

(2018) 05 CHH CK 0007
In the Chhattisgarh High Court
Case No : WRIT PETITION (S) NO.6336 OF 2014

Vijay Bahadur Dubey

APPELLANT

Vs

State Of Chhattisgarh And Ors.

RESPONDENT

Date of Decision : 03-05-2018

Acts Referred:

Citation : (2018) 05 CHH CK 0007

Hon'ble Judges : P. SAM KOSHY, J

Bench : Division Bench

Advocate : RS Baghel, Lav Sharma

Judgement

1. the present petition has been filed assailing Annexure P/1 dated 07.11.2014 whereby the petitioner has been placed under suspension by the

Collector, Kabirdham. The petitioner have also questioned Annexure P/14 dated 05.12.2014 which again is an order initiating disciplinary proceeding

against the petitioner by the Collector, Kabirdham.

2. The petitioner was working as Tracer at District Kabirdham. When the respondent has vide order dated 15.07.2014 issued an order of transfer, the

name of petitioner stood reflected at serial No.37 and he was ordered to be transferred from Kabirdham to the office of Collector, Land Records,

Koriya. The petitioner, pursuant to the said order of transfer went and joined the office at Koriya on 08.09.2014. While working on the said

department at Koriya, the Collector Kabirdham had issued the order of suspension against the petitioner.

Later on, the Collector, Kabirdham again issued an order initiating departmental enquiry against the petitioner.

3. The contention of the petitioner is that the entire grievance of the Collector,

Kabirdham was on account of the petitioner having proceeded to join at transferred place at Koriya without proper handing over the charge to the next incumbent and without proper order of relieving. He submits that the said act on the part of the petitioner even if accepted, the same is too pity for which the petitioner should have been placed under suspension or required a departmental action against the petitioner.

4. The petitioner has also questioned the competency of the Collector, Kabirdham, in passing the two impugned orders. According to petitioner, once the petitioner have joined at his transferred place as per the order of the State Govt. in district Koriya, thereafter for all practicable purposes his disciplinary authority would be the authority in the district Koriya and not the Collector, Kabirdham where he was posted prior to the order of transfer being executed. It was also contended by the counsel for the petitioner that even otherwise the Collector is not competent to initiate disciplinary action against the petitioner for the reason that the disciplinary authorities of the petitioner i.e. Tracer in the department is the Director, Land Records, and not the Collector and for this reason also the impugned order dated 05.12.2014 (Annexure P/14) is bad in law and without jurisdiction.

5. The State counsel however opposing the petition submits that since the petitioner has not been properly relieved from district Kabirdham, it has to be presumed that he is continued to be an employee of Collector, Kabirdham, and therefore, the Collector was fully competent to place the service of the petitioner under suspension and to initiate disciplinary action for having not followed the norms required for compliance of order of transfer.

6. Having heard the contentions put forth on either side and on perusal of records, this court fails to understand as to what purpose of the respondents would be served in placing the petitioner under suspension for the alleged misconduct which is reflected from the charge sheet for these considerable period of 3 and $\hat{A}$ ¹/₂ years. Moreover, what cannot be lost sight of is the fact that the service of the petitioner was infact transferred by the State Govt.

from Kabirdham to Koriya and the petitioner went and joined at Koriya on 08.09.2014.

7. Considering the nature of duty discharged by the petitioner that of a Tracer, it appears that the petitioner might not had been in possession of any confidential or complicated records which was required to be handed over to the

next incumbent. It also is necessary to be noted that whether the petitioner when he assumed his charge at Kabirdham was infact handed over any such things. Moreover, the nature of allegations levelled in the charge sheet also appears to be two pity a charge which could be attributed as misconduct under the Service Rules.

8. Needless to mention that the moment the Collector, Kabirdham had realized the fact that the petitioner has not handed over the entire charge to the next incumbent or there was no proper relieving order in his favour, it was expected that the Collector, Kabirdham should have intimated this aspect to the Collector, Koriya, for initiating appropriate proceedings and refusing to grant joining to the petitioner in district Koriya. The Collector, Kabirdham, suo motu could not after the petitioner assuming his charge in district Koriya, have initiated disciplinary proceedings against the petitioner. On this ground also, the order of suspension and initiation of disciplinary proceeding is not sustainable.

9. The petitioner, on instruction, submits that the services of the petitioner is still under suspension and he is being paid subsistence allowance for the last 3 and $\hat{A}^{1/2}$ years and the departmental enquiry initiated also has not proceeded substantially, and there is no further progress in the departmental enquiry.

10. Thus, taking into consideration the entire facts and circumstances of the case particularly taking into consideration the reason for which the petitioner has been placed under suspension and also taking note of the entire charges which have been levelled against the petitioner as is reflected from Annexure P/14, particularly charge No.2, this court is of the opinion that initiation of disciplinary proceeding so also placing the petitioner under suspension are not sustainable, the same deserve to be and are hereby set aside.

11. Consequences to follow.