

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2099 of 2015

- Smt. Pooja Jindal W/o Shri Vishal Jindal, Aged About 30 Years
Occupation House Wife, R/o Moda Niwas 9/14, Kotra Road, Raigarh
Chhattisgarh

---- Petitioner

Versus

1. Vishal Jindal S/o Shri Vijay Kumar Jindal, Aged About 33 Years
Occupation Business, R/o 45 Jindal Niwas, Deshmukh Marg, Dhantoli,
Nagpur Maharastra,
2. State Of Chhattisgarh, Through The Principal Secretary, Law &
Legislative Affairs Department, Mantralaya, Naya Raipur,
(Chhattisgarh)
3. The High Court Of Chhattisgarh, Through Registrar General, Bilaspur,
(Chhattisgarh)

---- Respondent

And

WPC No. 1932 Of 2015

- Smt. Pooja Jindal W/o. Shri Vishal Jindal, Aged About 30 Years
Occupation - House Wife, R/o Moda Niwas 9/14, Kotra Road, Raigarh
(Chhattisgarh)

---- Petitioner

Vs

1. The State Of Chhattisgarh Through: The Principal Secretary,
Government Of Chhattisgarh, Law & Legislative Affairs Department,
Mantralaya, Mahanadi Bhawan, Naya Raipur, Tahsil & District Raipur
Chhattisgarh.
2. The High Court Of Chhattisgarh, Through : The Registrar General,
High Court Of Chhattisgarh, Bilaspur, Tahsil & District Bilaspur
(Chhattisgarh)
3. Shri Balram Prasad Verma, Fourth Additional District & Sessions

Judge, Presently Appointed As Judge, Family Court, Raigarh, Tahsil & District Raigarh (Chhattisgarh)

4. Vishal Jindal S/o Shri Vijay Kumar Jindal Aged About 33 Years Occupation Business, R/o 45, Jindal Niwas, Deshmukh Marg, Dhantoli Nagpur (Maharashtra)

---- Respondent

And

WPC No. 2100 Of 2015

1. Smt. Pooja Jindal W/o. Shri Vishal Jindal, Aged About 30 Years Occupation House Wife, R/o Moda Niwas 9/14, Kotra Road, Raigarh (Chhattisgarh)
2. Vihan Jindal S/o Vishal Jindal, Aged About 5 Years Through Guardian Mother Pooja Jindal, R/o Moda Niwas 9/14, Kotra Road, Raigarh (Chhattisgarh)

---- Petitioner

Vs

1. Vishal Jindal S/o Shri Vijay Kumar Jindal, Aged About 33 Years Occupation Business, R/o 45, Jindal Niwas, Deshmukh Marg, Dhantoli Nagpur (Maharashtra)
2. State Of Chhattisgarh, Through The Principal Secretary, Government Of Chhattisgarh, Law & Legislative Affairs Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, (Chhattisgarh)
3. The High Court Of Chhattisgarh, Through The Registrar General, High Court Of Chhattisgarh, Bilaspur, (Chhattisgarh)

---- Respondent

For Petitioners : Dr. N.K. Shukla, Sr. Adv. with Shri S. Sharma, Advocate.
 For Respondent/Vishal Jindal : Shri PR Patankar, Advocate.
 For Respondent/State : Shri PK Bhaduri, Govt. Advocate.
 For Respondent/ High Court : Shri Pravin Das, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****07/12/2015**

1. In these 3 writ petitions, the petitioners would call in question 3 different proceedings pending before the Family Court, Raigarh on the ground that the Presiding Officer of the Family Court is not qualified to hold the office inasmuch as for holding such office, a person shall not be qualified unless he has for at-least 7 years held a judicial office in India or the office of a member of a Tribunal or any post under the Union or a State requiring special knowledge of law or has for at least 7 years been an advocate of a High Court or of two or more such courts in succession. Appointment of the Presiding Officer by notification dated 29.6.2015 published in the Chhattisgarh Gazette on 1.7.2015 has also been challenged in these petitions.
2. It is argued that the Presiding Officer was appointed as a District Judge (Entry Level) for the first time on 2.3.2009, therefore, he has not completed 7 years service as Judicial Officer nor he has practiced for 7 years in the High Court or two or more such courts in succession. Thus, according to the petitioners, initiation and continuation of proceeding before the said Presiding Officer is contrary to law.
3. Shri Prvain Das, learned counsel appearing for the High Court of Chhattisgarh and Shri PK Bhaduri, Govt. Advocate for the State would submit, on instructions, that the Presiding Officer of the Family Court,

Raigarh has since been transferred as Additional District Judge, Janjgir-Champa and another Judicial Officer, who fulfills the qualification to be a Presiding Officer of the Family Court, has been appointed as Presiding Officer of Family Court, Raigarh, therefore, challenge does not survive for adjudication and the writ petitions have been rendered infructuous.

4. At this stage, Dr. Shukla would submit that subsequent transfer of the Presiding Officer who was not competent to hold the post would not cure the defect, therefore, the entire proceeding has to be quashed being void ab initio.
5. Countering the submission, Shri Das, learned counsel appearing for the High Court, Shri Patankar, learned counsel appearing for the respondent-Vishal Jindal and Shri Bhaduri, learned Govt. Advocate would submit that in a case where any person was appointed to an office by a valid notification issued by the Government but subsequently it is found that such person lacks qualification to hold the post, the proceeding initiated by the said officer would not be void ab initio.
6. The argument made by learned counsel for the petitioners is referred only to be rejected because the proceeding is saved under the *de-facto* doctrine. In (1987) 3 SCR 496 {Beopar Sahayak (P) Ltd. & Ors. Vs. Vishwa Nath & Ors.}, it was held that even if the person appointed as

Prescribed Authority was not fully qualified to act as such and pass the order of release, the validity and legality of the order of release passed by him cannot be impugned because of the *de-facto* doctrine inasmuch as he did not hold the office as an usurper but only under colour of lawful authority.

7. In view of the above, the proceedings pending before the Family Court, Raigarh do not become void on this ground and therefore, relief prayed for on this ground is not sustainable. Needless to say, the petitioners would be at liberty to challenge the order on merits but not on the ground that the Presiding Officer was incompetent to pass such orders.
8. With the observation aforesaid, all the writ petitions stand disposed of.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve