
(2023) 11 CHH CK 0038
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 4654 Of 2015

Sammukharam Manikpuri	Vs	APPELLANT
State Of Chhattisgarh		RESPONDENT

Date of Decision : 10-11-2023

Acts Referred:

Constitution of India, 1950 — Article 226, 311
C.G. Panchayat Service (Discipline and Appeal) Rules, 1999 — Rule 7

Citation : (2023) 11 CHH CK 0038

Hon'ble Judges : Rajani Dubey, J

Bench : Single Bench

Advocate : Parag Kotecha, Binu Sharma

Final Decision : Allowed

Judgement

1. The petitioners have preferred this petition under Article 226 of the Constitution of India being aggrieved by order dated 18.09.2015 (Annexure P/5) passed by Respondent No.2/Commissioner, Bastar Division, Jagdalpur (C.G.), whereby the appeal against removal of the petitioners from service preferred by the petitioners against the order dated 12.08.2014 passed by the Collector, Uttar Bastar, Kanker, has been dismissed.

2. Brief facts of the case, as projected by the petitioners, are that earlier the petitioners were working as Guruji, whose services were discontinued by the Govt. Against the discontinuation order, the employees filed the petition before this Hon'ble Court and the Hon'ble Court was pleased to dispose of the petition. Some of the petitioners had also filed writ petition bearing W.P.(S) No.1077/13 and W.P. (S) No. 2274/13 before this Hon'ble Court and the Hon'ble Court was pleased to dispose off the petition with direction to respondents to consider the case of the petitioners. Thereafter, after following due process of law, the petitioners were appointed vide Annexure P/2 by the Chief Executive Officer, Janpad Panchayat, Narharpur. The petitioners had given joining and worked with utmost sincerity and devotion. Thereafter, on 26/8/2013, the services of the petitioners were

terminated on the ground that the petitioners do not fulfill the requisite qualification as per Panchayat Shiksha Panchayat Recruitment and Service Condition Rules 2012, without giving any opportunity/show cause notice as to whether they are eligible or not and further no opportunity was granted to the petitioners to fulfill the requisites qualification as per the circular of the State Government. Being aggrieved by the order of removal, the petitioners preferred an appeal before the Collector, Uttar Bastar, Kanker, which was rejected vide order dated 12.08.2014 (Annexure P/4). Against the order dated 12.08.2014, the petitioner preferred an appeal before the Respondent No. 2/Commissioner, Bastar Division, Jagdalpur, raising all the grounds, which was also dismissed by Respondent No.2 vide order dated 18.09.2015 (Annexure P/5), without application of mind, without considering the legal and factual ground & just reproduced the order of the Respondent No.3 and not even changed the words of the orders of Respondent No. 2. Hence, the present writ petition by the petitioners for the following relief(s):-

"I. Quash/set aside the order dated 18.09.2015 (Annexure P/5) issued by the respondent No. 2 and consequentially all orders of the respondents authority be set aside, which was passed against the petitioners removing them from the post of Shiksha Karmi Grade 3 (now known as Assistant Teacher Panchayat) and confirming it in appeal.

II. Direct the respondents to reinstate the petitioners alongwith all the back wages and all other consequential and other benefit to the petitioners on the post of Shiksha Karmi Grade 3 (now known as Assistant Teacher Panchayat)

III. Direct the respondents to produce the entire record pertaining to petitioner case.

IV. Any other relief which this Hon'ble Court deems fit and proper under the facts and circumstances of the case may also be passed in favour of the petitioner and the cost of the petition may be awarded in favour of the petitioner."

3. Learned counsel for the petitioner submits that the order passed by the Respondent No.4 and 5 confirming the order of Respondent No.2 and 3 are illegal, arbitrary, discriminatory, unconstitutional and against the principles of natural justice and with the malafide intention. Before passing the order of removal, no reasonable and fair opportunity was given to the petitioners and no departmental enquiry has been conducted nor any opportunity has been given to the petitioner for producing their defence on the allegation made by the respondents or to cross examine the witnesses. Learned counsel further submits that the order of respondents in removing the petitioners from service having the civil consequence, without following the principles of natural justice, the order is bad and liable to be set aside. The appointment of the petitioners had been made after following the due process of law. The services of the petitioners cannot be terminated in a manner which had been done by the Respondent Nos. 4 and 5. The removal of the petitioners from the service with stigma, without holding the

departmental enquiry and without affording any opportunity of hearing, is bad in law and the act of the respondents is in utter violation of provisions of Article 311 of the Constitution of India. Learned counsel also submits that the respondents without considering the fact that the Central Govt. had given relaxation to acquire the qualification under the Act 2009, which would also be applicable to respondents, but respondents had not given any time to acquire the relaxation to the petitioners, which is against the provision of Right to Free Education to Children Act, 2009. In support of his submission, learned counsel placed reliance on the decisions of this Hon'ble Court passed in WPS No.1846/2011 (order dated 15.07.2015 Prakash Chand Soni V. State of Chhattisgarh & Ors.) and in WPS No.791/2013 (order dated 22.03.2013 Umashankar Gupta and Ors. Vs. State of Chhattisgarh & Ors.).

4. Learned counsel for the State/respondents strongly opposed the prayer of the petitioners and submits that earlier while the petitioners were working as Gurujis, their services were discontinued by the Government and therefore, many persons filed petitions before this Hon'ble Court and the said petitions were disposed off vide order dated 31.07.2013 (Annexure P/1) with direction to respondents to consider the case of the petitioners. Thereafter, after following the due process of law, the petitioners were appointed on the post of Shiksha Karmi Grade -III vide order dated 19.08.2013 (Annexure P/2). The petitioners were terminated on the ground that they do not fulfill the required qualification as per Panchayat Shiksha Panchayat Recruitment & Service Condition Rules, 2012, whereby the petitioners have to clear the Teachers Eligibility Test ("TET"). Learned counsel further submits that petitioners have failed to show/establish that any adverse order has been passed against them. No cause of action arose against the petitioners, therefore, the petition is liable to be dismissed. Learned State counsel also submits that the rule of natural justice is not attracted in the present petition. The petitioners are not having basic qualification of T.E.T., therefore, they have been rightly terminated from the service. The petitioners have been appointed as probationers and the probation period gives the employer time and opportunity to watch the probationer's performance and to dispense with their services for want of suitability for the post. The impugned order does not suffer from any infirmity or illegality and, as such, the petition is liable to be dismissed.

5. I have heard learned counsel for the parties and perused the material available on record.

6. It is not disputed in this case that earlier the petitioners' services as "Guruji" were discontinued by the State Government and against the discontinuation, the petitioners herein had preferred two writ petitions bearing W.P.(S) Nos.1077/2023 and 2274/2013 and these writ petitions, vide order dated 26.04.2013 and 31.07.2013 respectively, were disposed of by this Court after making certain observation. For ready reference, the observation made by this Court in W.P.(S) No.2274/2013 is reproduced herein as under :-

"After going through the order of the Division Bench, I find that the Division Bench taking into consideration the State Government's instructions referred in para 5 of the order, has disposed of the matter with a direction to the State Government to take decision. Therefore, the petitioners may also approach the authorities and if such application is made claiming consideration on the basis of order passed by the Division Bench, the respondents shall consider and decide the petitioners' application also within a period of eight weeks from the date of receipt of copy of the order.

This petition is accordingly finally disposed of."

7. After passing the aforesaid order by this Court, the petitioners were again appointed by the respondents vide order dated 19.07.2013 (Annexure P/2), and after some time, without giving any prior notice or initiating/conducting departmental enquiry, the impugned order dated 26.08.2013 (Annexure P/3) has been passed and services of the petitioners were terminated on the ground that the petitioners do not fulfill the requisite criteria for the post i.e. Teacher Eligibility Test (T.E.T.).

8. This Court in the matter of Prakash (supra) held in para 4 as under :-

"4. Admittedly, on certain allegations, an enquiry was conducted against the petitioner and eventually, an enquiry report was submitted vide Annexure R/4 and thereafter, show cause notice was issued to him on 28.04.2008 vide Annexure R/3, therefore, before removing him the principles of natural justice have been complied with. However, at the same time, it is to be seen that a Division Bench of this Court in the matter of Rooplal Nayak vs. State of Chhattisgarh and others, 2006(4) M.P.H.T. 99 (C.G.) has held that any of the major penalty prescribed under Rule 5(b) (iv) of the Rules, 1999 cannot be imposed on a member of Panchayat service to whom the said Rules are applicable without conducting regular Departmental Enquiry as envisaged under 7 of the Rules, 1999."

9. In the instant case also it is apparent that before passing removal order of the petitioners from service, no enquiry under Rule 7 of the C.G. Panchayat Service (Discipline and Appeal) Rules, 1999, has been initiated or conducted against the petitioners. Thus, in the light of observation made by this Court in the matter of Prakash (supra), the impugned order of termination is not sustainable in law.

10. In the result, the petition is allowed. Impugned order dated 18.09.2015 (Annexure P/5) passed by Respondent No.2 is hereby set-aside. The petitioners are reinstated in service along with all consequential benefits flowing from setting aside of their order of termination. However, the respondents would be at liberty to initiate enquiry against the petitioners and take decision afresh, in accordance with law.