

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 4832 of 2007**

- Smt. Laxmi Bai, Aged about 35 years, Wife of Vikram Das Panka, R/o Village Pisid, Tahsil Kasdol, District Raipur (CG)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through the Secretary, Revenue, DKS Bhawan, Raipur (CG)
2. The Collector Raipur (CG)
3. The Tahsildar Tahsil Kasdol District Raipur (CG)
4. Jitendra Kumar, Aged about 25 years, S/o Budhram Sahu, R/o Village Pisid, Tahsil Kasdol, District Raipur (CG)
5. Sarpanch, Gram Panchayat Pisid, Tashil Kasdol, District Raipur (CG)

---- Respondent

For Petitioner	Mr. Yash Kumar Maurya, Advocate
For Respondent/State	Mr. KK Singh, Government Advocate
For Respondent No.4	Mr. Hanuman Prasad Agarwal, Advocate

Order On Board By**Hon'ble Mr. Justice Prashant Kumar Mishra, J.****8/8/2019**

1. Heard.

2. Challenge in this writ petition is to the order passed by the Board of Revenue, Chhattisgarh on 8.1.2007 rejecting the petitioner's Revision Application, which, in turn, was preferred against the order passed by the Additional Collector, Baloda Bazar on 25.4.2006 (Annexure P/4), whereby, the Appellate Order passed by the SDO(R), Bhilaiagarh on 14.6.2004 has been set-aside and the order passed by the Tehsildar, Kasdol on 20.3.2003 was maintained. By the original order passed by the Tehsildar in exercise of powers under Section 230 of the CG Land Revenue Code, 1959 (in short "the Code"), respondent No.4 Jitendra Kumar was appointed on the post of Kotwar of Gram Panchayat, Pisid, Tehsil Kasdol, District Baloda Bazar.
3. Upon occurrence of vacancy in the office of Kotwar of the concerned Gram Panchayat on account of Kotwar Vikram Das Manikpuri having suffered incapacity to function due to paralytic attack, the proceeding for appointment of new Kotwar was initiated. Respondent No.4 – Jitendra Kumar was initially appointed as temporary Kotwar on 30.9.2002. Thereafter, in the proceedings for appointment of new Kotwar, the Tehsildar considered candidature of 10 persons including petitioner Laxmin Bai and respondent No.4 Jitendra Kumar. The petitioner claimed appointment being the near relative (wife) of former Kotwar, whereas, respondent No.4 claimed appointment on merits. In a duly drawn proceeding, the Tehsildar obtained recommendation of the Gram Panchayat, which was made in favour of respondent No.4 vide Annexure R/4-1. The Tehsildar

having considered the recommendation and having considered the provisions contained in Rule 4 of the Rules regarding Appointment, Punishment and Removal of Kotwar and their Duties framed under Section 230 of the Code, concluded that the petitioner as well as respondent No.4 do not suffer from any disqualification as mentioned in Rule 2, therefore, both are suitable and qualified for appointment, however, on the strength of the recommendation of the Gram Panchayat in favour of respondent No.4 -Jitendra Kumar, he was offered appointment vide order dated 20.03.2003. Against this order, Petitioner Laxmin Bai preferred an appeal before the SDO(R), Bhilaigarh, which was allowed on 14.6.2004. Against the said order, an appeal was preferred by respondent No.4 Jitendra Kumar, which was allowed by the Additional Collector, Baloda Bazar on 25.4.2006. Thereafter, against the order dated 25.4.2006, the petitioner preferred a Revision Application, which was rejected by the Board of Revenue vide the impugned order dated 8.1.2007.

4. Mr. Yash Kumar Maurya, learned counsel for the petitioner, would submit that the petitioner is not disqualified to hold the office of Kotwar as she is not covered under any of the category mentioned in Rule 2, therefore, the petitioner being the near relative (wife) of the former Kotwar, should have been preferred for offering appointment. He would also submit that the recommendation made in favour of respondent No.4 was by the Gram Panchayat and not by the Gram Sabha, therefore, the

said recommendation has wrongly been invoked to prefer respondent No.4.

5. Mr. Hanuman Prasad Agarwal, learned counsel for respondent No.4 and Mr. KK Singh, learned Government Advocate would argue that under the Rules applicable in the State of Chhattisgarh, the resolution is required to be passed by the Gram Panchayat and not by the Gram Sabha. The amendment to Rule 4 necessitating resolution by a Gram Sabha has been introduced by the Notification issued by the Government of Madhya Pradesh after 1.11.2000, therefore, the said amendment is not applicable to the State of Chhattisgarh. Mr. Agarwal would further argue that the petitioner and respondent No.4 being equally qualified in terms of the Rules for appointment to the office of Kotwar, the Tehsildar has rightly referred to the resolution in favour of respondent No.4 to offer him appointment.
6. Rule 4 of the Rules regarding Appointment, Punishment and Removal of Kotwars and their duties as applicable in the State of Chhattisgarh provides that 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 an eligible 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. It also provides 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. It further provides that 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. Bare perusal of Rule 4 would clearly discern that the person in whose favour resolution has been passed by the Gram Panchayat, is entitled for a preference if he/she is otherwise not suffering from any disqualification as mentioned in Rule 2. If the resolution is proposed in favour of a person who does not fulfill the qualification to mean he does not suffer from any disqualification prescribed in Rule 2, the Tehsildar shall reject the resolution after recording the reasons in writing and intimate the Gram Panchayat.
8. True it is that sub-rule (2) of Rule 4 enables the Appointing Authority for according preference to the near relative of the Kotwar but the same would occasion only when other things are equal.
9. In the case at hand, the resolution of the Gram Panchyat was in favour of respondent No.4. Therefore, the resolution being one of the parameters provided under sub-rule (1) of Rule 4, which has a bearing on the entire selection process, it is not a matter

where other things were equal in between the petitioner and respondent No.4. Thus, sub-rule (2) of Rule 4 would not apply to assist the petitioner in the present case.

10. Mr. Hanuman Prasad Agarwal, learned counsel for respondent No.4, would also draw attention of the Court to the fact that the petitioner is the second wife of the former Kotwar.

11. Since the above fact was not before the Tehsildar nor the Tehsildar has passed any order on the said basis, this Court would not enter into that dispute of the matter.

12. The writ petition has no substance. It fails and is hereby dismissed.

Sd/-

(Prashant Kumar Mishra)

Judge

Shyna