



2026:CGHC:20661

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 1234 of 2024

Atul Kumar Shete S/o Shri R. R. Shete Aged About 54 Years Occupation- Government Employee, Working As Deputy Collector At District Bijapur, Chhattisgarh.

... Petitioner(s)

versus

1 - The State Of Chhattisgarh Through The Secretary, Department Of General Administration, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nawa Raipur, Chhattisgarh

2 - D. P. Singh (Deleted) As Per Hon'ble Court Order Dated 24-01-2025

3 - The Secretary Public Service Commission Chhattisgarh, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nawa Raipur, Chhattisgarh

4 - (Deleted), Shri Kumar Lal Chauhan As Per Honble Court Order Dated 28-02-2024

... Respondent(s)

For Petitioner	: Mr. Roop Ram Naik, Advocate
For Resp. No.1/State	: Mr. Gary Mukhopadhyay, Addl. Advocate General
For Resp. No.2/PSC	: Dr. Sudeep Agrawal, Advocate

S.B.: Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

04/05/2026

1. This writ petition is filed by the petitioner against the order of punishment dated 07.12.2023 whereby petitioner who is holding the post of Tahsildar has been inflicted with major punishment under Rule 10 (v) of the Chhattisgarh Civil Services Classification, Control and Appeal Rules, 1966 (hereinafter referred to as "*Rules of 1966*") of withholding two increments with cumulative effect.
2. Learned counsel for the petitioner submits that petitioner while posted as Tahsildar at Kharsiya, District- Raigarh, in exercise of jurisdiction, has entertained two applications for mutation and has passed order of mutation. Subsequently, a show cause notice was issued to petitioner as order of mutation has been passed without publishing the proclamation as provided under the Chhattisgarh Land Revenue Code, 1949 and Rules framed thereunder. Petitioner has submitted reply, however, without considering the reply in appropriate manner and further that petitioner has acted as quasi-judicial authority, charge memo was issued against him leveling two charges. Petitioner submitted reply to charge memo and thereafter Enquiry Officer, appointed by Disciplinary Authority has initiated proceeding of enquiry, examined witnesses and submitted its report opining that charges levelled against petitioner have been found to be proved. After receipt of enquiry report, petitioner was issued notice to submit reply/representation on the enquiry report to which petitioner submitted. However, reply was considered by not a Govt. servant of the State Govt. but by a person who has been engaged on contract basis. As the proceeding of departmental enquiry was initiated under

Rules of 1966, it will be the authority as prescribed under Rules of 1966 only to participate at each stage of proceeding i.e. issue charge memo, appoint Enquiry Officer/Presenting Officer to initiate enquiry proceeding and thereafter based on enquiry report submitted by Enquiry Officer, to issue notice to the delinquent employee to submit his representation on the enquiry report. He submits that employee engaged by the State Govt. on contract basis upon considering the enquiry report and representation/comments of the delinquent employee has formed opinion and recommended for imposition of punishment of withholding two increments, which is without jurisdiction in view of circular issued by the State Govt. dated 05.08.2006. He also contended that if any decision is taken by statutory authority at the behest or on suggestion of a person who has no statutory role to play, the same would be patently illegal . He places reliance upon the decision of Hon'ble Supreme Court in case of **Joint Action Committee of Air Line Pilots' Association of India (ALPAI) and Ors. Vs. Director General of Civil Aviation and Ors.** reported in **(2011) 5 SCC 435.**

3. Learned counsel for the State vehemently opposes submission of learned counsel for the petitioner and would submit that upon finding the irregularity committed by the petitioner, initially show cause notice was issued and upon dissatisfying with reply, charge memo was issued to petitioner by competent authority . Thereafter the competent authority has appointed Enquiry Officer who conducted enquiry and after conclusion of enquiry, submitted its report. He however submits that petitioner has not submitted any document/circular or directives

issued by State Govt. to suggest that employee like Mr. D.D. Singh appointed by State Govt. cannot participate in the said departmental proceeding where action is to be taken against delinquent employee. He contended that Mr. D.D. Singh is a retired Govt. servant and looking to exigency he was engaged as contract employee and in discharge of his duty he had recommended/opined the punishment to be imposed upon the petitioner. Hence it cannot be said that Mr. D.D. Singh acting as a Secretary was not having any jurisdiction to record such a proceeding.

4. Learned counsel for respondent- PSC would support the submission of learned counsel for the State.
5. I have heard learned counsel for the parties and perused the documents available on record.
6. Though petitioner has raised multiple grounds in this writ petition, however, this Court at this stage is considering the ground of jurisdiction of the authority who has participated in the proceeding of departmental action being taken against the petitioner, as it goes to root of matter.
7. It is not disputed by learned counsel for the State that engagement of Mr. D.D. Singh is on contract basis after his superannuation from service . Appointment order of Mr. D.D. Singh is placed in record at page No.88 of writ petition which is dated 30th June 2021. In the order itself it is clearly mentioned that Mr. D.D. Singh was appointed under Chhattisgarh Civil Services (Contract Appointment) Rules 2012. In

support of his contention that a contract employee is not a Govt. servant, learned counsel for the petitioner has enclosed the circular issued by State Govt. dated 05.08.2006 (Annexure P-10) which mentions that the employees/officers engaged on contract basis do not fall in the class of Govt. servant. Disciplinary action is to be taken against a Govt. servant only under the Rules of 1966.

8. Rule 2 (f) of the Rules of 1966 defines "Govt. Servant" which is relevant in the facts of case and therefore it is extracted below for ready reference:

2 (f). "Government servant" means a person who-

(i) is a member of a Service or holds a civil post under the State, and includes any such person on foreign service or whose services are temporarily placed at the disposal of the Union Government, or any other State Government or a local or other authority;

(ii) is a member of a service or holds a civil post under the Government of India or any other State Government and whose services are temporarily placed at the disposal of the State Government;

(iii) is in the service of a local or other authority and whose services are temporarily placed at the disposal of the State Government;"

9. "Constitution of State Civil Service" is defined under Rule 5 of Rules of 1966 which provides that State Civil Services, Class-I, Class-II, Class-III and Class-IV shall consist of services and grades of services specified in the Schedule, and such other services of the grades of services specified in Schedule, and such other services or grades or post as may be notified by the State from time to time.

10. Admittedly, Mr. D.D. Singh was not holding the post in the State services as provided under Schedule of Rules of 1966. However, from his appointment order itself it is clear that Mr. D.D. Singh was appointed on contract for a period of one year under Chhattisgarh Civil Services (Contract Appointment), Rules 2012.
11. The provision of the Rules of 1966, particularly Rules 14 and 15, makes it abundantly clear that the disciplinary authority is required to independently consider the enquiry report and the representation submitted by the delinquent employee before arriving at a conclusion regarding guilt and punishment. The statutory function so entrusted cannot be delegated or influenced by opinion or recommendation of a person who has no authority under the Rules of 1966.
12. Circular issued by the State Govt. dated 05.08.2006 about the status of officer/employee engaged on contract is extracted below for ready reference:

“इस संबंध में पूर्ण विचारोपरान्त यह स्पष्ट किया जाता है कि संविदा पर नियुक्त अधिकारी/कर्मचारी शासकीय सेवक की श्रेणी में नहीं आता है । अतएव उसे शासकीय सेवकों की गोपनीय चरित्रावली में मतांकन करने का अधिकार नहीं है ।”
13. Petitioner was holding post of Tahsildar and therefore he is an official of revenue department of the State which is Class-II Executive Post and appointing authority of whom is the State Govt. and the Divisional Commissioner is having power to impose punishment except the punishment of removal, dismissal and reduction in rank.

14. Rule 14 (23) provides for procedure after conclusion of enquiry by Enquiry Officer which provides for preparation of report under Rule 14 (23) (i) and under Rule 14 (23) (ii) it is for the Enquiry Officer to forward enquiry report to the Disciplinary Authority where Enquiry Officer is not Disciplinary Authority, along with records of enquiry. Though in the case at hand from note- sheet it is appearing that in the proceedings initiated against the petitioner for enquiry and of inflicting punishment, Mr. D.D. Singh the officer engaged on contract has proposed the punishment of withholding two increments with cumulative effect and accordingly the order Annexure P-1 was passed.

15. In the present case, the record reveals that the petitioner's representation was examined and opinion was formed by a contractual employee, who is not shown to be vested with any statutory authority under the Rules, 1966. He is not a Government Servant as defined under Rule 2 (f) of the Rules of 1966. Such participation, in the absence of any enabling provision, clearly amounts to interference in the decision-making process by an unauthorised person. The law is well settled that when a statute or statutory rules prescribe a particular authority to exercise power, the same must be exercised by that authority alone. Any decision influenced or guided by a person having no authority in law would stand vitiated.

16. Hon'ble Supreme Court in case of **Joint Action Committee of Air Line Pilots Association of India** (supra) has observed thus:

“26. The contention was raised before the High Court that the Circular dated 29-5-2008 has been issued by the authority having no competence, thus cannot be

enforced. It is a settled legal proposition that the authority which has been conferred with the competence under the statute alone can pass the order. No other person, even a superior authority, can interfere with the functioning of the statutory authority. In a democratic set-up like ours, persons occupying key positions are not supposed to mortgage their discretion, volition and decision-making authority and be prepared to give way to carry out commands having no sanctity in law. Thus, if any decision is taken by a statutory authority at the behest or on suggestion of a person who has no statutory role to play, the same would be patently illegal. (Vide *Purtabpore Co. Ltd. v. Cane Commr. of Bihar* [(1969) 1 SCC 308 : AIR 1970 SC 1896] , *Chandrika Jha v. State of Bihar* [(1984) 2 SCC 41 : AIR 1984 SC 322] , *Tarlochan Dev Sharma v. State of Punjab* [(2001) 6 SCC 260 : AIR 2001 SC 2524] and *Manohar Lal v. Ugrasen* [(2010) 11 SCC 557 : (2010) 4 SCC (Civ) 524 : AIR 2010 SC 2210] .)

27. Similar view has been reiterated by this Court in *Commr. of Police v. Gordhandas Bhanji* [1951 SCC 1088 : AIR 1952 SC 16] , *Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia* [(2004) 2 SCC 65 : AIR 2004 SC 1159] and *Pancham Chand v. State of H.P.* [(2008) 7 SCC 117 : AIR 2008 SC 1888] observing that an authority vested with the power to act under the statute alone should exercise its discretion following the procedure prescribed therein and interference on the part of any authority upon whom the statute does not confer any jurisdiction, is wholly unwarranted in law. It violates the constitutional scheme.

28. In view of the above, the legal position emerges that the authority who has been vested with the power to exercise its discretion alone can pass the order.

Even a senior official cannot provide for any guideline or direction to the authority under the statute to act in a particular manner.”

17. In the present case, participation of a contractual employee in disciplinary proceeding, considering the petitioner’s representation and recommending punishment, in absence of any statutory authority, amounts to interference by an unauthorised person in the decision-making process. This vitiated the disciplinary proceedings from the stage of consideration of the enquiry report and making recommendation, which is not sustainable in the eyes of law.
18. Consequently, the impugned order of punishment dated 07.12.2023 (Annexure P-1) cannot be sustained in the eyes of law. Accordingly, the writ petition is allowed. The impugned order of punishment is hereby quashed, reserving liberty with the respondents authority to initiate fresh proceeding from the stage of issuance of notice to petitioner on enquiry report and submission of representation by the petitioner, and to pass appropriate order afresh strictly in accordance with law, without being influenced by any opinion/recommendation made earlier by an officer who is not having any authority under the law.
19. No order as to costs.

Sd/-

(Parth Prateem Sahu)

Judge