

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P. (Art. 227) No. 6614 of 2008**

Santosh Kumar, S/o. Rakhi Das, Manikpuri, aged about 33 years, Occupation Kotwar, R/o. Navalpur, Tahsil Bemetara, District Durg (C.G.)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Department of Revenue, DKS Bhawan, Mantralaya, Raipur (C.G.)
2. Board of Revenue Chhattisgarh Bilaspur Circuit Court, Raipur (C.g.)
3. Collector, District Durg (C.G.)
4. Bharat, S/o Pusau Satnami
5. Ramkumar, S/o. Dev Singh
6. Premdas, S/o. Naindas
7. Lekhudas, S/o Rikhidas Manikpuri
8. Panchram, S/o. Chainsingh
9. Budhari, S/o Bislal
10. Tolak @ Toildas, S/o Budhari

Respondents No. 4 to 10 residents of Village Navalpur, Tahsil Bemetara, District Durg (C.G.)

---- Respondents

For Petitioner	:	Mr. Raghvendra Verma, Advocate.
For Respondents No. 1 to 3/State	:	Mr. Avinash Singh, Panel Lawyer
For Respondent No. 4	:	Mr. K.P. Sahu, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****05/12/2016**

(1) Smt. Amrita Bai, Kotwar of the village Nawalpur, Tahsil-Bemetara District- Durg could not continue on the post of Kotwar on account of her age. The petitioner herein was temporarily appointed on the post of Kotwar to look after till the regular incumbent is appointed. Thereafter, Tahsildar Bemetara initiated process of appointment on the post of Kotwar.

(2) Respondent No. 4- Bharat was appointed as Kotwar on 14.08.2001 as permanent Kotwar in exercise of power conferred under Section 230 of the Chhattisgarh Land Revenue Code and Rules made therein by Tahsildar Bemetara.

(3) The petitioner challenged the order dated 14.08.2001 before the Sub Divisional Officer, Bemetara by filing appeal. The S.D.O. by its order dated 30.03.2002 set aside the order of Tahsildar appointing respondent No. 4 on the post of Kotwar.

(4) The respondent No. 4 challenged that order before the Additional Collector Bemetara. The Additional Collector Bemetara by its order dated 13.04.2006 allowed the appeal of respondent No. 1 and set aside the order passed by the S.D.O. Bemetara.

(5) Feeling aggrieved against the order of Additional Collector, the petitioner herein preferred revision before the Board of Revenue. The Board of Revenue by its impugned order dated 04.11.2008 dismissed the revision filed by the petitioner, against which this writ petition under Article 227 of the Constitution of India has been filed.

(6) Mr. Raghvendra Verma, learned counsel appearing for the petitioner would submit that the learned Additional Collector as well as Board of Revenue committed legal error in holding that the petitioner is not entitled for preference being near relative of ex-Kotwar, as the other things being equal by virtue of Rule 4(2) of the Kotwari Rules and recorded a findings which are perverse and contrary to the records and therefore, impugned order is liable to be set aside.

(7) Per contra learned counsel for the State and learned counsel for respondent No. 4 would support the order impugned.

(8) I have heard learned counsel appearing for the parties and perused the order impugned with utmost circumspection.

(9) It is correct to say that by virtue of Rule 4(2) of the Kotwari Rules, for making appointment of a Kotwar under sub-Rule (1) preference may be given to the near relative of the ex-Kotwar, other things being equal.

(10) The petitioner claimed that he is the ex-Kotwar's daughter's son , therefore he is entitled for preference being near relative.

(11) The Board of Revenue relying upon the statement of ex-Kotwar clearly recorded a finding that petitioner is neither son nor adopted son of ex-Kotwar- Smt Amrita Bai. The petitioner has also failed to prove that he is near relative of ex-Kotwar-Smt. Amrita Bai, as such concurred with the finding recorded by Tahsildar and Additional Collector.

(12) After hearing learned counsel appearing for the parties and going through the records particularly categorical findings recorded by Board of Revenue that petitioner is neither son nor adopted son of ex-Kotwar- Smt. Amrita Bai; and he also failed to prove that he is near relative of ex-Kotwar- Amrita Bai, therefore, I do not find any illegality in the order impugned warranting interference by this Court under Article 227 of Constitution of India.

(13) Applying its earlier decision in **Surya Dev Rai v. Ram Chander Rai**¹ and **Shalini Shyam Shetty v. Rajendra Shankar Patil**², the Supreme Court in **Sameer Suresh Gupta through PA Holder v. Rahul Kumar Agarwal**³ has held that supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction. It has also been held that supervisory jurisdiction or certiorari jurisdiction is not available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the

1 (2003) 6 SCC 675

2 (2010) 8 SCC 329

3 (2013) 9 SCC 374

provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby. The power to issue a writ of *certiorari* and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act least a gross failure of justice or grave injustice should occasion.

(14) Accordingly, the writ petition filed under Article 227 of the Constitution of India deserves to be and is hereby dismissed.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-