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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.4009 of 2003

(Arising out of order dated 5-3-2003 in Appeal Case No.116/A-56/02.03 of the learned Board of Revenue, Chhattisgarh, Bilaspur)

Bholaram, S/o Rameshwar Ganda, aged about 32 years, R/o Village Pisoud, Tah. Janjgir, Distt. Janjgir-Champa (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through Member, Revenue Board of Chhattisgarh, Bilaspur.
2. Dholaram, S/o Rameshwar Ganda, Kotwar, R/o Village Pisoud, Tah. Janjgir, Distt. Janjgir-Champa (C.G.)
3. Nirasha, D/o Atmaram.
4. Sushildas, S/o Newardas Panika.
5. Samailal, S/o Kartik Ram Sahu.
6. Firtu, S/o Garibdas Panika.

Respondents No.3 to 6 are R/o Village Pisoud, Thana & Tah. Janjgir, Distt. Janjgir-Champa (C.G.)

---- Respondents

For Petitioner: Mrs. Anju Ahuja, Advocate.
For Respondent No.1 / State: - Mr. Arvind Dubey, Panel Lawyer.
For Respondent No.2: None present, though served.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

06/11/2017

1. The petitioner as well as the private respondents including respondent No.2 made applications for the post of Kotwar on which the Tahsildar selected / appointed respondent No.2 for the post of Kotwar of Village Pisoud, Tahsil Janjgir, Distt. Janjgir-Champa. On appeal preferred by the petitioner before the Sub Divisional Officer,

Janjgir, the Sub Divisional Officer set aside the order of the Tahsildar and remanded the matter back to the Tahsildar for adjudication in accordance with law. In further appeal / revision preferred by respondent No.2, the Board of Revenue set aside the order of the Sub Divisional Officer holding that the Sub Divisional Officer has no power to make remand against which this writ petition has been preferred.

2. Learned counsel for the petitioner would submit that the order of the Sub Divisional Officer has been set aside by the Board of Revenue even without noticing and without affording opportunity of hearing to defend the order of the Sub Divisional Officer dated 3-2-2003.

3. Learned State counsel would support the impugned order.

4. No one has appeared on behalf of respondent No.2, though served. No representation is made.

5. It is apparent on record that the order of the Sub Divisional Officer was challenged before the Board of Revenue at the instance of respondent No.2 herein, but the Board of Revenue while hearing the appeal of respondent No.2 on the question of maintainability and application for stay, set aside the order of the Sub Divisional Officer by the impugned order on merits. If the Board of Revenue was of the opinion that the order of the Sub Divisional Officer is liable to be set aside, it could have noticed the petitioner herein and after hearing him, could have proceeded further for passing final order on merits. The order passed by the Board of Revenue without noticing and without hearing the petitioner, especially when the order is in favour of the petitioner, is wholly unsustainable in

law.

6. In the result, the order passed by the Board of Revenue dated 5-3-2003 is hereby set aside and the matter is remitted back to the Board of Revenue for hearing and disposal in accordance with law within three months from the date of receipt of a copy of this order, as the matter is old one.

7. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma