

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 979 of 2017**

- Charan Singh Dhurve S/o. Shri Kunwar Singh Dhurve, Aged About 36 Years Occupation Service Ex- Secretary Of Gram Panchayat Mudghusari, R/o Village Mudghusari, Thana & Tahsil Bodala, Civil & Revenue District Kabeerdham (Chhattisgarh)

----- Petitioner**Versus**

1. The State Of Chhattisgarh Through The Secretary Panchayat And Social Welfare Department, Mantralaya, Mahanadi Bhawan, Capital Complex, New Raipur, Distt. Raipur (Chhattisgarh)
2. The Commissioner, Durg Division Durg, Civil & Revenue District- Durg, Chhattisgarh
3. Collector, Kabirdham, Civil & Revenue Distt. Kabirdham, Chhattisgarh
4. Sub Divisional Officer, Bodla, Civil & Revenue Distt. Kabeerdham (Chhattisgarh)
5. Chief Executive Officer, Janpad Panchayat, Bodla, Civil & Revenue Distt. Kabeerdham (Chhattisgarh).
6. Krishna Kumar Markam S/o. Shri Dasaruram Markam, R/o. Village Sontara, Post Baijalpur, Gram Panchayat Mudghusari, Thana & Tahsil Bodla, Civil & Revenue District Kabeerdham (Chhattisgarh)
7. Sarpanch Ishwar Singh Markam, Gram Panchayat Mudghusari, Thana & Tahsil Bodla, Civil & Revenue Distt. Kabeerdham (Chhattisgarh)
8. Secretary Vazir Khan, Gram Panchayat Mudghusari, Thana & Tahsil Bodla, Civil & Revenue Distt. Kabeerdham (Chhattisgarh)

----- Respondent

For Petitioner : Shri Sunil Sahu, Advocate.

For Respondent/State : Shri S.P. Kale, Deputy Advocate General.

For Respondent No. 6 : Shri Aditya Tiwari, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

12/04/2017

1. The petitioner would assail the order dated 26.5.2016 (Annexure-P/1) by which the Commissioner, Durg Division has reviewed and recalled its earlier order dated 19.5.2016 to restore the order passed by the Collector, Kabirdham on 21.11.2010.
2. The matter pertains to appointment to the post of Panchayat Karmi of Gram Panchayat Mudghusri, Post Baijalpur, Block Bodla, District Kabirdham. In the selection process, the petitioner was selected which was challenged by respondent No.6 by preferring an appeal before the Sub Divisional Officer (Revenue). His appeal was allowed on 14.10.2010 and thereafter further appeal preferred by the petitioner before the Collector was dismissed on 22.11.2010. Against the said order the petitioner preferred WPS No.7118/2010 which was dismissed by this Court on 18.12.2014. The petitioner thereafter preferred Writ Appeal No.358/2015, which was withdrawn on 23.7.2015 in the following order passed by the Division Bench:-

“1. After some argument, Learned Counsel for the Appellant submits that because of subsequent development by reason of which the village in the Gram Panchayat to which private Respondent No.3 belongs having been transferred to another Gram Panchayat, the appeal may be permitted to be withdrawn to pursue remedies before the authorities.”

3. Availing the liberty, the petitioner moved before the Commissioner in the year 2015 and his revision application was allowed by the Commissioner, Durg Division on 19.5.2016. However, as soon as it was brought to the notice of the Commissioner that the order which he

has set aside has in fact been upheld by the High Court in WPS No.7118/2010, the Commissioner withdrew the order dated 19.5.2016 and thus the order passed by the Collector on 21.11.2010 was not interfered.

4. In this petition, learned counsel for the petitioner would urge that the Division Bench having reserved liberty in favour of the petitioner, it was open for the Commissioner to consider the appeal or revision on merits, therefore, the order dated 19.5.2016 ought not to have been recalled.
5. Having considered the rival submissions and on perusal of the order passed by the learned Single Judge and the Division Bench in the previous round of litigation, it appears, when the learned Single Judge dismissed the writ petition on merits, the petitioner withdrew the Writ Appeal after arguing for some time. However, liberty was sought with specific reference to the fact that the village in the Gram Panchayat to which respondent No.3 therein Krishna Kumar Markam belongs, has been transferred to another Gram Panchayat.
6. Strangely in the subsequent appeal preferred before the Commissioner, there is absolutely no reference to this subsequent development which compelled the petitioner to withdraw the writ appeal. In any case, the Division Bench never observed that in case the petitioner pursue remedies before the authorities, the order passed by the learned Single Judge would not come in his way. In the absence of any such observation and the petitioner having withdrawn the Writ Appeal, allowing the order passed by the learned Single Judge to attain finality, it was neither open for the petitioner to pursue the appellate or revisional remedy before the Commissioner nor was it open for the Commissioner to have set aside the order passed by the Collector on 21.11.2010 against which the High Court has already dismissed the writ petition.

7. It is extremely unfortunate that the petitioner has tried to invoke jurisdiction of this Court and having failed therein, has approached another forum and had in-fact succeeded in convincing the authority that liberty reserved in his favour by the Division Bench has made the entire things wide open for fresh consideration on merits.
8. There is no substance in the writ petition, which fails and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve