

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 148 of 2017**

Dr. Bhupat Ram Malik, son of Late Shri Purno, aged about 53 years, Working as Senior Medical Officer, Community Health Centre, Basana, District Mahasamund, (Chhattisgarh).

---- Appellant**Versus**

1. The State of Chhattisgarh, Through: Secretary, Health Department, Mahanadi Bhawan, Mantralaya, New Raipur (Chhattisgarh).
2. Director, Health Department, Raipur, District Raipur, Chhattisgarh.
3. Collector, Mahasamund, District Mahasamund, Chattisgarh.
4. Chief Medical and Health Officer, Mahasamund, Chhattisgarh.
5. Block Medical Officer, Community Health Centre, Basna, District Mahasamund, Chhattisgarh.
6. Dr. B.B.Kosariya, In-charge, Block Medical Officer, Block Basna, District Mahasamund, Chhattisgarh.
7. Jai Prakash Pradhan, Block Medical Officer, Community Health Centre, Basna, District Mahasamund, Chhattisgarh.

---- Respondents

For Appellant	: Shri Raghavendra Pradhan, Advocate.
For Respondents/State	: Shri Ashish Surana, Panel Lawyer.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri P Sam Koshy, J.

Judgment on Board**Per Thottathil B. Radhakrishnan, Chief Justice****24/04/2017**

1. Heard learned counsel for the Appellant-Writ Petitioner and the learned counsel for the State.

2. The Petitioner and Respondents 6 and 7 work in the sector of community health. When the 6th Respondent was put in charge as Block Medical Officer of a particular Community Health Centre, the Petitioner moved this Court. While that writ petition was pending, the 6th Respondent was removed from charge and the 7th Respondent was brought as incharge. Without levying any challenge to the 7th Respondent's being put in charge, the Petitioner sought leave to withdraw the said writ petition with liberty to file a representation. Since the representation was not disposed of by the competent authority, the Petitioner challenged the placement of the 7th Respondent as incharge, Block Medical Officer. The learned Single Judge dismissed the plea holding that the 7th Respondent was put in charge while the writ petition against the 6th Respondent being put in charge was pending before this Court.
3. It appears that the principles those emanate from Order II Rule 2 of the Code of Civil Procedure, as would apply to the writ jurisdiction as well, stood advising the learned Single Judge not to entertain the subsequent challenge when ultimately the earlier writ petition was withdrawn with liberty to file a representation before the Government. To that extent, we do not find any error in the order of the learned Single Judge having refused to interfere with the 7th Respondent's being put in charge.
4. However, the plea of the Petitioner is that he is senior in comparison to 6th and 7th Respondents and therefore, is eligible for preferential treatment in the matter of being put in charge as the Block Medical Officer, Community Health Centre, Basna, District Mahasamund. The Establishment appears to indicate that there are certain allegations against the Petitioner which cannot be ignored. But, in the ultimate analysis, the competent authority ought to have considered the

representation of the Petitioner focusing on all different aspects as would be relevant in the best interest of the administration.

5. To pave weight for the aforesaid, the impugned judgment is vacated to the extent it does not contain any direction to consider the representation of the Petitioner. We affirm the said judgment on all fours otherwise, in particular, as regards the refusal of other reliefs sought for by the Petitioner.
6. Accordingly, this writ appeal is ordered directing that any representation of the Petitioner which is received and pending before the 2nd Respondent shall be taken up, considered and decided upon in accordance with law having regard to all relevant facts and factors and any binding policy decisions. This exercise shall be carried out without fail within a period of two months from the date of receipt of a copy of this order.
7. Having regard to the view which we have taken above, the order of cost imposed by the learned Single Judge is vacated.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE