

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO.1420 OF 2016**

1. Bhudhar Prasad Tiwari S/o Khem Prasad Tiwari, Aged About 42 Years Terminated Shiksha Karmi Grade III Assistant Teacher Panchayat, Village Chuhka, P.O. Hotraka, Tehsil Saja, District Bemetara, Chhattisgarh.
2. Arun Kumar Verma, S/o Shri Anjor Singh Verma, Aged About 30 Years Terminated Shiksha Karmi Grade III Assistant Teacher Panchayat, Village Hashmudi, District Bemetara, Chhattisgarh.
3. Rajendra Kumar Sahu, S/o Shri Pawan Sahu, Aged About 30 Years Terminated Shiksha Karmi Grade III Assistant Teacher Panchayat, Village Barchha, Post Bhanshoj, Tehsil Aarang, District Raipur, Chhattisgarh.
4. Khileshwar Das Sahu, S/o Shri Ramadhar Sahu, Aged About 31 Years Terminated Shiksha Karmi, Grade III Assistant Teacher Panchayat, Village Devri, Post Khursuni, Tehsil Gundardehi, District Balod, Chhattisgarh.
5. Laxman Prasad Bharti, S/o Shri Jhaduram, Aged About 35 Years Terminated Shiksha Karmi Grade III Assistant Teacher Panchayat, Post Mau, P.S. Nandghat, Tehsil And District Bemetara, Chhattisgarh.
6. Harish Chandra Tandan, S/o Shri Jagrit Kumar Tandan, Aged About 32 Years Terminated Shiksha Karmi Grade III Assistant Teacher Panchayat, Village Akaltara, Post Chourenga, Tehsil Simga, District Baloda Bazar, Chhattisgarh.
7. Bhagwan Singh Sivana, S/o Shri Tansingh Sivana, Aged About 34 Years Terminated Shiksha Karmi Grade III Assistant Teacher Panchayat, Village Bagdai, Post Limora, Tehsil Gurur, District Balod, Chhattisgarh.
8. Kuleshwar Kumar Patel, S/o Shri Loopsingh Patel, Aged About 28 Years Terminated Shiksha Karmi Grade III Assistant Teacher Panchayat, Village Khairjhiti Kala, Post Hatranka, Tehsil Thankhamariya, Block Saja, District Bemetara, Chhattisgarh.
9. Dev Kumar Nishad, S/o Shri Kanhaiyya Lal Nishad, Aged About 35 Years Terminated Shiksha Karmi Grade III Assistant Teacher Panchayat, Village Lakhna, Post Sarora, Tehsil Tilda, District Raipur, Chhattisgarh.
10. Kamal Prasad Koshle, S/o Shri Swaroop Das Koshle, Aged About 33 Years Terminated Shiksha Karmi Grade III Assistant Teacher Panchayat, Village Hemaband, Post Khandsara, District Bemetara, Chhattisgarh.

---- Petitioners**Versus**

1. Divisional Commissioner Durg Division, Durg, Chhattisgarh.
2. Collector, Bemetara, District Bemetara, Chhattisgarh.
3. Chief Executive Officer, Janpad Panchayat, Bemetara, District Bemetara, Chhattisgarh.

4. Janpad Panchayat, Bemetara, Through The General Administration Committee, Janpad Panchayat Bemetara, District Bemetara, Chhattisgarh.

---- Respondents

WRIT PETITION (S) No. 2178 of 2016

Yogeshwar Sahu S/o Shri Biselal Sahu, Aged About 32 Years R/o Village Bhojepara, Post Mohgaon, Tahsil Saja, District Bemetara, Chhattisgarh.

---- Petitioner

Versus

1. Divisional Commissioner Durg Division Durg, Chhattisgarh.
2. The Collector, District Bemetara, Chhattisgarh.
3. The Chief Executive Officer, Janpad Panchayat Berla, District Bemetara, Chhattisgarh.
4. Janpad Panchayat Berla, Through The General Administration Committee, Janpad Panchayat, Berla, District Bemetara, Chhattisgarh.

---- Respondents

WRIT PETITION (S) No. 2181 of 2016

Sangeeta Sinha W/o Shri Rohit Kumar Sinha, Aged About 28 Years Village And Post Kusami, Tehsil Berla And District Bemetara, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Panchayhat And Rural Development, D.K.S. Bhawan, Mantralaya, Raipur, Chhattisgarh.
2. The Collector, District Bemetara, Chhattisgarh.
3. Chief Executive Officer, Janpad Panchayat Bemetara, District Bemetara, Chhattisgarh.
4. Janpad Panchayat Bemetara, Through The General Administration Standing Committee, Bemetara, District Bemetara, Chhattisgarh.

---- Respondents

WRIT PETITION (S) No. 2249 of 2016

Dhruw Kumar Sahu S/o Shri Tilak Ram Sahu, Aged About 30 Years Village Kutkipara, P. O. Dharampura, P. S. Kawardha, District Kabirdham Chhattisgarh.

---- Petitioner

Versus

1. Divisional Commissioner Durg Division Durg Chhattisgarh.
2. Collector Bemetara, District Bemetara Chhattisgarh.
3. Chief Executive Officer, Janpad Panchayat Bemetara District Bemetara Chhattisgarh.
4. Janpad Panchayat Bemetara Through The General Administration Committee, Janpad Panchayat Bemetara, District Bemetara Chhattisgarh.
5. Directorate of Sports and Youth Welfare, Khel Bhawan, G. E. Road, Raipur Chhattisgarh.

---- Respondents

WRIT PETITION (S) No.3635 of 2017

Shyam Lal Sinha S/o Shri Ganga Prasad Sinha, Aged About 38 Years Village Padmi, Post Bemetara, Tehsil Than Khamariya, District Bemetara Chhattisgarh.

---- **Petitioner**

Versus

1. Divisional Commissioner Durg Division, Durg Chhattisgarh.
2. Collector Bemetara, District Bemetara Chhattisgarh.
3. Chief Executive Officer, Janpad Panchayat Bemetara, District Bemetara Chhattisgarh.
4. Janpad Panchayat Bemetara, Through The General Administration Committee, Janpad Panchayat Bemetara, District Bemetara Chhattisgarh.

---- **Respondents**

WRIT PETITION (S) No. 4702 of 2017

Purushottam Patel S/o Shri Khadanand Patel, Aged About 35 Years Village Padmi, Post Bemetara, Tehsil Thana Khamariya, District Bemetara Chhattisgarh.

---- **Petitioners**

Versus

1. Divisional Commissioner Durg Division, Durg Chhattisgarh.
2. Collector, Bemetara, District Bemetara Chhattisgarh.
3. Chief Executive Officer, Janpada Panchayat Bemetara District Bemetara Chhattisgarh.
4. Janpad Panchayat Bemetara Through The General Administration Committee, Janpad Panchayat Bemetara, District Bemetara Chhattisgarh.

---- **Respondents**

WRIT PETITION (S) No. 5362 of 2018

Smt. Hemlata Sahu W/o Shri Bholuram Sahu, Aged About 30 Years D/o Manohar Sahu, R/o Semariya, Janpad Panchayat Bemetara Tehsil Bemetara District Bemetara Chhattisgarh.

---- **Petitioner**

Versus

1. Divisional Commissioner Durg Division, Durg, Chhattisgarh.
2. Collector Bemetara, District Bemetara Chhattisgarh.
3. Chief Executive Officer, Janpad Panchyat Bemetara District Bemetara Chhattisgarh.
4. Janpad Panchayat Bemetara , Through The General Administration Committee, Janpad Panchyat Bemetara District Bemetara Chhattisgarh.

---- **Respondents**

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| For Petitioners | : | Shri Jitendra Pali, Advocate. |
| For Respondent-State | : | Shri Mazid Ali, Dy. Govt. Advocate. |
| For Respondent No.3&4 | : | Shri YS Thakur, Advocate, in WPS No.2178 of 2016. |
| For Respondent No.3&4 | : | Shri Shashank Thakur and Shri Chandresh Shrivastava, Advocates, in WPS Nos. 1420 & 2181 of 2016 and 3635 of 2017. |

Hon'ble Shri Justice P. Sam Koshy

Order on Board

31.10.2018

1. Since the facts involved in these 7 cases are similar and identical, this court proceeds to decide all these petitions by this common order.
2. Since all the petitioners have been terminated and appeals have been decided on separate basis, to avoid repetition this court is ignoring the date as the facts otherwise are common.
3. Challenge in these petitions are to the order of termination passed by the Chief Executive Officer of the concerned Janpad Panchayat against which the petitioners had also preferred an appeal first before the Collector and again thereafter by way of revision before the Divisional Commissioner and both the Appeal as well as the Revision stood rejected leading to filing of these petitions.
4. The counsel for the petitioners at the outset submits in one of the case arising out of the same common enquiry with which the petitioners have also been terminated one Rohini Jha and Dameshwari pertaining to Janpad Panchayat Saja in the same district had filed a writ petition vide WPS No.984 of 2018. He further submits that this court vide order dated 20.04.2018 had allowed the petition on the ground that the order of punishment has been passed in violation of the provisions of rule 7 of Chhattisgarh Panchayat Services (Discipline and Appeal) Rules, 1999 (in short, the Rules, 1999).

5. The counsel for the petitioners submits that since all the petitioners in this bunch of petitions also were terminated arising out of same enquiry which was conducted and since in the aforesaid judgment of Rohini Jha (Supra) after passing of the order by this court, they have been reinstated and other persons also terminated along with the petitioners (Rohini Jha) but who had not filed writ petition belonging to Janpad Panchayat, Saja, all have been reinstated in service and who are still performing their duties. Thus, the counsel for the petitioners prays for similar order to be passed in favour of the petitioners firstly on the ground of parity and secondly on the ground that the petitioners also have been terminated on the same facts and grounds as in case of petitioners also there is violation of rule 7 of Rules, 1999.
6. The counsel for the respondents opposing the petitions submit that though there is an order in the case of petitioners arising out of similar facts from the Janpad Panchayat, Saja, but they intend to distinguish the said order in case of Rohini (Supra) for the reason that it cannot be construed to be an act of misconduct what has been alleged against the petitioners. According to them, it is not a case where the petitioners have been misconducted themselves in the course of discharging their duties. Rather it is a case of obtaining employment by playing fraud by producing false and fake documents. Therefore, there would not be a requirement of compliance of rule 7 as mandated under Rules, 1999.
7. The contention of the respondents is also that before imposition of order of termination, the respondents had provided the petitioners

show cause notice with which they could have sufficiently established their innocence or could have disproved the charges which had been levelled against them. Thus, for all the aforesaid reasons, the respondents pray for rejection of the petitions.

8. Having considered the contentions on either side and on perusal of records what is not in dispute is the fact that in the year, 2014 in district Bemerata batch of Shiksha Karmies were terminated belonging to different Janpad Panchayats and the termination was passed on the basis of a common enquiry which was conducted. One such termination was in respect of the Shiksha Karmi who were appointed at Janpad Panchayat, Saja. Couple of Shiksha Karmis belonging to Janpad Panchayat Saja have filed WPS No.984 of 2018 which stood allowed by this court on 20.04.2018. The present set of petitioners also have been terminated by the same enquiry which was conducted. The only difference is that the present writ petitioners are Shiksha Karmi from a different Janpad Panchayat i.e. in the present cases the petitioners belonging to Janpad Panchayat Balod and Janpad Panchayat, Bemetara whereas the petitioners in WPS No.984 of 2018 are from Janpad Panchayat, Saja.
9. Given the aforesaid admitted factual position of the case as also the judgment of this court in the case similarly situated persons belonging to the other Janpad Panchayat i.e. Janpad Panchayat Saja and also taking note that they were also terminated arising out of the same enquiry and in whose case there already is an order of setting aside of the termination order, this court in exercise of judicial discipline proprietary and precedence is inclined to apply the same

analogy in deciding the case of the petitioners as well. In the said judgment of Rohini Jha (Supra), this court has observed in paragraphs 3 to 5 as under :

“(3) Admittedly, on certain allegations, show cause notice was issued to the petitioners and when the respondent authority was not satisfied with the reply of present petitioners, their services have been terminated. 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 Rule 7 of the Rules, 1999.

(4) In the case at hand, no departmental enquiry has been held as contemplated under Rule 7. The said provisions uses the words 'formal inquiry' with further stipulation that when an order for 'formal enquiry' has been made, the disciplinary authority shall frame Definite charges, communicate the same to the delinquent along with the statement of allegations, requiring him to submit within the specified time a written statement of defence and also to state whether he desires to be heard in person. Thereafter, the defence is required to be permitted to inspect and take extracts from the records, which can be refused for reasons to be recorded in writing. On submission of reply by the delinquent, the disciplinary authority may himself enquire or appoint an enquiry officer. Appointment of Presenting Officer and seeking assistance of some other officers by the delinquent is also contemplated therein. The enquiry officer is also enabled to record evidence and thereafter, at the conclusion of the enquiry, the enquiry officer is supposed to prepare enquiry report, the copy of which is required to be furnished to the delinquent. Thus, the 'formal inquiry' envisaged under the Rules is akin to the procedure prescribed for a regular enquiry under Rule 14 of

the C.G. Civil Services (Classification, Control and Appeal) Rules, 1966.

(5) The materials made available to this Court nowhere indicate that any enquiry as contemplated under Rule 7 has been initiated or conducted against the petitioner. Therefore, the impugned order of termination is ex facie not sustainable in law and the same deserves to be set aside.”

10. In the instant case also learned counsel for the respondents fairly submits that so far as the present petitioners are concerned, admittedly there has not been any Departmental Enquiry as such conducted. It was only a preliminary enquiry conducted and on the basis of the report of the preliminary enquiry the petitioners were issued with show cause notices and thereafter terminated. But, what is admittedly clear is that in the course of conducting of preliminary enquiry also the petitioners were not taken into confidence neither were they granted opportunity to disprove the contentions which had been raised by the department or which the department was investigating upon.
11. Given the aforesaid facts and circumstances of the case, all these writ petitions also deserve to be decided in similar terms as in case of Rohini Jha (Supra) in WPS No.984 of 2018 decided on 20.04.2018. It is ordered accordingly.
12. Accordingly, all the writ petitions stand allowed and disposed of in terms of Rohini Jha's case. The impugned orders of termination, rejection of their appeals by the appellate authority as well as revisional authority all stand set aside/quashed for similar reasons as had been held in Rohini Jha's case, reserving the right of the

department to proceed further, if they intend to do so, in accordance with provisions of law.

Sd/-
(P. Sam Koshy)
Judge

inder