

(2002) 03 CHH CK 0002
In the Chhattisgarh High Court
Case No : Writ Petition No. 2561 of 2000

Arif Hussain Siddiqui

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 13-03-2002

Acts Referred:

Madhya Pradesh Panchayat Raj Adhiniyam, 1993 — Section 91
Madhya Pradesh Panchayat Shiksha Karmis (Recruitment and Conditions of Service)
Rules, 1997 — Rule 5

Citation : (2002) 3 CGLJ 218 : (2002) 2 MPHT 53

Hon'ble Judges : Fakhruddin, J

Bench : Division Bench

Advocate : Mukhtar Ahmed, for the Appellant; Prashant Jaiswal and Prashant Mishra and Sanjay Kumar Agrawal, Dy. A.G., for the Respondent

Final Decision : Allowed

Judgement

Fakhruddin, J.—By this petition under Article 226 of the Constitution of India, the petitioner challenges the order passed by the respondent No. 7-Commissioner, Bilaspur Division, Bilaspur, dated 14-2-2000 (Annexure P-6) and that of Chief Municipal Officer-respondent No. 4, Nagar Panchayat, Dharamjaigarh, Dist. Raigarh (Annexure P-7).

2. Briefly stated the facts are that the petitioner was appointed on 18-3-1999 as per Annexure P-3 on the post of Shiksha Karmi, Grade-III, Purva Madhyamik Shala, Bazaarpara, Dharamjaigarh. He joined the said post immediately thereafter and was serving.

3. It is submitted that one Saiyacharan Sarkar, respondent No. 9 filed an appeal u/s 91 of Panchayat Raj Adhiniyam before the Commissioner, Bilaspur against the order dated 25-8-1999 (Annexure P-5) passed by the Chief Executive Officer, District Panchayat Raigarh-respondent No. 5. By this order Annexure P-5, an order was passed whereby the appointment of respondent No: 9 was cancelled on the ground that Chief Municipal Officer, Dharamjaigarh had no jurisdiction.

4, Respondent No. 9 impleaded State of Madhya Pradesh through Collector and Nagar Panchayat, Dharamjaigarh through Chief Municipal Officer as, respondents. The Commissioner noted that Satyacharan Sarkar was at Serial No. 4 in the selection list and he was serving in Durgapur Colony. It was further noted that on 25-8-99 when the order was passed regarding cancellation, the person who was junior in the order, his posting ought to have been considered. It was mentioned that Satyacharan Sarkar ought to have been posted in Durgapur and the said post ought to have been transferred. The relevant portion of the order of the Commissioner is reproduced :--

?3? izLrqr vihy ds rF;ksa ij eq[; uxj ikfydk] uxj iapk;r] /kjet;x<+ ls m?kj izkIr fd;k x;k A vihykFkhZ ds fo}ku vfHkHkk"kd ds rdks? dk Jo.k fd;k x;k A rdZ esa dgk x;k fd&f"k{k deHZ&oxZ&3 ds in gsrq uxj iapk;r] /kjet;x<+ }kjk vafre p;u lwph rS;kj dh x;h Fkh] ftlesa vihykFkhZ dk uke ojh;rk ?e esa pkSFks uacj ij Fkk A vihykFkhZ izk- "kkyk nqxxZiqj dkyksuh esa fu;q? gksdj dk;Z dj jgk gS A fnukad 25&8&99 ds vkns"k }kjk fu;qf? fujLr dh x;h gS A eq[; dk;Zikyu vf/kdkjh ftyk iapk;r dks ;g ekuuk Fkk fd f"k{k deHZ oxZ&3 ds in ij ojh;rk lwph esa of.kZr vihykFkhZ ds ckn ds ojh;rk de okys f"k{k deHZ dk;Zjr gSaaaaa A ,slh fLFkfr esa vihykFkhZ dh fu;qf? fujLr djus ds lkFk&lkFk ojh;rk lwph ds vuqlkj mlesa de ojh;rk izkIr f"k{k deHZ dh fu;qf? fujLr djrs gq, vihykFkhZ dh fu;qf? uxj iapk;r {ks= esa djuk Fkk A eq[; dk;Zikyu vf/kdkjh ftyk iapk;r dks ;g ekuuk Fkk fd izk- "kk- nqxxZiqj dkyksuh esa f"k{k deHZ oxZ&3 ds in fj? gSa] ftl ij vihykFkhZ dk;Zjr Fkk] rnuqlkj eq[; uxj ikfydk vf/kdkjh /keZt;x<+ }kjk nh x;h fu;qf? dks tuin iapk;r /keZt;x<+ dks LFkkukarfjr djrs gq, fu;qf? dh =qfV dks lq/kkj djrs gq, vkns"k ikfjr djuk Fkk A

?4? eq[; uxj ikfydk vf/kdkjh] uxj iapk;r] /keZt;x<+ }kjk izLrqr m?kj dk voyksdu fd;k A vihykFkhZ ds fo}ku vfHkHkk"kd ds rdksZ dk Jo.k ,oa euu fd;k A vihy Lohdkj dh tkrh gS A uxjikfydk o eq[; dk;Zikyu vf/kdkjh dks ;g funsZf"kr fd;k tkrk gS fd p;fur O;f?;ksa esa tks lcls de ojh;rk okyk gS mls lsokk eaaas i`Fkd djasa o tks Hkh O;f? ftls =qfVo"k lh/ks ftyk iapk;r us gVk fn;k gS ukSdj esa j[kk tk;s A

5. The contention of respondent No. 4 is that his posting order (Annexure P-7) was passed in compliance of the order by the Commissioner, Bilaspur Division, Bilaspur and terminated the services of the petitioner.

6. The petitioner submitted a representation praying for quashing of Annexure P-7. Annexure P-9 is the appointment order of respondent No. 9 which shows that he was appointed on 15-7-98 and was posted at Prathamika Shala, Durgapur as Shiksha Karmi.

7. The petitioner also filed a document as Annexure P-10 to show that Rameshwar Singh Chouhan who is at SI. No. 6, has been transferred to Abhyas Shala, Dharamjaigarh from Prathamika Shala, Dharamjaigarh and thereafter vide Annexure P-11 Shri Rameshwar Singh Chouhan's posting was cancelled and as such, the post of Rameshwar Singh Chouhan is vacant.

8. The petitioner's submission is that Annexure P-12 passed by respondent No. 4

intimating the Commissioner, Bilaspur that since Rameshwar Singh Chouhan's posting has been cancelled, therefore the Shiksha Karmi can be adjusted. The petitioner further submits that in any case since the post of R.S. Chouhan is lying vacant as has been recommended by the Chief Municipal Officer, Nagar Panchayat, Dharamjaigarh, the petitioner can be adjusted and the termination order of services of the petitioner, under these circumstances, is not sustainable.

9. The petitioner's grievance is that the appeal which was preferred u/s 91 was not maintainable under Panchayat Raj Adhinyam though the order was passed by the Zila Panchayat. But it was in compliance of Collector's order dated 28-7-99. The other grievance of the petitioner is that the petitioner was not joined as party nor he was heard by the Commissioner. It is submitted that in any case he was not heard when the order terminating his services (Annexure P-7) was passed. It is submitted that the order was issued. He had joined and was working on the post and for any reason, if termination is required, he ought to have been heard. The said order has been passed in violation of principles of natural justice. Reliance has been placed on the decision of Supreme Court reported in 1992 (6) SLR 718, Shrawan Kumar Jha and Ors. v. State of Bihar and Shrawan Kumar Jha and Ors. v. Ratnsevak Sharma and Ors., it was held that-

"By an order the Deputy Development Commissioner cancelled the appointments of the appellants. Mr. Ashok H. Desai, learned Solicitor General appearing for the respondent has contended that the appointments have been cancelled because the District Superintendent of Education had no authority to make the appointments, it was a devise of by-passing the reservations and that the conditions which are part of the appointment order were not complied with. Mr. U.R. Lalit and Mr. A.K. Ganguli, learned Senior Advocates, appearing for the appellants have controverted these allegations and have dated that all these teachers were variedly appointed and they had joined their respective schools. It is not necessary to go into all these questions. In the facts and circumstances of this case, we are of the view that the appellants should have been given an opportunity of hearing before cancelling their appointments. Admittedly, no such opportunity was afforded to them. It is well settled that no order to the detriment of the appellants could be without complying with the rules of natural justice. We set aside the impugned order of cancellation dated 3-11-1988 on this short ground. As suggested by the learned Solicitor General, we direct that the Secretary (Education), Government of Bihar, or to other person nominated by him should give an opportunity of hearing to the appellants and thereafter give a finding as to whether the appellants were validly appointed as Assistant Teachers. He shall also determine as to whether any of the teachers joined their respective schools and for how much duration. In case some of them joined their schools and worked, they shall be entitled to their salary for such period."

10. Further submission of the learned counsel for the petitioner is that it was the posting of respondent No. 9 that all the troubles started regarding the posting order of the respondent No. 9 which was cancelled by the Collector. It is

submitted that so far as respondent No. 9's order is concerned, it could not have been cancelled even without hearing him and it was without jurisdiction. It is further submitted that in any case under the guise of the posting what has been done is that appointment itself was cancelled.

11. Counsel for the petitioner further submitted that in Paragraph 5 of the return filed by respondent Nos. 1, 2, 3, 6 and 7, it is borne out that the question was regarding the posting in Urban area and the Rural area and not that of cancellation of any post. Paragraph 5 of return of respondent Nos. 1, 2, 3, 6 and 7 is reproduced for perusal.

"On receipt of complaint Collector, Raigarh found that one reserved post of Sankul Shaikshik Samanvayak, hereinafter referred to as C.A.C. for Dharamjaigarh Urban area, under the Rajeev Gandhi Shiksha Mission. According to Rajeev Gandhi Shiksha Scheme the Shiksha Karmi should have been appointed within the Urban area where school is situated. Against this post one Chanchal Vishwas, Teacher of Durgapur Colony Dharamjaigarh was posted and respondent No. 9 Shri Satyacharan Sarkar has been posted in the place of Shri Chanchal Vishwas at Durgapur Colony. According to respondent No. 9 Satyacharan Sarkar cannot be posted at Durgapur. Therefore, Collector, Raigarh vide its order dated 25-8-99 cancelled the posting of respondent No. 9 (Annexure P-5). Against this order (Annexure P-5) the respondent No. 9 Satyacharan Sarkar preferred an appeal before the Commissioner, Bilaspur which was registered as Appeal No. 2 of 59/1599-2000."

12. The return of respondent No. 4 has been read and Paragraph 3 shows that what is borne out is that now the position is that after issuance of cancellation order of appointment of the petitioner, the present status of the various schools and absorption of the petitioner was called and vide report dated 4-4-2000 (Annexure P-12) the respondents have already submitted the status to the Commissioner, Bilaspur and it is intimated that one Shri Rameshwar Singh Chouhan has already been appointed as C.S.E. Dharamjaigarh, Urban area by Block Education Officer and if he is relieved, one Shiksha Karmi Grade-III can be absorbed and the Commissioner, Bilaspur was informed that since Shri Chouhan has been relieved, a person belonging to Class-III can be adjusted and accommodated. Annexure P-14 has been filed alongwith application which has already taken on record dated 27-7-2000 and now the position is that the petitioner can be adjusted as the post has been fallen vacant. As such, in view of the development, which has taken place, the removal of services is not sustainable.

13. Counsel for the parties, therefore, submitted that the situation which was prevalent is changed subsequently and without in fact disturbing respondent No. 9, the relief can be granted to petitioner.

14. The question remains regarding the removal. So far as the removal part is concerned, the services have been terminated arbitrarily and without hearing the

petitioner. The petitioner was required to be heard since he was serving and joined and in view of the decisions passed in Shrawan Kumar Jha and Ors. v. State of Bihar and Shrawan Kumar Jha and Ors. v. Ramsevak Sharma and Ors., no order to the detriment of the petitioner could have been passed without complying with the Rules of natural justice. The present situation in the case is that so far respondent No. 9 is concerned, he was also removed without hearing by Collector, Raigarh. His order of removal was set aside subsequently by the Appellate order of the Commissioner. By Annexure P-7, the service of the petitioner was terminated and they have done without hearing of the petitioner, as such, the order of terminating the services of the petitioner is set aside. Since the post is already now made available, as stated by respondent No. 4 and which was further found on the basis of the return filed by respondent Nos. 1, 2, 3, 6 and 7, the order of termination Annexure P-7 is not sustainable and hereby set aside. He be reinstated.

15. Counsel for the petitioner submits that so far as back wages of the petitioner are concerned, the petitioner may be allowed to make a representation. The petitioner may, if so advised, make a representation and the same shall be considered on its own merits in accordance with law.

16. In view of the aforesaid discussions, the petition succeeds and it is accordingly allowed as indicated hereinabove.