

(2018) 08 CHH CK 0183

Chhattisgarh High Court

Case No: Writ Petition (S) No. 4794 Of 2018

Shyam Lal Nayak

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision: Aug. 14, 2018

Hon'ble Judges: P. Sam Koshy, J

Bench: Single Bench

Advocate: Shikhar Bhaktiyar, D K Wankhede

Final Decision: Allowed

Judgement

P. Sam Koshy, J

1. The challenge in this petition is to the order dated 05.03.2018 (Annexure P/1) whereby the order of regularization passed in favour of the petitioner on 09.02.2018 has been cancelled.
2. This court while issuing notice on 26.07.2018 directed the respondents to file their reply and the matter was ordered to be listed today.
3. Today also when the matter is called on, the State counsel submits that reply could not be filed. Considering the facts, with the consent of the parties, the writ petition was finally heard.
4. Learned counsel for the petitioner submits that right which has been created in favour of the petitioner by the order dated 09.02.2018 and which was also implemented by the respondents. They subsequently withdrew the said order by cancelling the same vide the impugned order dated 05.03.2018.
5. It is the categorical contention of the petitioner that before issuance of the order impugned, the petitioner was not taken into confidence inasmuch as

no explanation or show cause notice was given to the petitioner. Neither did the respondents conduct an enquiry in respect of the order dated

09.02.2018 is concerned. Thus, the impugned order is blatant violation of the principles of natural justice.

6. The State counsel however trying to defend the impugned order submits that it appears that the petitioner has been wrongly granted benefit of regularization by order dated 09.02.2018 inasmuch as his case would not fall within any of the conditions stipulated in the circular dated 05.03.2008 issued by the State.

7. The position as it stands is by now well settled by a catena of decisions of the Supreme Court that whenever there is an order particularly an order which has adverse affect on the employee, the least that is expected is an opportunity of hearing should have been given to the employee. In the instant case from the factual matrix of the case as it stands admittedly that before issuance of the impugned order the petitioner has not been afforded any opportunity to explain the matter. Nor has he been issued with any show cause notice.

8. The Supreme Court time and again has held that any action which has adverse civil consequence detrimental to the interest of a person, the same cannot be passed without complying with principles of natural justice i.e. by affording an opportunity of hearing to the person against whom order is being passed.

9. Under the circumstances, the impugned order dated 05.03.2018 (Annexure P/1) so far as it relates to the petitioner is not sustainable. The same deserves to be and is hereby set aside, reserving right of the respondents to pass appropriate suitable orders if the advantage which has been granted to the petitioner on 09.02.2018 has been wrongly granted. However, before any action is initiated, the respondents should ensure providing opportunity of hearing to the petitioner.

10. With the aforesaid observations and liberty to the the State, the writ petition stands allowed. Consequence to follow.