
(2018) 04 CHH CK 0091

In the Chhattisgarh High Court

Case No : Writ Appeal No. 283, 284, 287, 301 of 2017

Ramakant And Ors.

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 09-04-2018

Acts Referred:

Citation : (2018) 04 CHH CK 0091

Hon'ble Judges : THOTTATHIL B. RADHAKRISHNAN, J;SHARAD KUMAR GUPTA, J

Bench : Single Bench

Advocate : PKC Tiwari, Shri Shashi Bhushan Tiwar

Final Decision : Dismissed

Judgement

1. We have heard the learned Government Advocate and the learned senior counsel appearing for the private Respondents in these writ appeals

which arise from a common judgment.

2. Proceedings on account of alleged indiscipline were initiated and carried as if all the Respondents were concerned in one case. Act of cowardice is

also attributed to them. The learned Single Judge found that Rule 18 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules,

1966; hereinafter called as 'Rules', has not been followed in a common proceeding against them and therefore, the common proceeding should fall on

that jurisdictional issue. This is under challenge by the State.

3. Sub-rule (1) of Rule 18 of the Rules provides that where two or more Government servants are concerned in any case, the Governor or any other

authority competent to impose the penalty of dismissal from service on all such Government servants may make an order directing that disciplinary

action against all of them may be taken in a common proceeding. The Note to

that sub-Rule provides that if the authorities competent to impose the penalty of dismissal on such Government servants are different, an order for taking disciplinary action in a common proceeding may be made by the highest of such authorities with the consent of the others.

4. Learned Government Advocate argued that when common proceeding is held against two or more Government servants under Rule 18(1) of the Rules, such action is in accordance with law. He argued that it is not obligatory to make a separate order to carry out such common proceeding.

Learned Senior counsel appearing for the private Respondents (delinquents) argued that disciplinary proceeding against each Government servant is an independent proceeding and the authority to have common proceeding can be only in strict conformity with the statutory provisions contained in

Rule 18(1) of the Rules. He argued that in the absence of an order directing common proceeding, disciplinary action against different Government servants cannot be taken in a common proceeding and that the requirement to issue an order containing the decision to direct common proceeding against different Government servants is a mandatory requirement under Rule 18(1) of the Rules.

5. Under Rule 18(1) of the Rules, the Governor or the authority competent to impose the penalty of dismissal on the Government servants concerned

in any case may reach at the conclusion that common proceeding has to be held. Once such conclusion is arrived at by that authority, it may make

an order directing that disciplinary action against all those Government servants may be taken in a common proceeding. The administrative wisdom

at that level has to firstly conclude on the feasibility or requirement to have common proceeding. If discretion is exercised to order common

proceeding, an order to that effect will have to be issued under sub-Rule (1) of Rule 18 of the Rules. Once that is done, common proceeding can be

carried. The phrase "may make an order" occurring in Rule 18(1) only means that it is not mandatory to order common proceeding. The use of

the phrase "may make an order" does not mean that the making and issuing of an order for common proceeding is not mandatory in cases where

common proceeding is decided to be held. If common proceeding has to be held, that has to be directed by making and issuing a definite order to that

effect. Therefore, it is crystal clear that without making a specific order directing

that disciplinary action against two or more Government servants

may be taken in a common proceeding, there cannot be a common proceeding in terms of Rule 18 of the Rules. Issuance of order for joint

proceedings as enjoined by sub-rule (1) of Rule 18 of the Rules is mandatory; be it as a decision by the Governor, or of any other authority competent

to make such an order, directing that disciplinary action against two or more Government servants be taken in a common proceeding.

6. Note to Rule 18(1) of the Rules only authorises and delineates the manner in which the procedure of deciding as to whether common proceeding

should be carried, is to be taken where the different Government servants do not have a common superior authority who may be competent to impose

the penalty of dismissal from service. The contents of that Note do not have any impact on the issue for decision in this case.

7. In the aforesaid view of the matter, we do not find any legal infirmity or error in the judgment of the learned Single Judge, rendered holding that the

proceeding impugned in the writ petitions were illegal and had infringed Rule 18 of the Rules. The learned Single Judge was therefore justified in

setting aside the disciplinary proceeding and ordering reinstatement without prejudice to the establishment to proceed in accordance with law.

8. As regards the question of back wages, having considered the totality of the facts and circumstances of each case, we are of the view that the

order for payment of 50% back wages as directed the learned Single Judge does not result in any illegality or jurisdictional infirmity. That direction also

therefore stands.

9. In the result, these writ appeals are dismissed preserving what is stated by the learned Single Judge in the last sentence of the impugned judgment.