

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 6852 of 2009**

- Nathuram Nirmalkar S/o Dayaram Nirmalkar, aged about 25 years, R/o Village Bharda, Tehsil Gurur, District Durg (CG).

---- Petitioner**Versus**

1. State of Chhattisgarh through the Secretary, Panchayat and Rural Development, DKS Bhawan, Raipur (CG).
2. Deputy Director, Panchayat Zila Panchayat Office, Durg, District Durg (CG).
3. Chief Executive Officer Janpad Panchayat, Gurur, District Durg (CG).
4. Sarpanch, Gram Panchayat Bharda, Tehsil Gurur, District Durg (CG).

---- Respondents

For Petitioner	Shri Pawan Kesharwani and Shri Sunny Agrawal, Advocates.
For State/Respondent.	Ms. Smita Ghai, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****19/02/2016.**

1. The petitioner through the present writ petition is seeking a direction to the respondents for permitting him to resume his duties in the light of appointment order that has been issued in his favour by the respondents as early as on 28.08.2008.
2. The State, in its reply which has been filed as early as on 15.12.2011, has come with a categorical stand that the order of appointment in respect of

petitioner could not be given effect to for the reason that the post to which the petitioner was given appointment, originally one Yashwant Kumar was appointed. However, he was not given joining by the respondents, therefore Yashwant Kumar had approached before the Sub Divisional Officer (R), Balod (for short, the SDO) for redressal of his grievance. The SDO, Balod registered a case No.22-A-89/2004-05 and thereafter issued instructions to the respondent No.3-Chief Executive Officer, Janpad Panchayat, Gurur, to grant appointment to Yashwant Kumar.

3. The said order of SDO was assailed by the Gram Panchyat, Bharda before the Additional Collector, Durg, who also dismissed the same on 29.12.2007 against which the Gram Panchayat preferred an Appeal before the Director, Panchayat where also the Appeal of Gram Panchayat got rejected on 22.06.2009. It was thereafter that the said Yashwant Kumar was permitted to resume the office. This aspect has not been stated by the petitioner in this writ petition and has been raised for the first time before this court in the reply of State.
4. In the light of reply of State filed before five years and which has not been rebutted by the petitioner by filing any rejoinder to the reply, it is to be presumed that the petitioner does not have any contention to the submission made by the State in its reply.
5. Once the State Govt. has given an explanation as to why the petitioner could not be granted joining and for which the respondents have been able to give plausible and satisfactory explanation for not granting joining to the petitioner, it cannot be said that the respondents have acted malafidely or with an ulterior motive against the petitioner.
6. It is settled law that, only on account of an order of appointment being issued,

the petitioner before resuming the office would not have substantive right on the said post. In the instant case, the order of appointment in favour of petitioner could not be acted upon for the reason that respondents had to execute the order passed in favour of Yashwant Kumar in whose favour an order of appointment was issued first.

7. For the foregoing reasons, the writ petition being devoid of merit is liable to be and is accordingly dismissed. No order as to costs.

Sd/-

(P.Sam Koshy)

JUDGE

inder