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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.1927 of 2004

Daya Das Panka, S/o Piladas, aged 53 (fifty three) years,
Kotwar, working at and resident of Village Chorbhatti, Tahsil
Bilaigarh, District Raipur (C.G.)

---- Petitioner

Versus

1. Nirmaldas, S/o Sukhdas Panka, aged about 29 years, R/o
Village Pipardih, Tahsil Bilaigarh, Distt. Raipur
2. State of Chhattisgarh, through the Collector, Raipur, District
Raipur (C.G.)
3. The Board of Revenue Chhattisgarh (Bilaspur), Circuit Camp,
Raipur, District Raipur (C.G.)
4. The Naib Tahsildar at Bhatgaw, Tahsil Bilaigarh, District
Raipur (C.G.)
5. The Naib Tahsildar, Bilaigarh, Tahsil Bilaigarh, District
Raipur.

---- Respondents

For Petitioner: Mr. Vinay Pandey, Advocate.
For Respondent No.1: Mr. B.D. Guru, Advocate.
For the State/Respondents No.2, 4 and 5: -
Mr. Avinash Singh, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

08/11/2016

1. The petitioner was appointed as permanent Kotwar of Village
Chorbhatti by the appointing authority - Naib Tahsildar,
Bilaigarh by order dated 16-7-1997. Respondent No.1 being
aggrieved and dissatisfied against that order, as he was a
contestant for the post of Kotwar, filed an appeal before the

Sub Divisional Officer against the order appointing the petitioner on the post of Village Kotwar. The Sub Divisional Officer - appellate authority by order dated 30-4-1998, remanded the matter to the Naib Tahsildar for fresh enquiry and orders. The Naib Tahsildar verified the marks sheet of Class-V of the petitioner and held that the marks sheet of the petitioner is forged by order dated 5-9-1998. The petitioner filed an appeal before the Sub Divisional Officer, Bilaigarh and the Sub Divisional Officer made an enquiry on the marks sheet of the petitioner and found that the marks sheet of the petitioner is genuine and set aside the order of the Tahsildar. Feeling aggrieved against the order of the Sub Divisional Officer, respondent No.1 preferred a revision before the Board of Revenue against the order dated 9-2-1999. The Board of Revenue by its impugned order framed two questions in para 3 of the order and held that the educational qualification for the post of Kotwar is a must under the Rules framed under Section 230 of the Chhattisgarh Land Revenue Code, 1959 (for short 'the Code') i.e. the Rules Regarding Appointment, Punishment and Removal of Kotwars and Their Duties, and also held that respondent No.1 is not qualified for the post of Kotwar and directed the Naib Tahsildar to initiate fresh process for appointment on the post of Village Kotwar.

2. Questioning legality, validity and correctness of the order passed by the Board of Revenue, the instant writ petition has

been filed by the petitioner stating inter alia that the Board of Revenue has committed a legal error in holding that the educational qualification for the post of Kotwar is imperative under Section 230 of the Code, as such, the educational qualification is not prescribed under the Rules and therefore the Board of Revenue has committed legal error in holding that the petitioner is not fulfilling the educational qualification required under Rule 2 of the Rules enacted under Section 230 of the Code and also committed error in holding that the petitioner's conduct and character are doubtful / suspicious and therefore he is not qualified for the post of Kotwar.

3. Mr. Vinay Pandey, learned counsel appearing for the petitioner, would submit that against the order of the Board of Revenue though respondent No.1 has been held to be disqualified, but he has not filed writ petition questioning the same and as such, the order of the Board of Revenue has become final. He would further submit that the Board of Revenue is not justified in setting aside the well reasoned order of the Sub Divisional Officer. Therefore, the writ petition be allowed and the order of the Board of Revenue be set aside.
4. Mr. B.D. Guru, learned counsel appearing for respondent No.1, would submit that the Board of Revenue has compared the candidature of the petitioner and respondent No.1 and finding that both the persons are not suitable for the post of

Kotwar, has rightly directed for holding fresh recruitment for the post of Kotwar as such, the petitioner is guilty of filing forged / suspicious document on record to establish his candidature therefore, his writ petition deserves to be dismissed.

5. I have heard learned counsel for the parties, gone through the record and also considered the rival submissions made on behalf of both the parties.
6. It is pertinent to mention that the Sub Divisional Officer by its order dated 9-2-1999, after perusing the material available on record, has recorded a finding that the marks sheet of the petitioner of Class-V is genuine and it is not forged and allowed the appeal of the petitioner against which the Board of Revenue entertained the revision and set aside the order of the Sub Divisional Officer holding that under the Kotwari Rules framed under Section 230 of the Code, the educational qualification is a must.
7. In order to consider the correctness of the finding so recorded, it would be appropriate to notice the Rules framed under Section 230 of the Code i.e. the Rules Regarding Appointment, Punishment and Removal of Kotwars and Their Duties known as 'the Kotwari Rules'. Rules 2 and 4 of the Kotwari Rules provide for eligibility for the post of Kotwar which are reproduced herein-below for the sake of

convenience: -

"2. No person shall be eligible for the post of Kotwar, who-

(i) is, in the opinion of the appointing authority, not of good character and antecedents;

(ii) is, in the opinion of the appointing authority, unfit through infirmity of body or mind, to perform the duties of the post;

(iii) is below the age of 21 years;

4. (1) On the occurrence of a vacancy in the post of a Kotwar, the Revenue Officer, who is empowered to make appointment, after receiving a resolution duly passed by the Gram Sabha in whose area the post of Kotwar is vacant, shall appoint an eligible person on the post of Kotwar, if the person proposed in the resolution does not fulfill the qualification prescribed in rule 2, the authorised Revenue Officer shall reject the resolution after recording the reasons in writing and intimate the Gram Sabha and call for a fresh proposal:

Provided that immediately on occurrence of a vacancy, the appointing authority may temporarily appoint a suitable person to perform the duties of the office of Kotwar till the regular appointment under sub-rule (1) is made.

(2) In 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.

Note.-If the vacancy is caused by the suspension or dismissal of the previous incumbent for bad character, misconduct or disobedience and the effect of the dismissal would be lost if a member of his family is appointed to succeed him, relatives of the previous incumbent may not be appointed."

8. Rule 2 of the Kotwari Rules provides that in order to be eligible for the post of Kotwar, he must be of good character

and antecedents, and must not be in the opinion of the appointing authority unfit through infirmity of body or mind to perform the duties of the post. Thus, what is required to be seen in the Rules for the post of Kotwar is that candidate is of good character and antecedent and he is fit to perform the duties of Kotwar. Likewise, sub-rule (2) of Rule 4 of the Kotwari Rules provides that in 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.

9. Aforesaid Rules would clearly show that there are no positive qualifications for the post of Kotwar. The Rules only state what are the disqualifications for the post of Kotwar. The Legislature in its wisdom has not thought it expedient to provide any positive qualifications for the post of Kotwar. Therefore, by way of interpretation, it would be improper for this Court to legislate on the said Rules and to prescribe positive qualifications. Doubtlessly and concededly, educational qualification is not provided as qualification or disqualification in the Kotwari Rules. Therefore, candidate for the post of Kotwar not having any educational qualification is yet entitled to be considered for the post of Kotwar, as no educational qualification has been prescribed expressly and impliedly in the Rules applicable and as such, educational qualification cannot be read into the Kotwari Rules for the post of Kotwar, and while making appointment on the post of

Kotwar, it is sufficient, if a candidate is qualified for the post of Kotwar irrespective of his / her educational qualification.

10. In sub-rule (2) of Rule 4 of the Kotwari Rules, the expression "other things being equal" has been used. This expression "other things being equal" indicates some kind of comparison between two candidates. The expression "other things being equal" cannot be read into in relation to the qualification of candidates because the educational qualifications are not provided in the Rules. Certain candidates may be free of the disqualifications enumerated in Rule 2 and certain other candidates may be in touch with such disqualifications. The expression "other things being equal" must be read in the context of such comparison.

11. Thus, the finding of the Board of Revenue that educational qualification is provided for a candidate for the post of Kotwar under the Kotwari Rules framed under Section 230 of the Code, is contrary to the Kotwari Rules and the consequent finding recorded is also contrary to the rules and record that the educational qualification is necessary for appointment on the post of Kotwar.

12. This would bring me to the question as to whether the finding recorded that the marks sheet of the petitioner was doubtful.

13. The order of appointment of the petitioner was set aside by the Sub Divisional Officer by order dated 30-4-1998 and the

Sub Divisional Officer remanded the matter to the Naib Tahsildar with a direction to make enquiry and record fresh finding on the genuineness of the marks sheet which was enquired into and it was held that the marks sheet is forged, but the appellate authority i.e. the Sub Divisional Officer on 9-2-1999 noticed the statement of the Head Master of Primary School, Rapagula, from where the marks sheet of the petitioner has been issued and who had clearly made a statement that the petitioner has passed Class-V examination, the certificate / marks sheet is not forged and is true, but the Naib Tahsildar has recorded finding of forged marks sheet on the basis of report of the Block Development Officer which has no legs to stand.

14. The finding of the Sub Divisional Officer that the marks sheet of the petitioner is not forged, is a finding based on evidence available on record and the Board of Revenue could not have interfered with it in its limited jurisdiction under Section 50 of the Code holding it to be suspicious without any basis, particularly when the educational qualification is not prescribed as qualification for appointment on the post of Kotwar.
15. The Board of Revenue had unnecessarily gone into the other eligibility criteria, as that was not the question before the Board of Revenue and the SDO has allowed the appeal only on the ground of question of correctness of the marks sheet

filed by the petitioner. Therefore, in absence of challenge to the other questions, the Board of Revenue went wrong in considering and reaching to contrary conclusion.

16. The basic finding of the Board of Revenue that educational qualification is required for the post of Kotwar is unsupportable by the Rules and therefore the consequent finding recorded that the petitioner has referred incorrect educational qualification (marks sheet) to support his appointment, is also liable to be quashed being perverse to the record.

17. The writ petition is partly allowed and the order of the Board of Revenue is quashed.

18. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.1927 of 2004

Daya Das Panka

Versus

Nirmaldas and others

HEAD NOTE

Educational qualification is not a qualification prescribed for the post of Kotwar in Kotwari Rules.

शैक्षणिक अर्हता, कोटवारी नियम के अनुसार कोटवार के पद के लिए विहित अर्हता नहीं है।