

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 451 of 2008

Rajkumar S/o Sunderdas Panika, aged about 41 years, R/o. Village
Matiya, Tahsil Masturi, District. Bilaspur (CG).

---- Petitioner(s)

Versus

1. Ramlal S/o Chaitram Satnami, aged about 40 years,
2. Ganpat Das S/o Udal Das Manikpuri, aged about 61 years,
Both R/o Village Matiya, Tahsil Masturi, Distt. Bilaspur (CG).
3. The State of Chhattisgarh through the Collector, Bilaspur (CG).
4. Board of Revenue, Bilaspur (CG).

---Respondents

For Petitioner	:	Shri Animesh Verma, Advocate.
For Respondent No.1	:	Shri Keshav Dewangan, Advocate.
For Respondent No.2	:	None.
For Respondent-State	:	Shri Sameer Behar, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

19.06.2019.

1. Challenge in this petition is to the order dated 07.05.2007 (Annexure P/1) passed by the Board of Revenue, Bilaspur, in Revision Case No.247/A-56/2002-03. Vide the said impugned order the Board of Revenue has affirmed the order dated 21.07.1197 (Annexure P/4) passed by the Commissioner, Bilaspur Division as also the order passed by the Sub Divisional Officer dated 18.10.1993, whereby the two appeals preferred by the petitioner against appointment of the respondent No.1 as Kotwar of village Matiya, Tehsil Masturi, District Bilaspur, stood rejected.

2. The facts of the case is that an advertisement was issued for filling up of the post of Kotwar for the village Matiya on 14.08.1992. The vacancy arose on account of removal of ex-Kotwar namely Manharan Das Panika from the said post who was brother of the petitioner. The petitioner and two other persons i.e. respondents No.1&2 herein had applied for the post of Kotwar. The proceedings were convened as per the provisions of Section 230 of the Chhattisgarh Land Revenue Code and rules framed thereunder. Subsequently, the Naib Tehsildar vide order dated 29.01.1993 issued an order of appointment in favour of the respondent No.1. The petitioner herein immediately preferred an appeal before the SDO under Section 44 of the Chhattisgarh Land Revenue Code which the SDO after due consideration rejected vide order dated 18.10.1993 (Annexure P/3). Against the said order, Second Appeal was preferred before the Divisional Commissioner, Bilaspur Division and the Second Appeal also vide order dated 21.07.1197 (Annexure P/4) stood rejected affirming the order passed by the SDO.
3. Both these orders were subsequently challenged before the Board of Revenue by way of a Revision under Section 50 of the Chhattisgarh Land Revenue Code and the Board of Revenue also vide impugned order date 07.05.2007 (Annexure P/1) rejected the revision affirming the orders passed by the SDO as well as by the Commissioner, Bilaspur Division and in the process has affirmed the appointment of respondent No.1 as Kotwar of Village Matiya.

4. The ground of challenge raised by the petitioner in the present writ petition is that, the findings of all the three authorities below as also of the Naib Tehsildar is a totally perverse finding. According to the petitioner, it is not based on actual facts, but is based on the subjective satisfaction of the authorities without there being any basis. The contention of the petitioner is that the decision of Naib Tehsildar as well as of the subsequent appellate authority is bad in law for the reason that there could not had been a comparative assessment of the candidates based on their educational qualification. On the contrary, the petitioner ought to had been granted preferential treatment on account of fact that it was the petitioner's brother who was the previous Kotwar and his father and grandfather also were Kotwar and thus he had the experience and knowledge of discharging the duties of Kotwar.
5. According to the petitioner, the fact that the petitioner has been held to be encroacher by all the authorities below is also a fact which is contrary to the evidence on record and is baseless and therefore liable to be held to be a finding which is contrary to evidence and the impugned order therefore deserves to be set aside/quashed.
6. The counsel for the respondent No.1, on the contrary, submits that admittedly the petitioner and the respondents No.1&2 had applied for the post of Kotwar as per advertisement dated 14.08.1992. The Naib Tehsildar scrutinized the candidature of three persons who had applied for the said post. In the process of scrutiny, the Naib Tehsildar found that the respondent No.2 herein was involved in a

criminal case and therefore he was outrightly held to be ineligible for the said post. Then, there was only two left i.e. the petitioner and the respondent No.1. So far as educational qualification is concerned, the petitioner was 7th pass candidate whereas, the respondent No.1 was a matriculate. Moreover, there was an allegation against the petitioner of being an encroacher of government land. After assessing the merits of two candidates, the Naib Tehsildar found the respondent No.1 to be more suitable candidate for the post of Kotwar and had given an appointment way back on 29.01.1993.

7. The contention of the Respondent No.1 is that, since 1993 till now i.e. for a period of about 26 years he has been discharging the duties of Kotwar and therefore at this juncture he should not be disturbed. Moreover, it is a subjective satisfaction of the Naib Tehsildar in the appointment of Kotwar and which is based on certain factual matrix and therefore, there is no scope of any interference on the said findings. Thus prayed for rejection of the writ petition.
8. The State counsel also adopts the reply that has been advanced by the respondent No.1.
9. Having heard the contentions put forth on either side and on perusal of records, indisputably some of the admitted factual position as it stands from the pleadings is that, the previous Kotwar namely Manharan Das Panika was the brother of the petitioner who was removed from the post of Kotwar by a specific order passed by the Naib Tehsildar. The removal was on account of certain misconduct.

10. 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. xxx xxx xxx

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.

Note-If the vacancy is caused by the suspension or dismissal of the previous incumbent for bad character, misconduct or disobedience and the effect of the dismissal would be lost if a member of his family is appointed to succeed him, relatives of the previous incumbent may not be appointed”

11. 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/Naib Tehsildar and while making so the appointing authority has to form an opinion in respect of the candidates who have applied for the said post and thereafter pass an appropriate order.
12. 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.
13. The facts which is also revealed from the records, particularly the note attached to sub-rule (2) of Rule 4 of Rules framed under Section 230 of the Land Revenue Code, is that the said preferential treatment to a relative Kotwar would not be given in case if the relative Kotwar was dismissed from service. Admittedly, in the instant case the brother of the petitioner who was the previous Kotwar was removed from service for some misconduct.
14. From the aforesaid statutory provision as it stands and on perusal of the order passed by the Naib Tehsildar, it clearly reveals that rule provides for the power on the Naib Tehsildar to reach to a conclusion while deciding the most suitable candidates for the post of Kotwar. It has to be a subjective satisfaction of the Naib Tehsildar while deciding as to who is the more suitable candidate. The order of Naib Tehsildar reveals that while reaching to the subjective satisfaction, the Naib Tehsildar took into consideration the educational qualification of the two candidates plus the fact that the brother of the petitioner

i.e. the previous Kotwar was one who was removed from service. The other fact that there was an allegation of the petitioner being an encroacher of the government land, forced him to reach to a conclusion that it is the respondent No.1 who was more suitable candidate for the post of Kotwar. This findings of the Naib Tehsildar has been accepted by the first appellate authority i.e. SDO and also by the Second Appellate authority-Divisional Commissioner, Bilaspur and also by the Board of Revenue in the Revision.

- 15.** The admitted factual position as narrated above has not been disputed by the petitioner also. The only ground which the petitioner tries to canvass at this juncture is the fact that there is no evidence produced before the Naib Tehsildar of the petitioner being an encroacher on the government land. He further submits that the Patwari concerned has also not given any direct evidence or proof in this regard. Moreover, the petitioner submits that the Naib Tehsildar has totally ignored the fact that the petitioner was a relative of the previous Kotwar and therefore he ought to have been given preferential treatment under the rules itself.
- 16.** The aforesaid submissions and contentions of the petitioner would not be sustainable for the simple reason that indisputably the previous Kotwar was one who was removed from service and he seems to be the brother of the petitioner. Thus, Note to sub-rule (2) of Rule 4 of Section 230 of the Chhattisgarh Land Revenue Code denies the petitioner the preferential right that he would have otherwise enjoyed. Likewise, the fact that he is an encroacher is also

specified by the order of the Board of Revenue wherein it has been specifically mentioned by the Board of Revenue while deciding the revision that he has been also inflicted with a fine of Rs.500/- for encroaching upon the government land.

17. This finding of the Board of Revenue has not been rebutted or controverted by the petitioner by leading any cogent evidence to disprove the same. Further, it is also not brought before this court by the petitioner that the order of imposition of fine has been set aside by any of the higher authorities in the department.
18. In view of the aforesaid facts and circumstances of the case, it cannot be said that the authorities concerned have acted in an arbitrary manner or have taken a decision contrary to the evidence on record. It also cannot be said to be a perverse finding as there is a concurrent finding of fact by three of the authorities below.
19. It is settled position of law that this court while exercising its power of superintendence under Article 226/227 of the Constitution of India over the authorities below would not sit as another appellate body to re-appreciate the evidence which has come on record. All that this court would see under judicial review in a writ proceeding is whether the findings arrived at is based on the evidence and whether there is any jurisdictional error and there has been a perversity in the finding arrived at.
20. From the submissions which have been made by the counsel for the petitioner there does not appear to be any of these situations present

with which this court could interfere with the findings so arrived at by the three authorities below.

21. The writ petition thus being devoid of merit deserves to be and accordingly stands dismissed.

Sd/-
(P. Sam Koshy)
Judge

inder