

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 4658 of 2009

Smt. Sushila Bai W/o Shri Shivkumar Sahu, aged about 31 years, R/o village Sarwani, Janpad Panchayat Sakti, District Janjgir-Champa (C.G.).

---Petitioner

Versus

1. State of Chhattisgarh, Through The Secretary Panchayat & Social Welfare Department, D.K.S. Bhawan, Raipur, District Raipur (C.G.).
2. The Director Panchayat, Raipur, District Raipur (C.G.).
3. The Collector, Janjgir-Champa (C.G.).
4. The Chief Executive Officer, Sakti, District Janjgir-Champa (C.G.).
5. Project Officer Women and Chilled Development Officer, Sakti, District Janjgir-Champa (C.G.).
6. Smt. Alawati Patel W/o Shri Rohit Kumar, aged unknown, R/o Sarwani, Janpad Panchayat Sakti, District Janjgir-Champa (C.G.).

---Respondents

For petitioner	:	Shri Bharat Rajput, Advocate.
For respondent No.6	:	Shri Pushkar Sinha, Advocate.
For State	:	Shri Ashutosh Pandey, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

02/08/2018

1. The challenge in the present Writ Petition is to the Ex-parte order passed by the Collector on 04/07/2007 and to the order passed by the Deputy Director (Panchayat), Government of Chhattisgarh dated 13/02/2009 Annexures P/8 and P/11 respectively.
2. The facts of the case in brief is that, the Deputy Director, Sarwani under Janpad Panchayat, Sakti had initiated steps for filling up of the post of Anganbadi Worker in Ward No. 6. The petitioner along with 5 other persons

had applied for the said post. On scrutiny of the entire documents furnished by each of the candidates, the respondent No.4 issued an order of appointment in favour of the petitioner on 21/12/2006.

3. Being aggrieved of the order of appointment given to the petitioner, the respondent No.6 preferred an appeal before the Collector. The notices were issued to the respondents and it is alleged that the petitioner did not appear before the Collector and hence the Collector proceeded Ex-parte and allowed the said appeal on 04/07/2007.

4. The respondent No.6 while filing the appeal had raised two grounds. First being that the brother-in-law of the petitioner i.e. the elder brother of the husband of the petitioner was in the Police Department of the State Government and therefore it amounts to relative being in Government employment, as such she would not be entitled for appointment.

5. The second ground being that, the wife of the aforesaid brother-in-law (Jethani) herself was a 'Panch' in Gram Panchayat, Tendutoha and which also dis-entitles the petitioner to be appointed as an Anganbadi Worker.

6. The Collector finally vide his order dated 04/07/2007 allowed the appeal accepting both these grounds and finding the allegations to be correct.

7. Being aggrieved by the order of the Collector dated 04/07/2007, the petitioner preferred an appeal before the Director Panchayat disputing the findings of the Collector and specifically pleading that she has not been given proper opportunity of hearing and notice also has not been served upon the petitioner while proceeding Ex-parte and therefore the Ex-parte

order of the Collector is not sustainable. It was also the contention of the petitioner that, though the person who is alleged to be in Government employment was the “Jeth” - the elder brother of the husband of the petitioner, but there was a partition already taken in family and the said person was living separately in an altogether different village unconnected with the petitioner and therefore the same cannot be a disqualification for the petitioner.

8. Likewise, the fact that her “Jethani” was appointed in Gram Panchayat, Tendutoha also was disputed by the petitioner.

9. The Director Panchayt finally vide his order dated 13/02/2009 dismissed the appeal holding that, the findings of the Collector does not seem to be either erroneous or bad in law. It was also held therein that, the grounds which have been raised by the respondent No.6 seems to be proper.

10. So far as the additional ground that the petitioner has raised is that the husband of the petitioner himself was a 'Panch' of Ward No. 6 of Gram Panchayat, Tendutoha it was found by the Collector that, the husband of the respondent No.6 had before the recruitment process could be finalized itself had moved an application for resignation on 01/01/2006 and the same was accepted on 12/01/2006 and therefore on the date of scrutiny, there was no person in the family of the respondent No.6 working as a 'Panch' or 'Sarpanch' and thus she was fully eligible and the appeal of the petitioner was therefore rejected.

11. Coming to the issue of Ex-parte proceeding by the Collector, though the ground has been raised before the Director and the finding of the Director is that, since notices were issued to all the respondents and others had appeared before the Collector it has to be presumed that the petitioner also was served and therefore the Collector had proceeded Ex-parte.

12. This finding of the Director does not seem to be proper, legal and justified. Once when there is an allegation of service not been made upon the person who has been proceeded Ex-parte, all that has to be seen is whether the authority concerned had issued notice at any point of time and if the notice was issued, whether the notice has been effectively served upon the person or not.

13. There is no finding of the Director Panchayat in this regard except for drawing a presumption of service being made effective as the others have been served upon with the notices issued from the Collector.

14. Moreover, so far as the allegation of the husband of the petitioner also being a 'Panch' is concerned, though there is a finding of the Director Panchayat as well as of the Collector that he had already resigned and there was a resolution from the Gram Panchayat in this regard, but there does not appear to be any document produced by any of the parties in this regard before either the Collector or before the Director Panchayat, nor is any such document produced before the High Court in the present Writ Petition.

15. Similarly, so far as the sister-in-law of the petitioner being a 'Panch' of Gram Panchayat, Tendutoha is concerned, there does not appear to be any

documentary proof provided before any of the authorities below or before this Court.

16. On the contrary, the petitioner has been able to obtain an information from the Janpad Panchayat, Sakti wherein at the relevant point of time, the husband of the respondent No.6 – Rohit Kumar was shown to be the 'Panch' of Ward No. 6. This aspect also has not been properly considered by either the Collector or by the Director Panchayat.

17. Given all the aforesaid facts of the case, this Court is of the opinion that ends of justice would meet if both the two impugned orders passed by the Collector dated 04/07/2007 and by the Director dated 13/02/2009 are set-aside/quashed and the matter is reconsidered by the Collector afresh taking into consideration the position as it stood on the date of appeal of the respondent No.6.

18. Considering the fact that, by virtue of the order of the Collector dated 04/07/2007, the respondent No.6 has been continuing as an Anganbadi Worker for last 11 years, the law of equity goes in favour of the respondent No.6 and it is ordered that let status-quo so far as the appointment of the respondent No.6 is concerned be continued till the Collector passes a fresh order on the appeal preferred by the respondent No.6.

19. Considering the fact that it is an old matter, it is expected that the Collector shall decide the matter as expeditiously as possible preferably within a period of 90 days from the date of receipt of copy of the order passed by this Court.

20. It shall be the responsibility of the petitioner to apprise the Collector so far as the order passed by this Court today in this petition.

21. The Writ Petition accordingly stands allowed and disposed off.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit