

P.R. No.

233/06

SINGLE BENCH

Presented by Shri

Sushil Sahu

dated

16/1/06

IN THE HIGH COURT OF JUDICATURE AT BILASPUR,
CHHATTISGARH

Writ Petition No. 232 of 2006

PETITIONER:

✓ Ku. Vibhuti Sharma
D/o Shri Vijay Kumar Tiwari,
aged about 25 years, R/o.
Purana Bus Stand
Laxmeneshawar Nivas,
Janjgir, District - Janjgir-
Champa (C.G.).

- Versus -

RESPONDENTS:

1. State of Chhattisgarh,
Through the Secretary,
Department of Panchayat and
Social Welfare,
Mantralaya, D.K.S. Bhawan,
Raipur, Chhattisgarh.
- ✓ 2. Director, Panchayat and
Social Welfare, Raipur,
Chhattisgarh.
- ✓ 3. Collector, Janjgir-Champa,
District: Janjgir-Champa,
Chhattisgarh.
- ✓ 4. District Panchayat, Janjgir,
Through the Chief Executive
Officer, District Panchayat,
Janjgir, District: Janjgir-
Champa, Chhattisgarh.
- ✓ 5. Chief Executive Officer,
District Panchayat: Janjgir,
District: Janjgir-Champa,
Chhattisgarh.

Free
RECEIVED-COPY
16.1.06
CLE & A. G. BILASPUR



**WRIT PETITION UNDER ARTICLE 226/227 OF THE
CONSTITUTION OF INDIA FOR ISSUANCE OF**



121

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P. No. 224 of 2006

PETITIONER

Naveen Singh Chandel.

Versus

RESPONDENTS

State of Chhattisgarh and others.

W.P. No. 229 of 2006

PETITIONER

Ku. Seema Ravani.

Versus

RESPONDENTS

State of Chhattisgarh and others.

W.P. No. 231 of 2006

PETITIONER

Smt. Manimala Giri.

Versus

RESPONDENTS

State of Chhattisgarh and others.

W.P. No. 228 of 2006

PETITIONER

Smt. Sakun Singh.

Versus

RESPONDENTS

State of Chhattisgarh and others.

W.P. No. 225 of 2006

PETITIONER

Shivcharan Gadewal.

Versus

RESPONDENTS

State of Chhattisgarh and others.

W.P. No. 232 of 2006

PETITIONER

Ku. Vibhuti Sharma.

Versus

RESPONDENTS

State of Chhattisgarh and others.

AND

W.P. No. 233 of 2006

PETITIONER

Basant Kumar Markam.

Versus

RESPONDENTS

State of Chhattisgarh and others.

Shri Rajeev Shrivastava, Anil Mourya and Shri Malay Shrivastava,
counsel for the respective petitioners.
Shri Ajay Dwivedi, Dy. Govt. Advocate for the State.
Shri Alok Bakshi, counsel for the respondents No. 4 & 5.



-2-

122

SINGLE BENCH : HON'BLE SHRI PRASHANT KUMAR MISHRA, J.

ORAL ORDER
(31/07/2013)

Each of the petitioners was appointed as Shiksha Karmi Grade II by respondents No. 4 & 5. On the basis of some complaint the Director, Panchayat and Social Welfare, Raipur exercised powers under Section 85(1) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (for short "*the Adhiniyam, 1993*") and suspended the execution of the order of appointment issued by the Chief Executive Officer, Zila Panchayat, Janjgir-Champa. On the basis of said order dated 06/12/2005 passed by the Director, Panchayat, the Chief Executive Officer passed the impugned order of termination on 13/12/2005 without affording any opportunity of hearing.

(2) Indisputably, the same impugned order was under challenge before this Court in W.P. No. 6453/2005 '*Ku. Nidhi Kesharwani Vs. State of Chhattisgarh and Others*' and by order dated 23/04/2012 this Court quashed the order dated 13/12/2005.

(3) In view of the above and the present petition being similar, the present batch of the writ petitions are allowed in the same terms. A copy of the order passed in the matter of Ku. Nidhi Kesharwani is made part of the present batch of the writ petition.

Sd/-
Prashant Kumar Mishra
Judge

k

HIGH COURT OF CHHATTISGARH : BILASPURWRIT PETITION NO. 6453 OF 2005PETITIONER

Ku. Nidhi Kesharwani

Versus

RESPONDENTS

State of Chhattisgarh & Others

(Writ Petition under Article 226/227 of the Constitution of India)

Single Bench : Hon'ble Shri Satish K. Agnihotri, J.

Present :- Shri P.K.Patel, Advocate for the petitioner.
Shri A.V.Shridhar, Panel Lawyer for the State.

ORDER(Passed on this 23rd day of April, 2012)

1. Learned counsel appearing for the petitioner submits that the petitioner was duly appointed on the post of Shiksha Karmi Grade-II by the appointment order dated 17.06.2005 (Annexure P-3). On the basis of certain complaint, by order dated 06.12.2005 (Annexure P-2) the Director, Panchayat & Social Welfare, Raipur, while exercising his power under Section 85 (1) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (*for short "the Adhiniyam, 1993"*), suspended the execution of the order of appointment, issued by the Chief Executive Officer, Zila Panchayat, Janjgir-Champa. On the basis of said order dated 06.12.2005, the Chief Executive Officer, passed the impugned order of termination on 13.12.2005 (Annexure P-1) without affording any opportunity of hearing.
2. Learned counsel appearing for the petitioner submits that the impugned order passed by the Chief Executive Officer, is without competence, as he has exceeded his jurisdiction in terminating the services of the petitioner without following due process of law, as prescribed under the Chhattisgarh Panchayat Shiksha Karmis (Recruitment and Conditions of Service) Rules, 1997 (*for short "the Rules, 1997"*).
3. The Director, exercising his power under Section 85 (2) of the Adhiniyam, 1993, suspended the order of appointment issued, may be with the purpose to hold enquiry. The Chief Executive Officer, has no authority or

competence to terminate the services on the basis of suspension order passed by the Director.

4. Learned counsel appearing for the State respondents submits that there is no dispute that the Director exercised his power to suspend the execution order with the purpose to examine the order issued and thereafter, the order of termination from service can be passed.
5. Having heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto, it is evident that the Chief Executive Officer has passed the order of termination on the basis of suspension order passed under Section 85 (1) by the Director.

Section 85(1) of the Adhiniyam, 1993 reads as under :

"85. Power to suspend execution of orders, etc.- (1) The State Government or the prescribed authority may by an order in writing and for reasons to be stated therein suspend the execution of any resolution passed, order issued, licence or permission granted or prohibit the performance of any act by a Panchaya ~~its~~ opinion, -

- (a) such resolution, order, licence, permission or act has not been legally passed, issued, granted or authorized;
- (b) such resolution, order, licence, permission or act is in excess of the powers conferred by this Act or is contrary to any law; or
- (c) the execution of such resolution or order, or the continuance in force of such licence or permission or the doing of such act is likely -
 - (i) to cause loss, waste or misapplication of any money or damage to any property vested in the Panchayat;
 - (ii) to be prejudicial to the public health, safety or convenience;
 - (iii) to cause injury or annoyance to the public or any class or body of persons; or
 - (iv) to lead to a breach of peace."

6. The service condition of Shiksha Karmis are governed by the Rules, 1997. It is well settled principles of law that principle of natural justice must be read into the provisions of law, which provides for termination at any time

by one month notice, as prescribed under Rule 10 of the Rules, 1997. In the case on hand, nothing has been done, even one month notice has also not been given.

7. The removal of a regular employee without affording an opportunity of hearing is unconstitutional, as under Article 311(2) of the Constitution, it is provided that no such person shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. In such cases, where the employer has power to remove the employee from service, in that event also, the basic opportunity of hearing must be afforded to the employee. Thus, the impugned order is illegal and cannot be sustained under the provisions of law.

8. This Court in *Roshan Prasad Sidar v. State of Chhattisgarh and Others*¹ observed as under :

"13. It is well settled principle of law that if any order visits with civil consequences, the same is vitiated, if passed without affording an opportunity of hearing to the employee(s). (See: *Shrawan Kumar Jha and others v. State of Bihar and others*², *D.K. Yadav v. J.M.A. Industries Ltd. & Others*³, *Basudeo Tiwari v. Sido Kanhu University & Others*⁴, *Canara Bank & Others. v. Debasis Das & Others*⁵, *Vivekanand Sethi v. Chairman, J&K Bank Ltd. & Others*⁶, *Mohd. Sartaj & another v. State of U.P. & Others*⁷, *Inderpreet Singh Kahlon & others Vs. State of Punjab & others*⁸, *Ashok Kumar Sonkar v. Union of India & Others*⁹, *State of Manipur & Others v. Y. Token Singh & Others*¹⁰, *Jaswant Singh Pratap Singh Jadeja v. Rajkot Municipal Corporation & another*¹¹, *Nehru Yuva Kendra Sangathan v. Mehbub Alam Lashkar*¹² and *State of Punjab & Others v. Constable Avtar Singh (Dead) Through LRs.*¹³)."

¹ 2010 (3) MPHT 8 (CG)

² AIR 1991 SC 310

³ (1993) 3 SCC 259

⁴ AIR 1998 SC 3261

⁵ (2003) 4 SCC 557

⁶ (2005) 5 SCC 337

⁷ (2006) 2 SCC 315

⁸ AIR 2006 SC 2571

⁹ (2007) 4 SCC 54

¹⁰ (2007) 5 SCC 65

¹¹ (2007) 10 SCC 71

¹² (2008) 2 SCC 479

¹³ (2008) 7 SCC 405

9. This Court, in *Ku. Punam & Others v. State of Chhattisgarh & Others*¹⁴, wherein an identical issue came up for consideration, observed as under:

"20. It is well settled that the purpose of rules of natural justice is not to administer justice alone but to prevent miscarriage of justice and the principles of natural justice are applicable to the administrative order, if such order affects right of a citizen.

21. Applying well settled principle of law to the facts of the cases, there is a common thread that the principle of natural justice is not unruly horse. The principles of natural justice are required to be complied with, having regard to the facts situation obtained therein. Thus, the principles of natural justice may not be required to be followed in the cases, where the facts are admitted. Secondly, that it is practically impossible or highly improbable to afford an opportunity of hearing, in the event, of quashing of selection on account of irregularity committed on mass scale, or en-masse cancellation. Thirdly, no useful purpose would be served by affording an opportunity of hearing."

10. Accordingly, the impugned order dated 13.12.2005 (Annexure P-1) is quashed and the writ petition is allowed with all consequential benefits. No order as to costs.

Sd/-
S.K. Agnihotri
Judge

ashok

¹⁴ (2008) 2 CGLJ 366