

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 160 of 2017**

Smt. Aasha Kathautiya W/o Girdhari Lal Kathautiya Aged About 35 Years R/o Village-Tusma, P.S. And Tahsil Nawagarh, District- Janjgir-Champa, Chhattisgarh.

---- Appellant**Versus**

1. State Of Chhattisgarh Through- Secretary Women And Child Development Department, Dau Kalyan Singh Bhawan, Now- Mahanadi Bhawan, Raipur, Tahsil And District- Raipur, Chhattisgarh.
2. The Additional Commissioner, Bilaspur Division, District- Bilaspur, Chhattisgarh.
3. The Additional Collector, District- Janjgir-Champa, Chhattisgarh.
4. Chief Executive Officer, Janpad Panchayat, Janjgir, District- Janjgir-Champa, Chhattisgarh.
5. The Project Officer, Janpad Panchayat, Janjgir, District- Janjgir-Champa, Chhattisgarh.
6. Smt. Shashi Sahu W/o Late Shri Yudhishthir Sahu Aged About 35 Years R/o Village And Post Tushma, P.S. Sherinarayan, Civil And Revenue District- Janjgir-Champa, Chhattisgarh.
7. Smt. Anita Sahu W/o Shivkumar Sahu R/o Village-Tusma, Tushma, P.S. Nawagarh, District- Janjgir-Champa, Chhattisgarh.
8. Janpad Panchayat, Janjgir, The Chief Executive Officer, District- Janjgir-Champa, Chhattisgarh.

---- Respondents

For Appellant	: Shri H.V. Sharma, Advocate.
For Respondent/State	: Smt. Fouzia Mirza, Additional Advocate General.
For Respondent No.6	: Shri Prateek Sharma, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****07/02/2019****Per Ajay Kumar Tripathi, Chief Justice**

1. Heard counsel for the parties.
2. Smt. Shashi Sahu who is Respondent No.6 in the present appeal filed a writ application when decision was taken to withdraw the responsibility or charge of

Aganbadi Worker for Aganbadi Centre, Tusma, Block Navagarh, Janpad Panchayat, Janjgir, District Janjgir-Champa, Chhattisgarh.

3. The reason for Respondent No.6 to file the writ application arose in the background that way back on 30.05.2006, the present Appellant, namely, Smt. Aasha Kathautiya was appointed as Aganbadi Worker on the same Centre. Her appointment came to be challenged by one Smt. Anita Sahu who is Respondent No.7 in the present appeal. Appointment of the present Appellant was set aside. She preferred a revision before the Additional Commissioner, Bilaspur Division, wherein ad-interim order was passed till receipt of the record and finally on 20.10.2011, the revision application was allowed restoring the present Appellant to the position of Aganbadi Worker. The revisional order was communicated to the Project Officer of ICDP, Navagarh and charge thereafter was sought to be withdrawn from Smt. Shashi Sahu to be handed over to the present Appellant.

4. From narration of events, there were some confusion before the learned Single Judge whether Smt. Shashi Sahu was appointed on the same Tusma Aganbadi Centre which was held by the present Appellant or she was appointed on yet another Centre with similar name. In absence of clear evidence and pleadings, the learned Single Judge allowed the writ application and held that Respondent No.6, Smt. Shashi Sahu must be allowed to continue since she was validly selected and appointed as Aganbadi Worker on another Centre.

5. The present Appellant who was ordered to be restored to her post as Aganbadi Worker, by virtue of the order passed in revision has now approached the Division Bench because the learned Single Judge's order has created more problems for her rather than resolving the issue. It seems that the Appellant and private Respondent No.6, who also happened to be the Petitioner before the writ Court, are fighting for the same space and position with regard to the Aganbadi

Centre, Tusma. At present, by virtue of the learned Single Judge's order, private Respondent No.6 is also working and deriving remuneration and the Appellant's joining has been taken by virtue of the revisional order, but obviously, she is not getting paid as it is only a notional joining.

6. When the matter was taken up earlier, the State counsel was given a direction to verify the original records and revert to this Court as to where the confusion arose or whether there was a mischief played somewhere along in matter of appointment of private Respondent No.6, which has led to the present litigation.

7. The additional affidavit which has been now filed by the State removes all the ambiguity. It seems that after the order of removal was passed against the present Appellant, a vacancy arose of the Centre and since the litigation dragged on for some time, the Respondent-authority decided to advertise and fill up the post vacated by the present Appellant. There is no ambiguity now that the private Respondent i.e. Petitioner before the writ Court responded to the said advertisement and came to be selected and appointed. But the problem arose when the original appointee i.e. present Appellant got restored to her original post or position as Aganbadi Worker in the year 2012. The selection and appointment of Respondent No.6 was by virtue of the order dated 14.07.2011.

8. The stand of the counsel for the Appellant is that once she was restored to her post by the revisional authority, finding infirmity in the initial decision of the Additional Collector, she had a right to occupy the position she held against the valid selection and appointment. The fruit of adjudication cannot be denied to her. She had a rightful claim to go back to the post since she has been restored to the position with due dignity. Any decision which may have been taken between the period of removal till her restoration, will not come in the way of her being restored back to the post.

9. To the contrary, Shri Prateek Sharma, learned counsel representing Respondent No.6 submits that there was a regular advertisement, selection was made followed by her appointment. Neither the advertisement nor the selection was challenged by the present Appellant and therefore, she cannot be now made to suffer for which there is no fault of her. The selection and appointment of the private Respondent had not been set aside or interfered with while deciding the case of the present Appellant.

10. The question which arises for consideration is whether the private Respondent No.6 has a substantive right to occupy the position of Aganbadi Worker by virtue of the selection against the advertisement issued by the Respondent-authorities.

11. The Court cannot overlook the fact that it was vacancy caused due to the illegal removal of the present Appellant, which necessitated issuance of an advertisement and filling up the post as there was delay in adjudication. This vacancy was not a substantive vacancy, but a contingent vacancy which arose due to the illegal removal of the present Appellant. If subsequently in an adjudication, the order of removal was held to be bad by the revisional authority, she had to enjoy the fruits of such adjudication and there was an obligation upon the Respondents to restore her back to original post and position.

12. The selection of the private Respondent No.6 was under a fortuitous circumstance and since the vacancy was caused due to the removal of the present Appellant and was not a regular or substantive vacancy against which the selection was made, she has to make way for the original appointee i.e. present Appellant. However, harsh the decision may feel for her in retrospect.

13. We are satisfied therefore that the order of the learned Single Judge dated 27.03.2017 has been passed because of lack of clarity in so many words with

regard to the Aganbadi Centre and since two persons cannot occupy the same post under one Centre, therefore, the impugned order is required to be interfered with. The same is set aside.

14. The appeal is allowed. The present Appellant will be allowed now to continue as a full-fledged Aganbadi Worker and she will be entitled to all the remunerations by virtue of such responsibility conferred upon her. Respondent No.6 therefore has to vacate her position forthwith.

15. If private Respondent No.6 would like to apply against any future vacancies, she is free to do so provided she has the eligibility and fulfills the requirement.

Sd/-

(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-

(Parth Prateem Sahu)
JUDGE