

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 5076 of 2009**

- Ishwari Prasad Thakur, Son of Kishun Lal Thakur, Aged 35 years Resident of Village Barbaspur, Post Borid, Police Station Ranitarai Tahsil Patan, District Durg, C.G.

---- Petitioner**Versus**

1. Chairman Revenue Board Chhattisgarh, Bilaspur, Circuit Court at Raipur, (C.G.)
2. Ramashankar, Son Shri Ratiram Resident of Village Barbaspur, Post Borid, Police Station Ranitarai, Tahsil Patan, District-Durg C.G.

---- Respondents

For Petitioner	:	Shri Praveen Dhurandhar, Advocate
For Respondent-State	:	Shri Shashank Thakur, GA for the State

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****08/02/2016**

1. Challenge in this petition under Article 227 of the Constitution of India is to the order passed by the Board of Revenue, Chhattisgarh, whereby appeal preferred by respondent No.2 has been allowed.
2. The matter pertains to appointment of permanent Kotwar for the village Barbaspur, tehsil Patan, district Durg. On account of vacancy in the said office of Kotwar, respondent No.2 was appointed temporary Kotwar in the year 1992-93. The process for appointment of permanent Kotwar was initiated by the Tehsildar, Patan, wherein four persons, including the petitioner and respondent No.2, offered their candidature. At the end of selection process, the petitioner was found the most suitable candidate for

appointment and accordingly the Tehsildar, Patan passed the order on 30-5-1998 appointing the petitioner as permanent Kotwar, at the same time terminating the services of respondent No.2 as temporary Kotwar. Challenging the order of Tehsildar, Patan, respondent No.2 preferred an appeal before the Sub Divisional Officer (R), Patan, however, the petitioner was not impleaded therein as non-applicant or respondent. The Sub Divisional Officer (R), Patan allowed the appeal of respondent No.2 on 15-10-1998 and remitted the matter back to the Tehsildar for consideration of the matter afresh on merits. As against this order, the petitioner preferred appeal before the Additional Collector, Durg, which was allowed on 2-8-1999 only on the ground that the Sub Divisional Officer (R) has committed error of law by not giving opportunity of hearing to the petitioner and decided the appeal of respondent No.2 without arraying the petitioner. Respondent No.2 thereafter preferred a revision application before Additional Commissioner, Raipur, however, the same was dismissed on 26-9-2001. By the impugned order passed by the Board of Revenue, the revision application of respondent No.2 has been allowed and the order passed by the Sub Divisional Officer (R), Patan has been maintained.

3. It appears, when the Additional Collector allowed petitioner's appeal on the ground that Sub Divisional Officer (R) should have afforded opportunity of hearing to the petitioner, the said appellate authority should have remitted the matter back to the Sub Divisional Officer (R) for passing a fresh order after hearing all the interested parties. The Additional Collector having not done so, has provided opportunity to respondent No.2 to prefer an appeal before the Additional Commissioner and thereafter revision before the Board of Revenue.
4. Respondent No.2 has not entered appearance in this writ petition despite

service of notice, however, the writ petition being of the year 2009, this Court proceeded to decide the same with the assistance of learned counsel for the petitioner and learned State counsel.

5. Having heard learned counsel and on perusal of the papers annexed to the writ petition, it would appear that the Sub Divisional Officer (R) should not have decided the appeal preferred by respondent No.2 without providing opportunity of hearing to the petitioner in whose favour the Tehsildar has passed an order appointing him as permanent Kotwar of the village. He being the appointee for the office, was an interested party and as a matter of fact, the appeal preferred by respondent No.2 before the Sub Divisional Officer (R) was not maintainable on account of non joinder of the petitioner, who was a necessary party.
6. For the foregoing, the matter is remitted back to the Sub Divisional Officer (R), Patan for hearing the appeal preferred by respondent No.2 afresh after giving opportunity of hearing to both the parties i.e. the petitioner and respondent No.2.
7. The Sub Divisional Officer (R) shall restore the appeal to its original file and issue notice to the petitioner and respondent No.2 and thereafter proceed to decide the appeal on its own merits at the earliest, preferably within a period of three months from the date of presentation of certified copy of this order before him.
8. Accordingly, the writ petition stands allowed to the extent indicated above.

Sd/-

Judge
Prashant Kumar Mishra

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