

(2022) 01 CHH CK 0074
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 5055 Of 2020?

Dr. Shruti Khare

APPELLANT

Vs

State Of Chhattisgarh ?

RESPONDENT

Date of Decision : 21-01-2022

Acts Referred:

Juvenile Justice (Care And Protection Of Children) Act, 2015 — Section 27(7), 27(7)(i), 27(7)(ii), 27(7)(iii)

Citation : (2022) 01 CHH CK 0074

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : Aditi Singhvi, Amrito Das, Hariom Rai?

Final Decision : Allowed

Judgement

1. This writ petition has been filed calling in question the legality, validity and correctness of order dated 13/11/2020 (Annexure P/1) issued by

respondent No. 1 by which petitioner's appointment on the post of Chairperson, Child Welfare Committee, Rajnandgaon has been terminated.

2. The aforesaid challenge has been made on the following factual backdrop :Â?

2.1. It is the case of the petitioner that she had applied for the post of Chairperson, Child Welfare Committee, Rajnandgaon and after verification of

her documents and after conducting her interview, by following proper selection procedure, the selection list was published on 02/11/2020 (Annexure

P/3) and petitioner got selected for the said post. She gave her joining on the said post on 04/11/2020 (Annexure P/4), but thereafter, on 13/11/2020

(Annexure P/1), the impugned order has been passed by respondent No. 1 terminating her services without even issuing show cause notice and

without conducting any enquiry as mandated by Section 27(7) of the Juvenile

Justice (Care and Protection of Children) Act, 2015 (hereinafter, 'the Act of 2015'). As such, the impugned order (Annexure P/1) is absolutely arbitrary and is violative of principles of natural justice as petitioner's service has been terminated on alleged ground of misuse of power which has been concluded without conducting any enquiry and without affording any opportunity of hearing to the petitioner.

2.2. It is further the case of the petitioner that in the enquiry report dated 12/11/2020 (Annexure R/1) submitted by the Collector (District Child Protection Unit) (Integrated Child Protection Scheme), Women and Child Development Department, Rajnandgaon before the Secretary of the Department, it has been alleged that petitioner was earlier appointed as Member of the Juvenile Justice Board, District Rajnandgaon vide order dated 27/04/2016 wherein she did not perform her duties and abruptly resigned and as such, she cannot be appointed again and on that basis her services have been terminated, which is contrary to the provisions contained under Section 27(7) of the Act of 2015 as enquiry has to be made before terminating the service of any member of the Committee on the grounds enumerated in clauses (i) to (iii) of Section 27(7) of the Act of 2015, therefore, the impugned order is liable to be quashed.

3. Return has been filed by the respondents/State stating inter alia that appointment of the petitioner is provisional/temporary in nature and as per the terms and conditions enumerated in her appointment order, her services can be terminated at any point of time as per the provisions of the Juvenile Justice Board (Care and Protection of Children) Act, 2015 as well as the Juvenile Justice Board (Care and Protection of Children) Rules, 2016 if she is found guilty of misuse of power during her tenure.

4. Ms. Aditi Singhvi, learned counsel for the petitioner, would submit that petitioner was appointed on the post of Chairperson, Child Welfare Committee in accordance with law after undergoing the due selection procedure and she has abruptly been terminated from service on 13/11/2020 (Annexure P/1) without affording her an opportunity of hearing and without conducting any enquiry as required under Section 27(7) of the Act of 2015. Section 27(7) of the Act of 2015 clearly contemplates conducting an enquiry before terminating any member of the Committee. The petitioner ought to have been issued show cause notice along with the list of documents

and after conducting due enquiry, the impugned order could have been passed. She would rely upon the decision rendered by the Supreme Court in the matter of Kathiroom Service Coop. Bank Ltd. v. CIT (2014) 14 SCC 352 to buttress her submission.

5. Mr. Amrito Das, learned Additional Advocate General, would submit that petitioner has rightly been terminated from the post of Chairperson, Child Welfare Committee in light of the report dated 12/11/2020 (Annexure R/1) submitted by the Collector, as such, the instant writ petition deserves to be dismissed.

6. I have heard learned counsel for the parties, considered their rival submissions made herein above and went through the records with utmost circumspection.

7. It is not in dispute that petitioner was appointed on the post of Chairperson in Child Welfare Committee by order dated 02/11/2020 (Annexure P/3) and in compliance of the said order, petitioner joined her duties on 04/11/2020 and vide impugned order dated 13/11/2020 (Annexure P/1) she has been terminated in terms of Section 27(7) of the Act of 2015 on the ground of misuse of power. The impugned order dated 13/11/2020 (Annexure P/1) states as under :—

8. At this stage, it would be appropriate to notice Section 27(7) of the Act of 2015, which states as under :—

27. Child Welfare Committee. —

(1) to (6) XXX XXX XXX

(7) The appointment of any member of the Committee shall be terminated by the State Government after making an inquiry, if —

(i) he has been found guilty of misuse of power vested on him under this Act;

(ii) he has been convicted of an offence involving moral turpitude and such conviction has not been reversed or he has not been granted full pardon in respect of such offence;

(iii) he fails to attend the proceedings of the Committee consecutively for three months without any valid reason or he fails to attend less than three-fourths of the sitting in a year.

9. A careful perusal of the aforesaid provision would show that appointment of any member of the Committee can be terminated by the State

Government after making an inquiry on the grounds enumerated in clauses (i), (ii) and (iii) of sub-section (7) of Section 27 of the Act of 2015. As

such, in order to terminate the service of any member of the Committee, the State Government is obliged to serve show cause notice and then after

giving an opportunity of hearing to the concerned member and then after making an enquiry in accordance with law, the order of termination can be

passed.

10. The terms 'enquiry' has been defined by the Supreme Court in the matter of Kathiroom Service Coop. Bank Ltd. (supra), which states as

under :

14.1. Longman Dictionary of Contemporary English defines 'enquiry' as:

(1) (countable) a question you ask in order to get information; (2) (uncountable) the act or process of asking questions in order to get information;

(3) (countable) an official process to find out about something.

14.2. Merriam-Webster Unabridged Dictionary states that the words 'inquiry' or 'enquiry' connote :

(1) examination into facts or principles

(2) a request for information

(3) a systematic investigation often a matter of public interest.

(emphasis supplied)

14.3. Cambridge Advanced Learner's Dictionary & Thesaurus defines inquiry or enquiry as 'question' or 'the process of asking a question'.

The Oxford Advanced Learner's Dictionary defines enquiry as :

'an official process to find out the case of something or to find out information about something; a request for information about

somebody/something; a question about somebody/something; the act of asking questions or collecting information about somebody/something'

14.4. Black's Law Dictionary, 9th Edn. 2009, p. 864 defines 'inquiry' as 'a request for information, either procedural or substantive'.

14.5. The expression 'inquiry' under Encyclopedia Law Lexicon, Vol. 4, Ashoka Law House, 2008/09, p. 2356 and K.J. Aiyar's Judicial

Dictionary, Vol.1, Lexis Nexis Butterworths Wadhwa, 15th Edn. 2011, p. 838 follows the explanation thereunder :

'According to New Standards Dictionary, the word 'inquiry' includes

investigation into facts, causes, effects and relations generally; 'to inquire', according to the same dictionary means to 'exert oneself to discover something'. Chambers 20th Century Dictionary lays down that the meaning of the term 'to inquire' is 'to ask, to seek' and the meaning of the term 'inquiry' is to give as: 'in search for knowledge; investigation; a question' (also Real Value Appliances Ltd. v. Canara Bank (1998) 5 SCC 554).

11. In administrative law, the principle of audi alteram partem has been held to be a fundamental principle of the rules of natural justice. This requires the maker of a decision to give prior notice of the proposed decision to the persons affected and an opportunity to make a representation. An administrative order involving civil consequences must necessarily be made in conformity with rules of natural justice. Any decision which has been made without compliance of the aforementioned fundamental principle of natural justice i.e. the rule of audi alteram partem, cannot be sustained.

12. Reverting to the facts of the present case in light of the aforesaid proposition of law and in light of the term 'enquiry' as defined by the

Supreme Court in the matter of Kathirol Service Coop. Bank Ltd. (supra), it is quite vivid that the provisions contained under Section 27(7) of the

Act of 2015 have not been followed before passing the impugned order dated 13/11/2020 (Annexure P/1) as no enquiry was conducted on the alleged

grounds before terminating the services of the petitioner and even show cause notice was not served to her. As such, petitioner's termination from the

post of Chairperson, Child Welfare Committee is in teeth of Section 27(7) of the Act of 2015. Though the impugned order (Annexure P/1) clearly

recites the grounds for removing the petitioner, but since she has not been served with the grounds in the shape of show cause notice prior to passing

of the impugned order and her termination from service, therefore, the order impugned dated 13/11/2020 (Annexure P/1) passed by respondent No. 1,

being hit by Section 27(7) of the Act of 2015, is hereby quashed. Petitioner is directed to be taken back forthwith without remuneration from the date

of termination till the date of taking her back on the said post. In order to claim remuneration, petitioner is at liberty to make representation to the State

Government claiming remuneration for the above-stated period, which will be considered and decided by the State Government in accordance with

law. However, liberty is reserved in favour of respondent No. 1 to proceed in

accordance with law.

13. Accordingly, the writ petition is allowed to the extent indicated hereinÂ? above. No cost(s).