

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2642 of 2012

- Gulab Kunwar W/o Deen Dayal, aged about 28 years, R/o Village Tungva Police Chowki Balangi, Tahsil Wadrafnagar, Dist. Balrampur (earlier Sarguja) (C.G.)

---- Petitioner

Versus

1. State Of Chhattisgarh, through the Secretary, Department of Woman and Child Development, DKS Bhawan, Mantralaya, Raipur (CG)
2. Commissioner, Sarguja Division, Sarguja (CG)
3. Additional Commissioner, Sarguja Division, Sarguja (CG)
4. Collector, Balrampur (CG)
5. Collector, Sarguja (CG)
6. Chief Executive Officer, Janpad Panchayat, Wadrafnagar, District Balrampur (earlier Sarguja) (CG)
7. Rajmati, W/o Shyam Kartik, Caste Vaisya, R/o Tungva, Tahsil Wadrafnagar, District Balrampur (earlier Sarguja) (CG)

---- Respondent

For Petitioner : Shri Jitendra Shrivastava, Advocate.
For Respondent/State : Shri PK Bhaduri, Govt. Advocate.
For Respondent No.7 : Shri Shakti Raj Sinha, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

18/03/2016

1. The petitioner is aggrieved by the order passed by the

Commissioner, Sarguja Division on 2.7.2012 dismissing her appeal on the ground that the petitioner had earlier preferred an appeal against the same order which was withdrawn from the Court of Additional Commissioner, therefore, the same impugned order cannot be challenged once again before the same appellate forum.

2. The petitioner was appointed as 'Atirikt Sah Sahayika' for Tungva Pashchimpara Village, project area Wadrafnagar on 18.11.2004. She was thereafter appointed as Aangan Badi Worker on 22.7.2006. Challenging the appointment of the petitioner, respondent No.7 preferred an appeal before the Collector, Sarguja which was allowed vide Annexure-P/8. The Collector cancelled the petitioner's appointment and directed that respondent No.7 be appointed as Aangan Badi Worker.
3. Challenging the order passed by the Collector, the petitioner initially preferred an appeal before the Commissioner on 10.1.2012 which was taken up by the Additional Commissioner, as per the work distribution memo applicable at the relevant time. After admission of appeal and summoning of record, the petitioner withdrew the appeal on 16.3.2012. However, application for withdrawal of appeal filed on 16.1.2012 did not contain any prayer for reserving liberty to prefer fresh appeal. Even before the order regarding withdrawal of appeal could be passed on 16.3.2012, the petitioner moved another appeal before the Commissioner on

7.2.2012 wherein an interim order was passed in her favour on the same date.

4. When the things stood thus, the appeal presented before the Commissioner was heard on 2.7.2012 wherein it was brought to the notice of the Commissioner that the petitioner had earlier preferred an appeal before the Additional Commissioner which has been dismissed as withdrawn, therefore, another appeal against the same impugned order is not maintainable before the Commissioner. Sustaining the objection, the Collector has dismissed the appeal as not maintainable.
5. Shri Jitendra Shrivastava, learned counsel for the petitioner would argue that the petitioner withdrew the appeal from the Court of Additional Commissioner on assumption that the Additional Commissioner has no jurisdiction to hear the appeal, therefore, merely because liberty was not sought for, the petitioner should not be penalized. He would also submit that the appeal presented by respondent No.7 before the Collector was itself presented after 5 years from the date the petitioner was appointed as Aangan Badi Worker.
6. Per contra, Shri PK Bhaduri, learned Govt. Advocate and Shri S.R. Sinha, learned counsel for respondent No.7 would urge that the petitioner was playing hide and seek with the jurisdiction of the

appellate authority and had mischievously filed one appeal after another. Therefore, the Commissioner has rightly dismissed the appeal preferred for the second time as not maintainable.

7. On previous dates of hearing, this Court had expected from the petitioner to produce the work distribution memo which was effective in Sarguja Commissionerate at the relevant time. The petitioner has submitted the work distribution memo issued by the Commissioner, Sarguja Division on 16.3.2012 which was effective at the relevant time. The work distribution memo categorically provides that the appeals arising out of the orders passed by the Collector, Additional Collector and Sub Divisional Officer (Revenue) on cases arising out of Sitapur, Rajpur, Ramanujganj, Kusmi, Wadrafnagar, Surajpur and Pratappur Sub Division shall be heard by the Additional Commissioner. Thus at the relevant time, it was Additional Commissioner, Sarguja which had the jurisdiction to hear the appeals in the present matter because it arose out of appointment made within the area of Wadrafnagar Sub Division. On a reading of the order sheet of the appeal filed before the Additional Commissioner, it does not appear that the Additional Commissioner himself opined that he has no jurisdiction over the matter. It may be an advise to the petitioner or assumption of the lawyer which propelled them to withdraw the appeal. However, the fact remains that the Additional Commissioner had jurisdiction

to hear the appeal.

8. In the matter of **Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and others** {(1987) 1 SCC 5}, it has been held by the Supreme Court that where a petitioner withdraws a petition filed by him in the High Court under Article 226/227 without permission to institute a fresh petition, remedy under Article 226/227 should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition and it would not be open to him to file a fresh petition in the High Court under the same article, though other remedies like suit or writ petition before Supreme Court under Article 32 would remain open to him. The principle underlying Rule 1 of Order XXIII of the CPC should be extended in the interests of administration of justice to cases of withdrawal of writ petition also.
9. The principles laid down in the matter of Sarguja Transport (Supra) squarely applies with full force in the present case. Even though it concerns withdrawal of appeal before the Additional Commissioner and not the petition, but the principle deducible is one and the same.
10. The petitioner is also guilty of committing concealment of facts before the Commissioner while presenting the appeal for the

second time. As observed by the Commissioner, the petitioner never disclosed in her subsequent appeal that she has preferred an appeal before the Additional Commissioner which was later on withdrawn. The petitioner could not have made that statement because as on 7.2.2012 when the appeal was presented before the Commissioner and ex-parte interim order was passed, the earlier appeal before the Additional Commissioner was still pending because the earlier appeal was dismissed as withdrawn on 16.3.2012. Thus till 16.3.2012 the petitioner was prosecuting two different appeals before two different appellate authorities challenging the same impugned order. The petitioner is thus guilty of playing hide and seek and hobnobbing with the judicial process. It can very well be said to be a case of forum shopping which is highly deprecable. Since the petitioner was not granted any ex-parte relief by the Additional Commissioner, the petitioner filed subsequent appeal before the Commissioner and obtained ex-parte interim order. Hence on the principle of concealment of material fact also, the petitioner is not entitled to any relief in this petition.

11. For all the aforesaid reasons, the writ petition deserves to be and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)