

HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on 14/08/2018****Order delivered on 07/09/2018****WP227 No. 2737 of 2009**

- Dhaniram Nagarachi S/o Manrakhan, Aged about 34 years at Present Working as Kotwar, Village- Kesra, Tahsil- Patan, Distt. Durg CG.

---- Petitioner**Versus**

1. Board Of Revenue Chattisgarh, Bilaspur, circuit Court Raipur, C.G.
2. Collector, Durg, Distt. Durg CG.
3. Smt. Nain Bai W/o Shatrughan Nagarachi, Aged about 55 years, Village- Kesra, Tahsil - Patan, Distt. Durg, C.G.

---- Respondents

For Petitioner	:	Shri F. S. Khare, Advocate.
For State/respondent No.1 & 2	:	Ms. M. Asha, PL.
For Respondent No.3.	:	Shri B. P. Gupta, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu**CAV Order**

1. By the instant writ petition, the petitioner is challenging the legality and validity of the impugned order dated 12.05.2009 passed by Board of Revenue, C.G Revision Case No. R. N. 05/R/A- 56/687/2006, whereby the Board of Revenue set aside the order of appointment passed by the Tahsildar in favour of the petitioner and directed for appointment of respondent No.3.
2. Brief facts of the case, are that one Kunjram was working as Kotwar in Village- Kesra, Tahsil- Patan, District- Durg. He due to his ill health gave his

resignation from the post of Kotwar. After his resignation respondent No.3 was appointed as temporary Kotwar of Village- Kesra vide order dated 03.03.1992. Respondent No.3 is daughter-in-law of Kunjram. After sometime Kunjram died on 15.09.2000. On 13.03.2001 the Competent Authority i.e. Tahsildar issued an advertisement for appointment of permanent Kotwar of Village- Kesra. The petitioner and respondent No.3 submitted applications for their appointment. Tahsildar vide order dated 10.04.2001 passed an order for appointment of Kotwar in Village- Kesra in favour of the petitioner. The said order was challenged by respondent No.3 before Sub-Divisional Officer, (Revenue), Patan, which was dismissed vide order dated 20.06.2001 and, thereafter, second appeal was preferred before the Additional Collector, Durg, District- Durg who also dismissed the appeal vide order dated 23.09.2005 and confirmed the orders passed by the Sub-Divisional Officer and Tahsildar. Being aggrieved by the order passed by the Additional Collector, respondent No.3 preferred Revision under Section 50 of C.G Land Revenue Code, 1959 (in short the 'Code of 1959') before the Board of Revenue, CG, Bilaspur and the Revisional Court allowed the revision and set aside the orders passed by the Additional Collector, Sub-Divisional Officer and Tahsildar on the ground that there is non compliance of the provisions of Rule 4 of Rules Regarding Appointment, Punishment And Removal Of Kotwars And Their Duties framed under Section 230 of C.G. Land Revenue Code, 1959 and further directed for appointment of respondent No.3 as Kotwar.

3. Learned counsel for the petitioner submits that the petitioner was appointed on the post of Kotwar after following due procedure of law and considering the recommendation/proposal sent by the Gram Panchayat. He further submits that the petitioner being the grand son-in-law of deceased Kunjram (Ex-Kotwar) has rightly been appointed. He further argued that there is no

violation of Rule 4 (1) as held by the Board of Revenue and, therefore, the Board of Revenue has committed gross illegality in issuing direction regarding appointment of respondent No.3 on the post of Kotwar as the appointment order can be issued only by the Appointing Authority as provided under the Code of 1959.

4. Per contra, learned counsel appearing for respondent No.3 submits that the Board of Revenue have rightly arrived at a conclusion that the proposal as required under Sub-rule (1) of Rule 4 of Rules framed under Section 230 was not called and also not sent by the Village- Panchayat and thus there was non compliance of Rule 4 (1) of Rules made under Section 230 of Code of 1959. He further argued that respondent No.3 is daughter-in-law of Kunjram (Ex-Kotwar) and, therefore, she being the near relative of Kunjram was having preferential right of appointment on the post of Kotwar in view of Sub-rule (2) of Rule 4 which the Appointing Authority has ignored and not considered. He further submits that the Rules of Appointment framed under Section 230 of Code of 1959 do not provide for considering the qualification or experience but it only provides that a person should be of good character having no infirmity of body or mind and not below the age of 21 years, but the Appointing Authority and the Appellate Authority have considered the qualification of the petitioner as well as respondent No.3 and only on that basis the petitioner was appointed as Kotwar, which is contrary to the provisions of Rules for Appointment as provided under the Code of 1959.
5. I have heard the learned counsel appearing for the respective parties and perused the records.
6. To appreciate the arguments of the respective counsel it will be helpful to peruse Rule 4 of Rules Regarding Appointment, Punishment And Removal Of Kotwars And Their Duties framed under Section 230 of Chhattisgarh

Land Revenue Code, which are reproduced herein below for ready reference :-

4(1). On the occurrence of a vacancy in the post of a Kotwar, the Revenue Officer, who is empowered to make appointment, after receiving a resolution duly passed by the Gram Panchayat in whose area the post of Kotwar is vacant, shall appoint on aligible person on the post of Kotwar, if the person proposed in the resolution does not fulfill the qualification prescribed in rule 2, the authorised Revenue Officer shall reject the resolution after recording the reasons in writing and intimate the Gram Panchayat and call for a fresh proposal:

Provided that immediately on occurrence of a vacancy, the appointing authority may temporarily appoint a suitable person to perform the duties of the office of Kotwar till the regular appointment under sub-rule (1) is made.

4(2). In making appointment of a Kotwar under Sub-rule (1) preference may be given to the near relative of the ex-Kotwar, other things being equal.

7. From perusal of Para-7 of the impugned order it is clear that an advertisement was issued by Tahsildar vide order sheet dated 13.03.2001 for calling applications from eligible candidates for appointment on the post of Kotwar. It further reveals that on 07.03.2001 Village- Panchayat had sent the recommendation for appointment of the petitioner as Kotwar. Prior to 13.03.2001 there was no occasion or requirement of any proposal/recommendation to be made by the Gram Panchayat for appointment on the post of Kotwar in favour of any person. The facts reflecting on order sheets with respect to issuance of advertisement on 13.03.2001, and also the recommendation dated 07.03.2001 were not disputed by any of the parties.

8. From the aforementioned facts, it is clear that no proposal of the Gram Panchayat has been received by the Appointing Authority i.e. Tahsildar after issuance of advertisement considering all applications and from them recommending any one mentioning his/her suitability at the relevant point of time and even then the Tahsildar/Appointing Authority has appointed the petitioner on the post of Kotwar of Village- Kesra, considering the recommendation dated 07.03.2001 sent to him prior to issuance of advertisement and also considering the qualification of the petitioner. Other thing which has been considered by the Appointing Authority was that respondent No.3 was not residing at Village- Kesra, whereas the petitioner was performing the duties of Kotwar. Admittedly, the petitioner has not placed any document showing that respondent No.3 is residing at Raipur, even after her appointment as temporary Kotwar. Further, no evidence and documents have been filed on record to show that he was working as Kotwar. Whereas the learned counsel for respondent No.3 submitted the voter list of Village- Kesra and also filed the order of appointment of petitioner as temporary kotwar.
9. The rules do not specify that the candidates applying for the post of permanent Kotwar necessarily required to be the resident of same village, but Rule 2 of Rules framed under Section 230 of Code of 1959 only provides that who cannot be eligible for appointment of Kotwar. Rules also do not provide for any qualification.
10. Board of Revenue have rightly arrived at a conclusion on the basis of the material available on record that there was non-compliance of the provisions of Rule 4 (1) and further there was non compliance of the provisions of Rule 4 (2) as respondent No. 3 is the near relative of Kunjram (Ex-Kotwar) being daughter-in-law. The Board of Revenue after arriving at a conclusion that there was violation of the provisions of Rule 4 in appointment of Kotwar of

Village- Kesra could not have passed an order of appointment of respondent No.3 on the post of Kotwar. As the dispute in this case is not with regard to non compliance of Sub-rule (2) of Rule 4 only but there is also non compliance of Sub rule (1) of Rule 4 of Rules Regarding Appointment, Punishment And Removal Of Kotwars And Their Duties framed under Section 230 of C.G. Land Revenue Code, 1959 which is the basic requirement and compliance as provided under the rules framed under Section 230 for appointment of Kotwar. After advertisement obtaining resolution of concerned Gram Panchayat where vacancy arosed is one of the mandatory requirement which was not complied with by the Tahsildar.

11. In view of the aforementioned, discussions and considering the provisions of Rule 4 in its entirety, I am of the considered opinion that the order passed by the Board of Revenue is contrary to rules of appointment, which is liable to be and is hereby set aside. Consequently, the order of Tahsildar dated 10.04.2001 also do not sustain.
12. The matter is remitted back to the Tahsildar for initiating the appointment proceedings afresh and to make appointment strictly in accordance with the provisions of Rules Regarding Appointment, Punishment And Removal Of Kotwars And Their Duties framed under Section 230 of C.G. Land Revenue Code, 1959.
13. In the result, the writ petition is allowed in part.
14. No order as to costs.

Sd /-

(Parth Prateem Sahu)

Judge

