

HIGH COURT OF CHHATTISGARH, BILASPUR**WP No. 4122 of 2004**

Ram Khilawan Yadav, S/o Shri Khorbahara Yadav, Aged about 40 yrs.,
R/o Gondpara, Durg, Tahsil & District Durg **---- Petitioner**

Versus

1. Janpad Panchayat, Through : Chief Executive Officer, Durg CG
2. Collector, Durg
3. Deputy Director, (Panchayat), Panchayat & Social Welfare Deptt. Durg
4. Zila Panchayat, Through : CEO Durg (CG)
5. Smt. Puspa Dewangan, W/o Late Shri Pukharaj Dewangan, Aged about 40 yrs., Peon, R/o Durg, Janpad Panchayat, Durg (CG)

--Respondents

For Petitioner	:	Mr. Amiyakant Tiwari, Advocate
For State	:	Mr. Dhiraj Wankhede, G.A.
For Respondent No.5	:	Mr. Shobhit Koshta, Advocate
For other respondents	:	None appears

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****10.04.2018**

Heard.

1. This petition has been filed by the petitioner aggrieved by rejection of proposal for petitioner's promotion to the post of Peon vide impugned order dated 09.09.2003 passed by second respondent. The petitioner has also challenged the appointment of fifth respondent vide impugned order dated 09.09.2003 (Annexure P/1) by which has been appointed on compassionate basis.

2. The petitioner was initially appointed as Chowkidar in the year 1985 in the services of Janpad Panchayat Durg. His services were, later on, discontinued in the year 1988 which was challenged before the Labour Court, Durg. A settlement finally arrived at between the parties and the petitioner was again appointed on 16.04.1992 as contingency paid-Chowkidar.

3. While the matter stood thus, regular peon Bhukhan Lal Patel working in the Janpad Panchayat, attained the age of superannuation. The Janpad Panchayat, in its general body, General Administration Committee resolved on 28.05.2003 to promote the petitioner on the post of peon. This proposal was sent by the Chief Executive Officer for approval to Deputy Director, Panchayat and Social Welfare Durg vide his memo dated 11.07.2003. The proposal was, however, turned down vide impugned order dated 09.09.2003 (Annexure P/2). Eventually by order of even date, respondent No.5, whose husband was working as Driver in Zila Panchayat, Durg and died in harness, was granted compassionate appointment as Peon in Janpad Panchayat, Durg. The petitioner, therefore, challenge this appointment order also.

4. Learned counsel for the petitioner would submit that the scrutiny of proposal of Janpad Panchayat by the Deputy Director has been done with reference to repealed Janpad Panchayat (Employees, Classification, Recruitment & Service Condition) Rules, 1976 whereas on the date of consideration, new Rules had already come into force, known as Panchayat Service (Recruitment and General Conditions of Services) Rules, 1999 (for short 'the Rules of 1999'). Learned counsel for the petitioner would submit that at that time, there was dire need of appointment of peon because the then regular peon had retired, therefore, the Janpad Panchayat proposed to appoint the petitioner as peon and since the mode by which the appointment was proposed, was other than the mode specified in Rule 7 of the Rules of 1999, prior approval of Deputy Director was sought. The Deputy Director did not examine the proposal in its proper perspective under the applicable Rules. Therefore, the same is illegal. The challenge to appointment of fifth respondent is said on the ground that the fifth respondent was appointed against the post of peon against which the petitioner's appointment was proposed whereas no compassionate appointment could be given to fifth respondent as her husband was not an employee of Janpad Panchayat Durg but of Zila Panchayat, Durg.

5. Learned counsel for the respondent State would submit that the Deputy Director had to reject the proposal because the proposal of the Janpad Panchayat was to promote the petitioner. He would submit that even if it is assumed that at the relevant time, the Rules of 1999 were applicable, even under the said Rules, there is no channel of promotion from contingency Chowkidar to peon in the regular appointment of Janpad Panchayat, therefore, no fault can be found with the order of the Deputy Director.

6. Learned counsel for fifth respondent would submit that in view of order dated 27.04.2005, her appointment is beyond challenge because the Court has directed one post to be kept vacant whereas fifth respondent working as another post therefore, irrespective of result of this petition, appointment of fifth respondent may not be disturbed.

7. Before dealing with the case of the petitioner on merits, it has to be observed that in view of the statement made before the Court that the Janpad Panchayat, Durg, there are two posts of Peon and that post was directed to be kept vacant till final disposal of the writ petition, there is no need to go further into the issue of validity of appointment of fifth respondent and challenge to her appointment by order dated 09.09.2003 (Annexure P/1) is repealed.

8. The proposal of Janpad Panchayat as contained in Annexure P/3 vide resolution dated 28.05.2003 is for promotion of the petitioner from contingency Chowkidar to Peon. Learned counsel for the petitioner laid great emphasis on the fact this was a proposal for appointment. But this contention is not acceptable. The proposal clearly records that the Janpad Panchayat proposed to promote the petitioner.

9. In so far as the contention of learned counsel for the petitioner that the repealed Rules were made a basis to examine proposal, is worth acceptance because those Rules no longer remained in force after promulgation of the Chhattisgarh Panchayat Service (Recruitment and General Conditions of Services) Rules, 1999 which was framed in exercise of powers conferred under Section 95 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 and notified under No.F-1-5-98-XXII-P-2 published in M.P. Gaz. Ext. dt. 10.05.99 p.716(22). These Rules were framed in exercise of power under the Panchayat Raj Adhiniyam, 1993 (for short 'the Act of 1993'). The Act of 1993 repealed earlier legislation namely Chhattisgarh Panchayat Raj Adhiniyam 1990. The Rules of 1976 were framed long back under the old Panchayat Act which stood repealed since long. Therefore, it is apparent that the Rules of 1976 were no longer in force. This shows that the Deputy Director did not apply its mind with reference to the correct provision and for this reason alone, the impugned order is liable to be set aside.

10. The proposal of the Gram Panchayat for promotion of a contingency Chowkidar to the post of peon, at the same time, is not in accord with the provision contained in the Rules of 1999 because there is no provision in the said Rules providing the channel of promotion from the post of contingency

Chowkidar to the post of peon.

11. Therefore, on the basis of the said proposal, the petitioner is not entitled to seek any relief.

12. It would, however, be open for the concerned Janpad Panchayat to examine whether the administrative considerations and exigencies of Panchayat require petitioner for appointment as peon and if those consideration warrant, it will be open for the Panchayat to forward such proposal for prior approval to the prescribed authority as provided under Rule 7 of sub-rule (4) of the Rules of 1999 and decision in this regard be taken by the Janpad Panchayat, Durg within an outer limit of 12 weeks from the date of receipt of copy of this order. For a period of 12 weeks, the post of peon which has remained vacant under the interim order passed by this Court earlier, shall not be filled up.

13. With the aforesaid observation, the petition is finally disposed off.

Sd/-
(Manindra Mohan Shrivastava)
Judge