

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 192 of 2013**

Rambharos Bhagat S/o Bhukhai Ram Aged About 34 Years R/o Village And Post Kapu, Distt. Raigarh C.G. Present Address KG-15, PWD Colony, South Raigarh Chhattisgarh

---- Appellant**Versus**

1. Omprakash Singh Maravi S/o Rama Singh Maravi Aged About 34 Years Caste Gond, R/o Village Pakariya Latiya Post And Tahsil Akaltee, District. Janjgir-Champa Chhattisgarh
2. State of Chhattisgarh Through The Secretary, Public Works Department D.K.S. Bhawan, Raipur, District Raipur, Chhattisgarh
3. The Engineer-In-Chief Public Works Department, Sirpur Bhawan, Civil Lines, Raipur, District Raipur, Chhattisgarh

---- Respondents

For Appellant	: Shri Vinod Deshmukh, Advocate.
For Respondent No.1	: Shri Atanu Ghosh, Advocate.
For Respondent/State	: Shri UNS Deo, Government Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Manindra Mohan Shrivastava, Judge

Order on Board**20/07/2018****Per Ajay Kumar Tripathi, Chief Justice**

1. The order dated 09.01.2013 in Writ Petition (S) No.2303 of 2009 has been assailed in the writ appeal since the learned Single Judge has quashed the appointment order dated 05.11.2007 issued in favour of the present Appellant with a direction upon the Respondent authorities to consider the claim of the private Respondent No.1, if he comes within the merit list. The Appellant wants interference with the said order.
2. It may be noted that when the writ appeal was admitted for hearing, there was an interim order dated 06.05.2013 to maintain the status quo and therefore,

the Appellant continuous to hold the post of Sub Engineer (Civil) in the Public Works Department.

3. On 08.06.2005, the Respondent authorities issued an advertisement for selection and appointment on the post of Sub Engineer (Civil) and Sub Engineer (Electrical). The present Appellant was one of the applicants alongwith the private Respondent No.1. Since the Appellant came to be selected and appointed vide order dated 05.11.2007 on the post of Sub Engineer (Civil), the private Respondent No.1 who lost out in the said selection process, decided to file a writ application and sought quashing of the appointment order of the Appellant with a liberty to consider his case as well.

4. The primary submission made on behalf of the private Respondent No.1 before the writ Court was that the advertisement dated 08.06.2005 carried a clause that if any person was working in Government or Semi Government Organization, a No Objection from the said employer was a must at the time of the application. Plea was taken and urged on behalf of the private Respondent No.1 that the Appellant had not complied with the said mandatory provision and therefore, his application should not have been entertained much less employment offered to him as part of the exercise of selection. Submission was that since the Appellant was working as an Assistant Engineer under the Pradhan Mantri Gramin Sadak Yojna (hereinafter referred to as 'PMGSY') and he did not obtain any No Objection from the said authority or authorities when he applied for the post, this according to the private Respondent No.1, went to the root of the matter and makes the Appellant disqualified.

5. So far as the selection is concerned, it is not disputed that the Appellant was shown at Sl. No. 11 of the merit list whereas the private Respondent No.1 was at Sl. No. 16, therefore, the Appellant was more meritorious than the private Respondent No.1.

6. The learned Single Judge taking the allegation made against the Appellant that since he was in employment under the Organization known as PMGSY and he had not produced a No Objection Certificate at the time of the application. Therefore, there was deliberate effort on the part of the Appellant to not comply with the requirement of the advertisement. He also did not fully or fairly disclose that he was working in a Semi Government Organization. Therefore, the selection and appointment of the Appellant will be hit by the principles of *suppresio veri and suggestio falsi*. The appointment letter dated 05.11.2007 therefore, stood quashed.

7. At the very outset, learned counsel for the Appellant submits that the Appellant was not working in a Government or a kind of Semi Government Organization and more so, in any substantive capacity, he was hired on contract by an Organization which implements the construction of roads under the PMGSY. The funding is done by the Central Government and for implementation and construction, hands are hired by the State Implementing Authority. The State is exercising a kind of supervisory power in the implementation of the scheme, and therefore, by no stretch of interpretation can it be said that the Appellant was in employment of the State or Semi Government Organization. Here, employment has to be understood as substantive or regular employment either under the State or Semi Government Organization. Hiring on contract cannot be said to fall within the category of substantive appointment.

8. Besides the above, counsel for the Appellant submits that he had produced the No Objection Certificate obtained from the authorities of PMGSY and was tendered to the Respondent authorities and only then, he was allowed to join on the post of Sub Engineer (Civil).

9. The whole effort on the part of the private Respondent No.1, who was the Petitioner before the writ Court was to somehow oust the Appellant from the post

on which he could never have been appointed, given the fact that he was at Sl. No. 16 of the merit list whereas the Appellant was at Sl. No. 11. It was a malafide and motivated writ application to deny to the Appellant the benefit of a fair selection which was made by the Respondent authorities only because there was failure on the part of the private Respondent No.1 to corner the post and position.

10. Advertisements for appointment on substantive basis do carry clauses where a No Objection or permission of the former employer is talked about or incorporated in the advertisement. There are objects behind it, some of which this Court can perceive that the previous employer does not desire to spare the service of the employee in question or whether the employee in any manner is tied down by the terms and conditions of the appointment and whether the employee is leaving behind any obligation or liability before quitting the employment which is required to be settled by the employee and therefore, the permission or No Objection Certificate.

11. So far as present set of facts are concerned, nobody has disputed the position that the Appellant was working as an Assistant Engineer (Civil) on contract with an Implementation Agency, may be guided and controlled by the State or PMGSY Establishment. He was not holding any substantive post or in the employment of the State Government or Semi Government Organization as such. The State Government has not taken a stand in their plea that the Appellant was their employee and therefore, there was necessity for him to follow the requirement of the declaration as well as the production of a No Objection Certificate at the time of application.

12. It is also an accepted position that the Appellant had tendered the No Objection Certificate before joining the post and that was accepted by the Respondent authorities as sufficient compliance and only then, he was allowed to

join and he has been working uninterruptedly since 2007 i.e. almost 11 years now. Besides that the Appellant also happens to come from a weaker section of the society and if he has been able to obtain employment under the State on a substantive basis on the merit position which he obtained by a process of selection then a trivial kind of objection which was taken on behalf of the private Respondent No.1, who had an axe to grind, the appointment of the Appellant cannot be set aside in such a cursory manner.

13. We are satisfied that since the Appellant was not holder of any substantive post on a Government or Semi Government Organization or Establishment and further since the Appellant did produce the No Objection Certificate, if at all it was needed before he joined the post and was accepted by the Respondent authorities and has been working since last 11 years, his appointment is not required to be interfered with.

14. We are satisfied that no serious breach of terms and conditions of the advertisement had taken place either by the Appellant or by the State-Respondents and therefore, the impugned order dated 09.01.2013 passed by the learned Single Judge is required to be set aside and is hereby set aside. The appeal is allowed. The Appellant would continue on the substantive post of Sub Engineer (Civil) to which he was initially appointed. There will be no order as to costs.

15. The writ appeal is allowed in terms of the above.

Sd/-

(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-

(Manindra Mohan Shrivastava)
JUDGE