

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 546 of 2009

Smt. Umeshwari W/o Hublal, aged about 25 years, Occupation - Service working on the post of Anganbadi Karyakarta, R/o village Lohjhar, Tahsil Chhura, District Raipur (C.G.).

---Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Mahila and Bal Vikas Department, D.K.S.Bhawan, Mantralaya, Raipur, District Raipur (C.G.).
2. Chhattisgarh Rajya Anusuchit Janjati Ayog, through its Secretary, 61-Jal Vihar Colony, Raipur, District Raipur (C.G.).
3. Collector, Raipur, District Raipur (C.G.).
4. Mahila Bal Vikas Samiti, Janpad Panchayat-Chhura, through its Secretary, Janpad Panchayat Chhura, District Raipur (C.G.).
5. Chief Executive Officer, Janpad Panchayat Chhura, District Raipur (C.G.).
6. Gram Panchayat, Lohjhar, through its Sarpanch Gram Panchayat Lohjhar, Tahsil Gariyaband, District Raipur (C.G.).
7. Smt. Leela Bai Markam W/o Shri Parasram Markam, aged about 26 years, R/o village Lohjhar, Tahsil Gariyaband, District Raipur (C.G.).

---Respondents

For petitioner	:	Shri Awadh Tripathi, Advocate.
For respondent No.2	:	Ms. Pushpa Diwedi on behalf of Shri Ashutosh Singh Kachhawaha, Advocate.
For respondent No.7	:	Shri Naveen Shukla, Advocate.
For State	:	Shri Syed Majid Ali, Dy.G.A.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

01/08/2018

1. The challenge in the present Writ Petition is to the orders Annexures-P/1 & P/2.
2. Annexure-P/1 having been passed by the respondent No.2 and Annexure-P/2 having been passed by the respondent No.5.

3. The facts of the case in brief is that, the respondent No.5 had initiated a recruitment process for filling up of the post of Anganbadi Karyakarta and the petitioner vide Annexure-P/3 dated 05/01/2007 was found suitable and appointed as an Anganbadi Karyakarta at Lohjhar, District Raipur (C.G.) and on which post the petitioner immediately joined her duties.

4. Aggrieved by the appointment of the petitioner on the post of Anganbadi Karyakarta, the respondent No.7 preferred an appeal before the Collector and the Collector after due consideration dismissed the appeal vide Annexure-P/4 dated 29/02/2008.

5. The respondent No.7 thereafter did not further challenge the order of the Collector or the appointment of the petitioner before any other authorities under the Act or scheme governing the service conditions of Anganbadi Karyakarta.

6. The respondent No.7 thereafter made a representation to the respondent No.2 who in turn took cognizance of the complaint lodged by the respondent No.7 and enquired into the matter and sent a report to the respondent No.5 as well as to the Collector, District Raipur for grant of appointment to the respondent No.7 in place of the petitioner. That in turn the respondent No.5 has issued Annexure-P/2 removing the petitioner from the said post and granting appointment to the respondent No.7.

7. The primary contention of the counsel for the petitioner is that, the impugned orders Annexures-P/1 & P/2 both are not maintainable for the simple reason that, the respondent No.2 does not have any power to

adjudicate upon a dispute raised so far as the appointment is concerned. He further submits that, the respondent No.2 could not have conducted the proceedings of deciding whether the appointment of Anganbadi Karyakarta has been rightly done or not. Similarly, it was also contended that, the respondent No.2 also has not taken care of ensuring that the petitioner was effectively represented before the Commission before the impugned order Annexure-P/1 had been passed. It was lastly contended that, even otherwise, once when the appeal of the respondent No.7 stood decided by the Collector and it was dismissed, the option left for the respondent No.7 was to challenge the findings of the Collector rather than approaching the respondent No.2 – Commission. The respondent No.7 having not challenged the findings of the Collector – Annexure-P/4, the same by efflux of time attained finality. Unless the order of the Collector is set-aside/quashed, the appointment of the petitioner could not have been restored by another authority and thus prayed for quashment of the impugned orders.

8. The counsel appearing for respective respondents however opposing the petition submits that, the respondent No.7 had raised a genuine grievance before the respondent No.2 so far as the case of the respondent No.7 not been properly scrutinized by the authorities concerned while the recruitment to the post of Anganbadi Karyakarta was been held. That it was after due scrutiny the respondent No.7 found to be more eligible for the said post and order was passed in favour of the respondent No.7 and as such the same does not warrant any interference and thus prayed for rejection of the petition.

9. Prima-facie, what requires to be considered from the aforesaid factual matrix is as to whether the respondent No.2 does have any power to act as an Appellate Authority over the order of the Collector. It also requires to be considered as to whether the respondent No.2 does have any adjudicatory power to decide the dispute pertaining to the recruitment of an Anganbadi Karyakarta.

10. The Commission has been constituted under the provision of Chhattisgarh Rajya Anusuchit Janjati Ayog Adhiniyam, 1995 (In short "the Act, 1995"). The function of the Commission has been envisaged under Section 9 of the said Act.

11. A bare perusal of the functions of the Commission itself would clearly reflect that, the primary duty conferred upon the Commission is to ensure protection of the interest of the members of the Scheduled Tribes in the State.

12. For ready reference, Section 9 of the said Act of 1995 dealing with the functions of the Commission is reproduced herein under:-

"9. Functions of the Commission.- (1) It shall be the function of the Commission-

(a) to act as watch-dog Commission for the protection afforded to the members of the Scheduled Tribes under the Constitution and under any other law for the time being in force;

(b) to recommend to the State Government to take steps to add particular tribes or tribal communities or parts of or groups within tribes or tribal communities in the Constitution (Scheduled Tribes) Order, 1950.

(c) to watch the proper and timely implementation of programmes meant for welfare of Scheduled Tribes and to suggest improvement in such programmes of the State Government or any other body or authority responsible for such programmes;

(d) to tender advice regarding reservation for Scheduled Tribes in public services and admission in educational institutions;

(e) to perform such other functions as may be assigned to it by the State Government.

(2) The advice of the Commission shall, ordinarily be binding upon the State Government, where, however, the Government does not accept the advice, it shall record its reason therefor."

13. The aforesaid provision which is the functions of the Commission itself clearly stipulates that, the Commission has not been given any power or authority to adjudicate or determine the rights of the parties. The function of the Commission was more in the nature of protecting the interest of the Tribes and the Tribal Communities in the State and also ensuring that the various schemes and welfare programmes introduced by the State Government or the Central Government as the case may be is implemented in the larger interest of the said community.

14. Further, it also reflect that, the role of the Commission was more of advisory nature and it is always an advice which would be provided to the State Government instead of determining or adjudicating upon a dispute.

15. It would be relevant at this juncture to refer to the decision of the Hon'ble Supreme Court in the case of Bhabani Prasad Jena v. Convenor Secretary, Orissa State Commission For Women And Anr0 [2010 8 SCC

633] wherein in paragraph 13 dealing with the powers which have been conferred upon a similar Commission the State Government has constituted under the State Government Commission for womens Act, 1993, wherein it has been held as under:-

“13. It is clear to us that the legislature has not gone so far as to give jurisdiction to the State Commission to make an order such as the one that has been made. From whatever angle we may examine the validity of the directions given by the State Commission in its order dated 11/05/2009, it appears to us that the said order was outside the jurisdiction, power or competence of the State Commission. It was an order which the State Commission had no competence to make and, therefore, a void order. The High Court instead of correcting that order went a step further and directed that DNA test of the child as well as the appellant shall be conducted.”

16. This Court further draws strength from the judgment of the Supreme Court in the case of All India Indian Overseas Bank SC And ST Employees Welfare Association & Ors. v. Union of India & Ors. [1996 6 SCC 606] wherein in paragraphs 10 & 11 it has held as under:-

“10. Interestingly, here, in clause (8) of Article 338, the words used are “the Commission shall ... have all the powers of the Civil Court trying a suit”. But the words “all the powers of a Civil Court” have to be exercised “while” investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause 5”. All the procedural powers of a civil court are given to the Commission for the purpose of investigating and inquiring into these matters and that too for that limited purpose only. The powers of a civil court of granting injunctions, temporary or permanent, do not

inhere in the Commission nor can such a power be inferred or derived from a reading of clause (8) of Article 338 of the Constitution.

11. The Commission having not been specifically granted any power to issue interim injunctions, lacks the authority to issue an order of the type found in the letter dated 04/03/1993. The order itself being bad for want of jurisdiction, all other questions and considerations raised in the appeal are redundant.

The High Court was justified in taking the view it did. The appeal is dismissed.

No costs."

17. Given the aforesaid legal position as it stands, this Court has no hesitation in reaching to the conclusion that, the directives given by the respondent No.2 to the Collector as also to the respondent No.5 if any were totally uncalled for.

18. Moreover, in the instant case it would reveal that, the respondent No.7 has already availed the alternative remedy of an appeal before the Collector and the Collector had dismissed the appeal of the petitioner.

19. The respondent No.7 having not availed the further remedies available for challenging the order of the Collector and the same having in due course of time attained finality, the respondent No.7 could not have raised his grievance before the respondent No.2 in respect of the same subject matter.

20. Given the facts, the orders Annexures-P/1 & P/2 are not sustainable and the same deserve to be and are accordingly set-aside/quashed.

21. Consequences to follow.

Sd/-

(P. Sam Koshy)
JUDGE