
(2018) 06 CHH CK 0213
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 786 Of 2010

R.G. Bhargav

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision : 29-06-2018

Acts Referred:

Chhattisgarh Civil Services (Classification, Control And Appeal) Rules, 1966 — Rule 14, 16

Citation : (2018) 06 CHH CK 0213

Hon'ble Judges : P. Sam Koshy, J

Bench : Single Bench

Advocate : Ajay Shrivastava, Shashank Thakur

Final Decision : Allowed

Judgement

P. Sam Koshy, J

1. The challenge in the present writ petition is firstly the order dated 26.11.2009 (Annexure P/1) passed by the respondent No.4 and the subsequent action of the respondents vide order date 03.02.2010 (Annexure P/2) whereby the State Govt. has initiated recovery proceedings of Rs.2,98,428/- as directed by the respondent No.4. The challenge is also to the initiation of Departmental Enquiry (in short DE) vide order dated 03.02.2010 which again is in compliance of the order dated 26.11.2009 passed by the respondent No.4.

2. The brief facts of the case is that a complaint was received by the respondent No.4 in respect of certain irregularities alleged to have been committed by the petitioner while discharging the duties of Executive Engineer in Public Works Department of the State Govt. and being posted in the office of Superintending Engineer, Bilaspur. The complaint was pertaining to the irregularities in the tender process for constructing road from Gharghoda to Lailunga. The respondent No.4 took cognizance of the complaint and conducted an enquiry and pursuant to the enquiry, the respondent found certain irregularities to have been

committed by the petitioner. On the basis of the said finding, the respondent No.4 made recommendations to the State. The operative portion of the recommendations so made is being reproduced herein as under:

"अनुशंसा-परिणामतः धारा 11 ;1द्ध छ0ग0 लोक आयोग अधिनियम के अंतर्गत प्रमुख सचिव, लोक निर्माण विभाग को अनुशंसा की जाती है कि श्री आर0जी0 भार्गव, कार्यपालन अभियंता से कुल राशि रूपये 2,98,428/-उसके वेतन व अन्य भत्तों से वसूल की जाये। अगर वह यह राशि जमा नहीं करता है तो उसकी चल व अचल संपत्ति से राजकीय राजस्व की राशि के रूप में वसूली की जावे, साथ ही श्री आर0जी0 भार्गव के विरुद्ध विभागीय अनुशासनात्मक कार्यवाही संस्थित की जाकर उसको दीर्घ शास्ति से दंडित किया जावे, तथा की गई कार्यवाही से दिनांक 26.02.2010 तक आयोग को सूचित किया जावे।"

3. The entire dispute of the present writ petition revolves around the aforesaid recommendations made by the respondent No.4- Lokayukta, Chhattisgarh.

4. The counsel for the petitioner submits that the respondent No.4 could not have made the recommendations in the manner that it has made. The order of the respondent No.4 dated 26.11.2009 is bad in law to the extent that the respondent No.4 has also proposed the punishment to be imposed against the petitioner. The respondent No.4 has also recommended for initiating DE for major punishment. The respondent No.4 has also sought for compliance report from the State Govt. in this regard. All these are beyond the powers vested with the respondent No.4. The only duty casted upon the respondent No.4 is to enquire upon the complaint which they have received and to give a finding to the State Govt.

5. It was further contended by the petitioner that after the order dated 26.11.2009 was passed, the State Govt. has straightway issued an order of recovery vide Annexure P/2 and have also set up a DE vide Annexure P/3. Both these orders are again unsustainable for the reason that on the recommendations so made by the respondent No.4, the respondent State ought to have first satisfied itself in respect of the findings of the respondent No.4 by way of either preliminary enquiry or by conducting a detailed DE, without which, the order of recovery straightway is bad in law and also is in direct conflict with the mandatory requirement as is envisaged under Rule 16 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (in short, the Rules, 1966). Further, the respondent No.4 could not propose the punishment to be imposed on DE which was recommended, neither he could call for compliance report from the State Govt.

6. The counsel for the petitioner further submitted that pending the petition before this court the petitioner has crossed the age of superannuation.

7. Per contra, the State counsel opposing the petition submits that the order dated 26.11.2009 (Annexure P/1) issued by the respondent No.4 is self explanatory explaining the irregularities and misconduct on the part of petitioner and therefore the said findings and recommendations made by it cannot be found fault with. It is purely within the power and domain of the respondent

No.4. He further submits that even Annexure P/2 & P/3 which is under challenge is nothing but an action initiated by the State Govt. as recommended by the respondent No.4. Therefore, the petitioner as such cannot have any grievance if the State acts upon the recommendations of the respondent No.4. Thus, prayed for rejection of the petition.

8. Having heard the contentions put forth on either side and also on perusal of records, what is necessary to take note of is the powers and authorities of the respondent No.4. The respondent No.4 has been appointed in accordance with provisions of the Chhattisgarh Lok Ayog Adhiniyam, 2002. There are provisions in the said Act which only says that the Lokayukta shall conduct an enquiry or investigation in respect of the complaint that they received and thereafter shall inform the State Govt. in respect of their finding. On the basis of the said recommendations/findings, the State will proceed against the delinquent and then appropriate action has to be taken. This does not mean that the respondent State shall give a go by to the Rule provision so far as imposition of punishment or initiation of DE is concerned. The least that is required by the State is that on recommendations which they receive from the respondent No.4, they have to proceed in accordance with the rules governing the field so far as disciplinary action is concerned both imposition of minor punishment as also for major punishment.

9. In the instant case the respondent State as such does not appear to have conducted any sort of Preliminary Enquiry or investigation nor have they scrutinized the allegations or findings of the respondent No.4-Lokayukta before issuance of the impugned order which is an order of recovery.

10. Likewise, the appointment of the inquiry officer and the initiation of DE also seems to have been done in haste as the appointment of inquiry officer seems to be without issuance of a detailed charge sheet with the imputation of charges alleged against the petitioner- delinquent employee. In the absence of charge sheet or an opportunity to reply to the charges alleged against the employee, conducting DE would be per se illegal. Moreover, the inquiry officer is supposed to give specific findings to the charges which are levelled and framed against the delinquent. For this reason also, the impugned order/action of the respondents in issuing order dated 03.02.2010 (Annexure P/3) appointing inquiry officer is not sustainable and the same deserves to be set aside/quashed.

11. So far as order dated 26.11.2009 (Annexure P/1) is concerned, this court finds that the observations of the respondent No.4 in the concluding paragraph of its finding to be in excess of its power conferred so far as proposing punishment to the petitioner with major penalty and also calling for compliance report of the recommendations so made. The said observation is totally uncalled for and the observation so made therefore deserves to be and is accordingly expunged from the impugned order Annexure P/1. Reserving right of the respondent-State to proceed further with the recommendations made by the respondent No.4, as per Rules governing the service conditions, the impugned action of issuance of

recovery order dated 03.02.2010 and also the order for appointment of inquiry officer and conducting DE without issuance of detailed charge sheet, as is required under Rule 14 of Rules, 1966, in case of major penalty is unsustainable and two orders Annexure P/2 and P/3 deserve to and are accordingly set aside.

12. As a consequence, the writ petition is allowed. The order passed by the respondent No.4 vide Annexure P/1 dated 26.11.2009 to the extent that the observation so far as conducting DE for major punishment and seeking for compliance report stand expunged and further the order of recovery Annexure P/2 as also order of appointment of inquiry officer (Annexure P/3) are set aside/quashed. Consequences to follow.