides for procedure before terminating service of a member of Panchayat. In the instant case, it is apparent that the said provisions were not followed, no definite charges were framed and the petitioner was not served with the statements of charges before holding an enquiry, leading to termination of the petitioner from his services and in fact neither the show-cause notice was issued nor the enquiry was held. Thus, the impugned order of removal is unsustainable.

8. It is evident that the impugned removal order was passed without following the statutory and mandatory procedure of law, as prescribed under Rule 7 of the Rules, 1999. The procedure for holding an enquiry is enshrined in Rule 7 of the Rules, 1999 for imposition of major penalty. Hence, the removal is bad and vitiated on the ground of non-compliance of the statutory provisions and denial of the principles of natural justice. It amounts to infraction of not only the provisions of Rule 7 of the Rules, 1999 but also the provisions of Article 311(2) of the Constitution of India. The order was in fact penal in nature, having civil consequences and as such compliance of the elaborate provisions, as enshrined in Rule 7 of the Rules, 1999 was mandatory in the present case. [See: *Raj Kumar (supra)*, *Dhaluram Kosaria (supra)* and *Anjordas (supra)*].

9. Against the decision rendered by this Court in *Raj Kumar (supra)*, the Gram Panchayat, Hardi, preferred Special Leave to Appeal (Civil) No. 2365 of 2007 (*Gram Panchayat, Hardi v. State of Chhattisgarh and Ors.*) before the Supreme Court, which was dismissed as withdrawn on 15-1-2010.

10. For the reasons mentioned hereinabove that the petitioner was removed from the post of Panchayat Karmi in an arbitrary manner, without following the principles of natural justice and further without following the statutory procedure, the petitioner remained out of job since a long period and according to learned Counsel for the petitioner, the petitioner has suffered great financial loss, thus grant of 30% back wages would sub-serve the interest of justice.

11. Resultantly, the writ petition is allowed with back wages, as aforesaid. The impugned orders dated 14-11-2002 (Annexure P-1) and 10-12-2002 (Annexure P-2) are set aside. However, the respondents are at liberty to initiate disciplinary action against the petitioner, if so advised, in accordance with law and in terms of the procedure prescribed in Rule 7 of the Rules, 1999.

12. There shall be no order as to costs.