

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.7669 of 2011

Smt. Indira Patel, W/o B.C. Patel, aged about 37 years, Occupation Terminated Aganwadi Worker, R/o Ward No.24, Rani Laxmibai Ward, Dallirajhara, New Bus Stand, District Durg (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Women and Child Development Department, D.K.S. Bhawan, Mantralaya, Raipur, District Raipur (C.G.)
2. Commissioner/Director, Directorate, Woman and Child Development, Raipur (C.G.)
3. Additional Collector, Durg, District Durg (C.G.)
4. Project Officer, Women and Child Development Department, Durg, District Durg (C.G.)
5. Chief Municipal Officer, Municipal Council, Dallirajhara, District Durg (C.G.)
6. Smt. Usha Meshram, W/o Late Shri B.S. Meshram, aged about 43 years, By Caste Mahar, R/o Chandeli Bhata, Ward No.24, Dallirajhara, Tahsil Dondi, District Durg (c.G.)

---- Respondents

For Petitioner: Mr. Awadh Tripathi, Advocate.

For Respondents No.1 to 4 / State: -

Mr. Aditya Sharma, Panel Lawyer.

For Respondent No.5: Mr. Y.S. Thakur, Advocate.

For Respondent No.6: None present, though served.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

25/08/2021

1. Proceedings of this matter have been taken-up through video conferencing.
2. The petitioner calls in question legality, validity and correctness of order dated 28-10-2011 (Annexure P-1) passed by respondent No.3 – Additional Collector, Durg, whereby order dated 17-8-2010 (Annexure



P-2) passed by respondent No.5 – Chief Municipal Officer, Municipal Council, Dallirajhara, District Durg, terminating the services of the petitioner from the post of Aanganwadi Karyakarta, has been affirmed by the learned Additional Collector.

3. The petitioner was duly selected and appointed as Aanganwadi Karyakarta in Aanganwadi Centre No.42 in selection process on 21-5-2007 which she joined on 8-6-2007. Thereafter, she was served with notice dated 17-2-2010 which she replied, but ultimately her services were terminated on 17-8-2010 by the Chief Municipal Officer, Municipal Council, Dallirajhara which she questioned by filing appeal in terms of circular dated 2-4-2008 before the Additional Collector, Durg, but by impugned order dated 28-10-2011 (Annexure P-1), the learned Additional Collector dismissed the appeal affirming the order of the CMO, Municipal Council, Dallirajhara which is sought to be challenged in this writ petition on the ground that the procedure prescribed in circular dated 2-4-2008 terminating the services of Aanganwadi Karyakarta has not been followed and that has caused serious prejudice to the petitioner and therefore the order of the CMO, Municipal Council, Dallirajhara and that of the Additional Collector deserve to be set aside the petitioner be reinstated on the post of Aanganwadi Karyakarta.
4. Return has been filed by the State / respondents No.1 to 4 supporting the orders impugned passed by the CMO and the Additional Collector.
5. No return has been filed by respondent No.5 as well as by respondent No.6.
6. Mr. Awadh Tripathi, learned counsel appearing for the petitioner, would submit that in order to remove the petitioner who was a duly





selected Aanganwadi Karyakarta, the procedure prescribed in circular dated 2-4-2008 (clause 13) was imperative and by merely giving show cause notice, her services could not have been terminated. As such, the order of the CMO is absolutely bad in law, but in appeal preferred in accordance with clause 11 of the said circular, the Additional Collector also did not look into the same and dismissed the appeal which is ex facie illegal and bad in law and therefore the impugned orders be set aside and the petitioner be reinstated along with back-wages.

7. Mr. Aditya Sharma, learned State counsel, would support the impugned orders which in turn was adopted by Mr. Y.S. Thakur, learned counsel for respondent No.5 also.

8. None present for respondent No.6, though served.

9. I have heard learned counsel for the parties and considered their submissions made herein-above and also went through the record with utmost circumspection.

10. Admittedly and undisputedly, the petitioner was duly selected as Aanganwadi Karyakarta, she was removed from service by order dated 17-8-2010 by respondent No.5 and appeal against the order of removal has been dismissed by the Additional Collector. The procedure for removal of Aanganwadi Karyakarta has been prescribed by the State Government by circular dated 2-4-2008. Clause 13 of circular dated 2-4-2008 prescribes the procedure for removal of Aanganwadi Karyakarta which states as under: -

13 कार्यकर्ताओं/सहायिकाओं को पद से हटाने की प्रक्रिया:-

13.1 किसी आंगनबाड़ी कार्यकर्ता/सहायिका के संदर्भ में शिकायत प्राप्त होने पर बाल विकास परियोजना अधिकारी द्वारा संबंधित पर्यवेक्षक से जांच करवाकर प्रतिवेदन प्राप्त किया जायेगा व प्राप्त प्रतिवेदन में गुण दोषों का परीक्षण कर शिकायत सही



पाये जाने पर यदि किसी प्रकार का गबन अथवा गंभीर अनियमितता का प्रकरण बनता है तो संबंधित कार्यकर्ता/सहायिका को उस पर परिलक्षित हुए आरोपों से स्पष्ट अवगत कराते हुए अपना पक्ष रखने का अवसर प्रदान किये जाने हेतु पन्द्रह दिवस का समय प्रदान किया जावेगा एवं उत्तर प्राप्त होने पर पुनः गुण दोषों का परीक्षण कर न्यायोचित निर्णय लेते हुए यदि पद से पृथक किया जाना आवश्यक हो तो पद से पृथक किये जाने संबंधी प्रस्ताव जाँच प्रतिवेदन सहित जनपद पंचायत/नगरीय निकाय की उस समिति के समक्ष प्रस्तुत किया जावेगा जो चयन के लिये सक्षम है। उक्त समिति के अनुमोदन होने के उपरांत मुख्य कार्यपालन अधिकारी, जनपद पंचायत/आयुक्त नगर निगम/मुख्य नगर पालिका अधिकारी द्वारा पद से पृथक करने के आदेश प्रसारित किये जावेंगे।

13.2 यदि गबन अथवा गंभीर अनियमितता का प्रकरण परिलक्षित नहीं हुआ है एवं मात्र सामान्य लापरवाहियों परिलक्षित हुई हैं तो संबंधित बाल विकास परियोजना अधिकारी द्वारा प्रथम दो बार संबंधित कार्यकर्ता/सहायिका को सचेत करते हुए चेतावनी जारी की जावेगी एवं तृतीय बार भी सुधार न आने पर उस पर स्पष्ट आरोप आरोपित करते हुए सुनवाई का अंतिम अवसर प्रदान किया जावेगा एवं प्राप्त स्पष्टीकरण पर न्यायोचित रूप से विचार करते हुए यदि पद से पृथक किया जाना आवश्यक हो तो तदनुसार उपरोक्त कण्डिका 13.1 अनुसार जनपद पंचायत/नगरीय निकाय को प्रस्ताव प्रस्तुत कर सेवा समाप्त करने की कार्यवाही की जावेगी। यदि गंभीर कदाचार/अनियमितता की शिकायत होने पर भी जनपद पंचायत/नगरीय निकाय की चयन समिति कार्यकर्ता/सहायिका को पद से प्रथक करने संबंधी प्रस्ताव प्रस्तुत करने के तीन सप्ताह की समयावधि के भीतर पारित नहीं करती है एवं परियोजना अधिकारी उक्त कार्यकर्ता/सहायिका को जनहित में पद से पृथक किया जाना आवश्यक मानते हैं तो बाल विकास परियोजना अधिकारी प्रकरण मूल्यांकन समिति के समक्ष रखेंगे। बाल विकास परियोजना अधिकारी के द्वारा मूल्यांकन समिति के प्रस्ताव से जिला कार्यक्रम अधिकारी के अनुमोदन उपरांत पद से पृथक किया जा सकेगा।

13.3 वरिष्ठ अधिकारियों अर्थात् जिला कार्यक्रम अधिकारी अथवा उनसे उच्च अधिकारियों के निरीक्षण के दौरान स्थिति असंतोषजनक पाये जाने पर यदि उनके विवेक अनुसार कार्यकर्ता को पद से पृथक किया जाना आवश्यक पाया जाता है तो इस हेतु संबंधित अधिकारी अपने निरीक्षण तथा अनियमितताओं का विस्तृत सुस्पष्ट प्रतिवेदन तैयार कर पद से पृथक करने हेतु उल्लेख करते हुए मुख्य कार्यपालन अधिकारी जनपद पंचायत और यदि नगरीय क्षेत्र है तो आयुक्त नगर निगम/मुख्य नगर पालिका अधिकारी को प्रेषित कर देंगे एवं जनपद पंचायत एवं नगरीय निकाय द्वारा कण्डिका 13.1 एवं 13.2 अनुसार कार्यवाही की जावेगी।

13.4 पद से पृथक्करण के आदेश के विरुद्ध अपील कंडिका 11 के प्रावधानों के अनुसार की जा सकेगी।

13.5 यदि कोई आंगनबाड़ी कार्यकर्ता/सहायिका बिना किसी सूचना के लगातार एक माह से अधिक अवधि तक अनुपस्थित रहती है तो परियोजना अधिकारी अनुपस्थिति के कारण पर पर्यवेक्षक से एक जांच प्रतिवेदन प्राप्त कर कंडिका 13.1, 13.2 के अनुरूप सेवा समाप्त करने की कार्यवाही करेंगे।

13.6 आंगनबाड़ी कार्यकर्ता/सहायिका की सेवा की अधिकतम उम्र 62 वर्ष पूर्ण होने पर



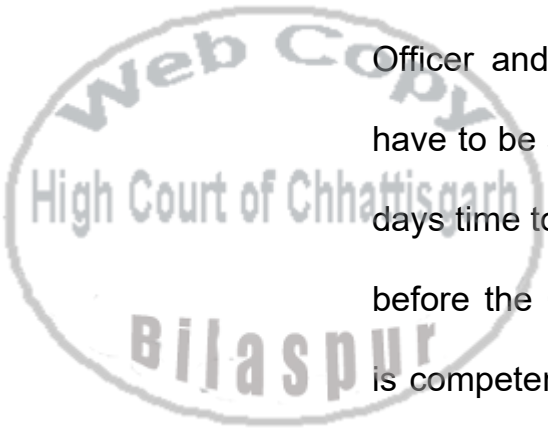


परियोजना अधिकारी उन्हें एक माह पूर्व लिखित सूचना देकर सेवा समाप्त करने संबंधी आदेश प्रसारित करेंगे। इस हेतु कंडिका 13.1, 13.2 के अनुरूप जनपद पंचायत/नगरीय निकाय की चयन समिति से अनुमोदन लेने की आवश्यकता नहीं होगी।

स्पष्टीकरण:- उपरोक्तानुसार पद से पृथक करने की प्रक्रिया में जिस अभ्यर्थी की नियुक्ति जिस प्रक्रिया से हुई होगी उसी प्रक्रिया से उसी प्रक्रिया के तहत विहित समिति व अनुमोदन के अनुसार उसे पद से पृथक किया जावेगा अर्थात् यदि जनपद पंचायत/नगरीय निकाय से चयन हुआ है तो उसी निकाय के माध्यम से कंडिका 13.1 अनुसार कार्यवाही करते हुए पद से पृथक किया जावेगा एवं जिस अभ्यर्थी का चयन मूल्यांकन समिति तथा जिला कार्यक्रम अधिकारी के अनुमोदन से हुआ होगा उसे तदनुसार ही मूल्यांकन समिति व जिला कार्यक्रम अधिकारी के अनुमोदन से पद से पृथक किया जावेगा।

11. A careful perusal of the aforesaid clause would show that detailed procedure has been prescribed for removal of Aanganwadi Karyakarta which includes enquiry by supervisor at the instance of the Project Officer and in case of embezzlement or gross irregularity, charges have to be served to the delinquent Aanganwadi Karyakarta giving 15 days time to submit reply and after receipt of reply, it should be placed before the Committee of Janpad Panchayat/Municipal Council which is competent to recruit and thereafter, order has to be passed by the CMO, Janpad Panchayat/Commissioner, Municipal Corporation. Likewise, as per clause 13.2 of the said circular, if it is not the case of embezzlement or gross irregularity, then warning has to be given.

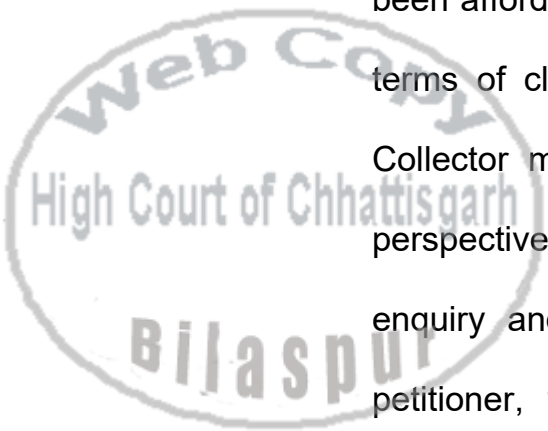
12. Reverting to the facts of the case in the light of the aforesaid requirement of conducting enquiry, it appears that vide Annexure P-6, the petitioner was only given notice dated 17-2-2010 directing her to appear in the office which she replied on 22-2-2010 and asked for permission to join and in the meanwhile, departmental report was also submitted against the petitioner which is available at page 16 & 17 of the writ petition, but it appears that thereafter, no procedure has been followed as indicated in clause 13.1 of circular dated 2-4-2008 by





serving copy of charges along with materials giving 15 days notice to reply and it also appears that on 13-8-2010, the Project Officer referred the matter to the Municipal Council on the basis of resolution in the meeting of President-in-Council dated 13-8-2010 and accordingly, order dated 17-8-2010 was passed. As such, the procedure prescribed in clause 13.1 of circular dated 2-4-2008 has not been followed while terminating the services of the petitioner which has caused serious prejudice to her. It appears that even no show cause notice for termination along with material which has been collected departmentally by the Project Officer has been served to the petitioner and no minimum opportunity to her to defend herself has been afforded and she has been terminated, which she questioned in terms of clause 11 of the said circular, but the learned Additional Collector misdirected himself by not considering her case in right perspective and without considering the requirement of holding enquiry and giving opportunity in terminating the services of the petitioner, who was a duly selected and appointed Aanganwadi Karyakarta, in terms of clause 13.1 of circular dated 2-4-2008, the impugned order has been passed affirming the order of the CMO, Municipal Council, Dallirajhara removing the petitioner from the said post. The impugned orders are ex facie illegal and in teeth of clause 13 of circular dated 2-4-2008 and also in violation of the principles of natural justice.

13. Accordingly, the order dated 17-8-2010 removing the petitioner from the post of Aanganwadi Karyakarta and the order dated dated 28-10-2011 affirming the said order of removal of the petitioner are hereby quashed. The petitioner would be entitled for reinstatement. In order to claim back-wages, the petitioner is at liberty to move the appointing





authority within six weeks from today which will be considered by the appointing authority in accordance with law. However, the official respondents are at liberty to proceed in accordance with law, but this should not be considered as a mandate to initiate disciplinary proceeding unless it is expedient in the interest of justice to be decided by the competent authority.

14. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

