NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 3564 of 2010

Babudas S/o Bisram, aged about 45 years, R/o Gram Chanderi, Tehsil Simga, District Raipur (C.G.).

---Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Department of Revenue D.K.S. Bhawan, Mantralaya, Raipur (C.G.).
2. The Board of Revenue, Chhattisgarh, Bilaspur, Circuit Court, Raipur (C.G.).
3. The Additional Collector, Balodabazar, District Raipur (C.G.).
4. The Sub Divisional Officer, Bhatapara, District Raipur (C.G.).
5. Tahsildar, Tahsil Simga, District Raipur (C.G.).
6. The Purshottam S/o Mannulal Satnami, R/o Gram Chanderi, Tahsil Simga, District Raipur (C.G.).

---Respondents

For petitioner	:	Ms. Renu Kochar, Advocate.
For respondent No.6	:	Shri Vivek Sharma, Advocate.
For State	:	Shri S.P.Kale, Dy.A.G.

Hon'ble Shri Justice P. Sam Koshy

CAV Order

Reserved on 04/12/2018.

Delievered on /12/2018.

1. The challenge in the present Writ Petition is to the order passed by the learned Collector dated 14/02/2008 and which was lateron confirmed by the Board of Revenue vide order dated 29/03/2010 – Annexure-P/2 and P/1 respectively.

2. The facts of the case in brief is that, for the village Chanderi, Tehsil Simga, District Raipur an appointment process for filling up of the post

of Kotwar was initiated by the Government. After assessment of all the eligible candidates, the Tahsildar under the powers vested upon him under Section 230 of the Chhattisgarh Land Revenue Code issued an order of appointment in favour of the petitioner vide order dated 04/02/2002.

3. Not satisfied with the appointment of the petitioner on the said post, the respondent No.6 raised an objection on the appointment of the petitioner before the Sub Divisional Officer and the Sub Divisional Officer vide his order dated 12/07/2002 rejected the objection upholding the order of Tahsildar in appointing the petitioner.

4. The order of the Sub Divisional Officer dated 12/07/2002 was challenged by the respondent No.6 before the Collector by way of an appeal.

5. The Collector however found the order of Tahsildar and the Sub Divisional Officer to be incorrect and accordingly allowing the appeal of the respondent No.6 set aside the appointment of the petitioner.

6. The petitioner immediately preferred a Revision Petition before the Board of Revenue who in turn rejected the revision of the petitioner affirming the order of the Collector in appeal. It is this order which is under challenge in the present Writ Petition.

7. The contention of the counsel for the petitioner is that, the Collector as well as the Board of Revenue failed to appreciate the fact that the order of Tahsildar as such was not either bad in law or in any manner violative

of the Rules pertaining to the appointment of Kotwar and since the order of Tahsildar which was lateron affirmed by the Sub Divisional Officer could not be said to be illegal. The findings arrived at by the Collector and the Board of Revenue are bad in law deserving quashment of the same. He further contended that, the two authorities ought to have considered that when all other things are same so far as the candidates who have participated in the selection process, the authorities concerned i.e. the Tahsildar/Appointing Authority under the Act itself had the discretion of forming an opinion and pass an appropriate order in favour of a person who in his opinion was most suitable.

8. It was also the contention of the counsel for the petitioner that, if other things are similar, the appointing authority is supposed to give preference to the person who is the relative of Ex-Kotwar. He further contended that, the Collector and the Board of Revenue failed to appreciate the fact that the respondent No.6 had a criminal antecedent in as much as he was an accuse in a case for the offence punishable under Section 342 & 376 of IPC. That keeping this in mind if the Tahsildar has taken a decision to appoint the petitioner at the first instance, the same cannot be said to be bad in law and for all these reasons the impugned orders passed by the Collector as well as the Board of Revenue supposed to be held as bad in law and arbitrary.

9. The counsel for the respondents on the contrary opposing the petition submits that, there is a concurrent finding given by two forums i.e. by the Collector in exercise of its power of appeal and the Board of

Revenue in exercise of its power of revision. He further contended that, the findings of the Collector as well as of the Board of Revenue cannot be said to be erroneous in any manner as the petitioner has failed to produce strong cogent evidence in respect of his relationship with the Ex-Kotwar. It is a case where the petitioner has not been able to establish his credentials to be better than the respondent No.6 for being appointed as Kotwar and thus prayd for rejection of the Writ Petition.

10. Having heard the contentions put forth on either side and on perusal of record the fact which is revealed from the reading of the two impugned orders i.e. the order passed by the Collector in an appeal and the order passed by the Board of Revenue in a revision is that, the Collector as well as the Board of Revenue found the respondent No.6 to be more meritorious on the ground that firstly the respondent No.6 was more qualified than the petitioner, secondly the petitioner has failed to show that he has infact the relative of an Ex-Kotwar and thirdly in the criminal case involving the respondent No.6 for the offence under Section 342 and 376 he stood acquitted.

11. If we read the evidence which has come on record it would reveal that the petitioner had adduced the evidence of one Kejabai who has specifically deposed before the Court that she is infact the grandmother of the petitioner to establish the petitioners relationship with the Ex-Kotwar.

12. To this evidence, there has been no rebuttal given by the respondent No.6 to prove that this was an incorrect statement made by Kejabai. At the same time, the respondent No.6 also did not produce any cogent evidence to show that the petitioner infact was not the grandchild of Kejabai.

13. At this juncture, it would be relevant to refer to the Rules framed under Section 230 of the Land Revenue Code dealing with the appointment of Kotwar. For ready reference, the relevant portion is reproduced herein under:-

> **"2. No person shall be eligible for the post of Kotwar, who -**
>
> **(i) is, in the opinion of the appointing authority, not of good character and antecedents;**
>
> **(ii) is, in the opinion of the appointing authority, unfit through infirmity of body or mind, to perform the duties of the post;**
>
> **(iii) is below the age of 21 years.**
>
> **3. XXXXXXXXXXX**
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> **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 Sabha or Gram Sabhas] in whose area the post of Kotwar is vacant, still appoint an eligible person on the post of Kotwar, if the person proposed in the resolution does not fulfil the qualification prescribed in Rule 2, the authorised Revenue Officer shall reject the resolution after recording the reasons in writing and intimate the [Gram Sabha or Gram Sabhas] 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.]

(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."

14. If we read the aforementioned Rule provision it would clearly reflect that, the power of appointment has been vested upon with the appointing authority i.e. the Tahsildar and while making so the appointing authority has to affirm the opinion in respect of the candidates who have applied for the said post and thereafter pass an appropriate order.

15. Similarly, clause 2 of Rule 4 further empowers the appointing authority to give preference to a person who is the near relative of Ex-Kotwar when other things being equal.

16. The plain reading of the order of the Collector would reveal that, many persons had applied and all were eligible. It is at this juncture when the Tahsildar had to form an opinion while issuing an appointment order. It is at this juncture that the Tahsildar has been empowered to take his own opinion in respect of different candidates who have put up their candidature and in the process if the Tahsildar has given a preference to the petitioner accepting him to be the near relative of Ex-Kotwar, unless otherwise proved which the respondent No.6 apparently has not

been able to establish, the finding of the Tahsildar cannot be held to be bad.

17. Secondly, we cannot loose site of that the respondent No.6 at one point of time was prosecuted for a criminal case for the offence punishable under Section 342 & 376 of IPC which again gives an indication of his criminal antecedent though he may have been acquitted of the said case at a later stage.

18. What is important is whether the opinion formed by the Tahsildar in the aforesaid factual matrix of the case can be held to be bad in law in any manner? There is no specific guidelines or parameters which have been given or laid down to assess the suitability. Thus, it is the general assessment which has to be made by the Tahsildar and in the course of general assessment with the available materials, if the Tahsildar forms an opinion, the said opinion cannot be said to be in any manner perverse.

19. Now, for the Collector and the Board of Revenue, if they intended to interfere with the findings of the Tahsildar there ought to had been strong cogent evidence led by the respondent No.6 to establish that there was perversity in the finding of the Tahsildar.

20. From the perusal of the order passed by the two authorities it clearly reflects that they have not found anything extra other than that which has been assessed by the Tahsildar. At the same time, it also is not in dispute that the respondent No.6 was infact prosecuted in a criminal

case for an offence punishable under Section 342 & 376 of IPC. It is not the case of the respondent No.6 that he has been falsely implicated in the case, but it is a case where with the available evidence, he has got an acquittal in his favour.

21. There is also no material whatsoever adduced before any forum by the respondent No.6 to show that the petitioner is not the relative of Ex-Kotwar.

22. So far as the burden of proof is concerned, the petitioner has discharged his burden of adducing evidence of Kejabai. In rebuttal there is no evidence adduced either orally or documentary to show that the statement of Kejabai was false and also to show that the petitioner was not related to the Ex-Kotwar.

23. Under the circumstances, this Court is of the opinion that, the two orders passed by the Collector dated 14/02/2008 and the Board of Revenue dated 29/03/2010 are not sustainable and the same deserve to be and are accordingly set-aside/quashed. It is ordered accordingly.

24. As a consequence, the order of appointment passed by the Tahsildar affirmed by the Sub Divisional Officer stands restored.

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

26. No order as to cost.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

WPS No. 3564 of 2010

Babu Das **-Versus-** State of Chhattisgarh & Ors.

19/02/2019	Ms. Aparajita Gaikwad, Advocate for the petitioner Mr. Saleem Kazi, Dy. A.G. for the State. Matter today come up for hearing on the note put up by the office in as much as the date on which the judgment was pronounced has not been reflected in the judgment. From the perusal of the record, it appears that the judgment was pronounced on 14.12.2018, but the space to be filled up for the same was left blank. Accordingly, the date of pronouncement in the judgment is mentioned as "**14.12.2018**". **Sd/-** **(P. Sam Koshy)** **JUDGE**

Ved