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Court : Chhattisgarh

Decided On : May-01-2012

Judge : Satish K. Agnihotri

Appeal No. : WRIT PETITIONS NO. 2474 OF 2011

Appellant : Arvind Joshi

Respondent : State of Chhattisgarh and Others

Judgement :

ORDER

(Writ Petition under Article 226 of the Constitution of India)

1. Challenge in this petition is to the order dated 23.02.2011 (Annexure P-1), whereunder, the appeal case No. 89/A-89/(15)/9-10, filed by the petitioner was dismissed upholding the order dated 30.09.2005 and order dated 05.06.2006, passed by the Additional Collector, District Janjgir-Champa, in appeal.

2. The facts, in brief, are that the petitioner was appointed as Panchayat Karmi (Secretary) by order dated 23.06.1996 (Annexure P-2). Thereafter, on 10.03.2005, the Gram Panchayat - Amoda, Janpad Panchayat - Jaijaipur, by resolution, in its meeting, expressed displeasure in the functioning of the petitioner. Thereafter, on the basis of resolution passed on 10.03.2005, in the meeting, , it was decided to remove the petitioner from the post of Panchayat Karmi (Secretary), which was

subsequently approved by the Gram Panchayat on 20.04.2005. Consequent thereupon, the petitioner was removed from service by order dated 11.05.2005 (Annexure P-4). Before removal, the petitioner was issued a show cause notice by the Chief Executive Officer, Janpad Panchayat- Jaijaipur, on 21.03.2005 (Annexure R-4/4) asto why disciplinary action be not taken against him. Thereafter, the Chief Executive Officer, by letter dated 24.08.2005 (Annexure R-4/5) directed all the Sarpanch of Gram Panchayat to take action of removal from service against Panchayat Karmies whose reply is not found satisfactory.

3. Being aggrieved, the petitioner preferred an appeal before the Sub Divisional Officer, Shakti, which was dismissed by order dated 30.09.2005 (Annexure P-5) on the ground of being not maintainable. Thereafter, the matter was taken to the Additional Collector, Janjgir-Champa. The Additional Collector, Janjgir-Champa, by order dated 05.06.2006 (Annexure P-6) dismissed the appeal holding that the show cause notice, before passing the resolution for removal of service, was issued to the petitioner and under new rules, there is no provision to review the resolution passed by the Gram Sabha. Thereagainst, an appeal was preferred before the Additional Commissioner, Bilaspur Division, Bilaspur.

4. The Additional Commissioner, Bilaspur, after having recorded the grounds raised by the petitioner that there was violation of principles of natural justice and the procedure for imposition of major penalty of removal as enshrined under Rule 7 of the Chhattisgarh Panchayat Service (Discipline and Appeal) Rules, 1999 (for short "the Rules, 1999"), was not followed. The resolution was passed in Gram Sabha on 20.04.2005, without there being any subject for the same. However, the Additional Commissioner, did not advert to any of the grounds raised by the petitioner. It was held that a show cause notice was issued informing the petitioner the date of appearance before the Gram Sabha on 14.04.2005. The quorum was not complete on 14.04.2005. Thus, the meeting was held on 20.04.2005. The petitioner did not respond to the notice and had misbehaved with the persons in the meeting. The Additional Commissioner held that by resolution No.1 in the meeting held on 10.03.2005, a decision was taken to remove the petitioner, which was approved by the Gram Sabha on 20.04.2005 and consequent thereupon, a proper impugned order dated 11.05.2005 was passed. Thus, the order passed

therein was just and proper. It was further held that there was no provision to prefer an appeal or revision against the resolution passed by the Gram Panchayat/ Gram Sabha. Thus, the appeal of the petitioner was rightly rejected on 30.09.2005, by the Additional Collector.

5. Learned counsel appearing for the petitioner submits that the authorities below have not considered the import of Rule 7 of the Rules, 1999. Any decision for removal of Panchayat Karmi or Secretary taken by the Gram Panchayat de hors the provision of Rule 7 of the Rules, 1999, is illegal and finding of the authorities below that no appeal or revision is maintainable against the resolution is erroneous. Learned counsel relies on a decision of this Court in Dhaluram Kosaria v. State of C.G. and Others1.

6. Learned counsel appearing for the State submits that it is an admitted position that the procedure deals with imposition of major penalty, as prescribed under Rule 7 of the Rules, 1999, which was not followed in the instant case. However, proper opportunity of hearing was given, as show cause notice was issued to the petitioner and the petitioner declined to respond to the same. Thus, no further enquiry was necessary and the order passed by the respondent No.2 on the basis of resolution passed by the Gram Panchayat and approved by the Gram Sabha was just and proper.

7. The authorities below have proceeded on a wrong premise that the challenge in the case was to the resolution passed by the Gram Panchayat and thereafter, approved by the Gram Sabha, but not to the order of termination dated 11.05.2005 (Annexure P-4) passed by the Sarpanch Gram Panchayat. Thus, the finding recorded by the authorities below that, there was no review or appeal or revision is permissible under the provisions of law, is not relevant to the facts of the case. In view of that, I do not propose to consider the issue asto whether an appeal against the resolution is maintainable or not in the facts of the case. Looking from all angles, it cannot be held that the order of termination, the findings recorded and the decision taken therein by the authorities below, are not perverse and illegal.

8. This Court, while analysing the effect of Rule 7 of the Rules, 1999 in Dhaluram Kosaria v. State of C.G. and Others1, observed as under :

"19. It is further admitted by all the parties that the procedure for holding an enquiry is prescribed under Rule 7 of the Rules 1999 for imposition of major penalty, that has not been followed. Hence, the termination is bad and vitiated on the ground of non-compliance of the statutory provisions and denial of the principles of natural justice. It amounts to infraction of not only the provisions of Rule 7 of the Rules 1999 but the provisions of Article 311(2) of the Constitution of India also. The order is in fact penal in nature having civil consequences and as such the elaborate provision of Rule 7 of the Rules 1999 was applicable in the case of the petitioner before terminating his services."

9. In J and K Housing Board and Another v. Kunwar Sanjay Krishan Kaul and Others2, the Supreme Court reiterated the settled position, as aforestated and observed as under:

"32. It is settled law that when any statutory provision provides a particular manner for doing a particular act, the said thing or act must be done in accordance with the manner prescribed therefor in the Act. Merely because the parties concerned were aware of the acquisition proceedings or served with individual notices does not make the position alter when the statute makes it very clear that all the procedures/modes have to be strictly complied with in the manner provided therein."

10. In Vidya Bushan Mishra v. State of Chhattisgarh and Others3, this Court held as under :

"10. Non-compliance of the statutory provisions and denial of principles of natural justice tantamounts to infraction of not only the provisions of Rule 7 of the Rules, 1999 but the provisions of Article 311 (2) of the Constitution of India also. The order of removal being penal in nature, visiting with civil consequences, cannot be passed without holding enquiry in accordance with the elaborate provisions, as prescribed in Rule 7 of the Rules, 1999. It is, thus, clear that the respondents have not followed the statutory provisions of law before passing the impugned order."

11. In view of foregoing, the impugned order dated 23.02.2011 (Annexure P-1) and the orders passed by the authorities dated 30.09.2005 and 05.06.2006 are set

aside. The impugned termination order dated 11.05.2004 (Annexure P-4) is quashed.

12. Having regard to the facts situation of the case, particularly, conduct of the petitioner by not receiving the copy of the show cause notice and secondly, it is also not case of the petitioner that he was not gainfully employed elsewhere, as the same has not been pleaded in the petition, the petitioner is not entitled to back wages.

13. Thus, the writ petition is allowed to the above-extent and the petitioner is entitled to be reinstated in service without back wages. No order asto costs.

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