

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 7281 of 2009

Jeetandra Dewangan, S/o. Late Mahanand Dewangan, Aged about 42 years, R/o. Sadar Bazar, Near Durga Mandir, District Durg Chhattisgarh

---- Petitioner

Versus

1. High Court of Chhattisgarh, Through its Registrar General, High Court of Chhattisgarh, Bilaspur, Chhattisgarh
2. The Principal Judge, Family Court, Raipur, Chhattisgarh
3. The Administrative Officer, Family Court, Raipur Chhattisgarh

---Respondents

AND

WPS No. 7282 of 2009

Mahesh Chandrakar, S/o. Budhu Ram Chandrakar, Aged about 36 years, R/o. Village Khopali, Police Station Utai, District Durg, Chhattisgarh

---- Petitioner

Versus

1. High Court of Chhattisgarh, Through its Registrar General, High Court of Chhattisgarh, Bilaspur, Chhattisgarh
2. The Principal Judge, Family Court, Raipur, Chhattisgarh
3. The Administrative Officer, Family Court, Raipur Chhattisgarh

---Respondents

AND

WPS No. 5987 of 2009

Tillesh Rao Sawarkar, S/o. Laxman Rao Savarkar, Aged about 34 years, R/o. Raja Talab, Near Sai Mandir, Raipur, Chhattisgarh

---- Petitioner

Versus

1. High Court of Chhattisgarh, Through its Registrar General, High Court of Chhattisgarh, Bilaspur, Chhattisgarh
2. The Principal Judge, Family Court, Raipur, Chhattisgarh
3. The Administrative Officer, Family Court, Raipur Chhattisgarh

---Respondents

For respective Petitioners	:	Mr. Alok Kumar Dewangan, Advocate Ms. Trishna Das, Advocate on behalf of Mr. B.P. Sharma, Advocate
For respective Respondents	:	Mr. Rajeev Shrivastava, Advocate along with Mr. Malay Shrivastava, Advocate

Mr. Ashish Shrivastava, Advocate along
with Mr. Animesh Verma, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

22/01/2019

1. Since the facts, grounds and the impugned order in all these writ petitions are of identical nature, the three writ petitions are being decided by this common judgment.
2. The challenge in all these three writ petitions is the order dated 13.10.2009, whereby the alleged promotion, which the petitioners were given on the post of Process Server on 05.06.2007 has been ordered to be cancelled and the salary which the petitioners have drawn that of Process Server from 05.06.2007 till the impugned order was passed, was ordered to be recovered.
3. The relevant facts for adjudication of the present writ petitions are that the petitioners were initially appointed as Casual Worker on 09.12.2005 (Annexure P/2) on different posts. The petitioner in WPS No. 7281/2009 was appointed as a Sweeper, the petitioner in WPS No. 7282/2009 was appointed as a Gardener (*Maali*) and the petitioner in WPS No. 5987/2009 was appointed as a Watchman. The order of appointment dated 09.12.2005 clearly reflects the fact that they have been appointed on casual basis at the rate fixed by the Collector.
4. Subsequently, the respondent No.2 vide order dated 05.06.2007 passed an order, thereby promoted the three petitioners on the post of Process Server. Subsequently, it was learnt that the petitioners have been wrongly granted promotion and that the post of Process Server is not a post, which could be

filled up by way of promotion, but was a post, which was to be filled up by way of direct recruitment.

5. Later, the impugned order (Annexure P/1) was passed on 13.10.2009 canceling the earlier order of promotion granted to the petitioners on 05.06.2007. It is this order, which is under challenge in the present writ petitions.
6. The contention of the counsel for the petitioners assailing the impugned order is that firstly the impugned order has been passed in violation of the principles of natural justice, in as much as no opportunity of hearing has been granted to the petitioners before issuance of the impugned order. It was further the contention of the petitioners that at the relevant point of time, there never used to be any recruitment conducted for the post of Process Server. The Principal Judge, Family Court used to formally issue orders in favour of the employees working in the class-IV category in the Department on the post of Process Server and such practice has been undertaken in most of the districts and except for the petitioners, all other similarly placed persons are still continuing in employment, who have been either promoted or appointed in similar fashion.
7. It is also the contention of the petitioners that the petitioners do fulfill all the eligibility criteria and the requisite qualifications for the post of Process Server and therefore the authorities should, considering their period of service rendered as a Process Server, have taken a decision for appointing the petitioners themselves as Process Server. It was lastly contended by the counsel for the petitioners that the order of recovery, which has been passed by the respondents is **per se** illegal for the reason that it is not the case of the respondents that the petitioners have misrepresented

themselves for being promoted on the said post of Process Server. The petitioners have been duly issued with an order of promotion and which the petitioners have acted upon and have also worked for the said period and therefore the recovery cannot be made from the petitioners.

8. Per contra, counsel appearing for the respondents opposing the petitions submit that the question of grant of opportunity of hearing in the given facts may not be required for the reason that the impugned order of promotion is ***per se*** illegal, as it has not been in accordance with rules. It was further contended that the post of Process Server, firstly is not a promotional post, but is a post, which as per the rules, is to be filled up by way of direct recruitment. It was further the contention of the respondents that the respondent No.2, at no point of time, initiated any recruitment process for filling up of the post of Process Server and have illegally granted promotion to the petitioners and as such the order of promotion was bad in law and therefore the respondents were justified in issuing the impugned order dated 13.10.2009.
9. It was further the contention of the counsel for the respondents that, even otherwise, there were not sufficient post lying vacant, against which the petitioners could have been promoted or appointed and for all these reasons, the impugned order does not warrant any interference.
10. Having heard the contentions put forth on either side and on perusal of record, particularly taking into consideration the rule position, as it stands, it clearly reflects that under the ***MP/CG Class-IV Services of the Establishment District & Sessions Judge Recruitment Rules, 1978***, the post of Process Server is a post to be filled up by way of direct recruitment. The proceedings drawn by the respondent No.2 does not show that there

was any process of direct recruitment initiated for appointing the petitioner as a Process Server. Moreover, from the order Annexure P/3 dated 05.06.2007, it appears that the respondent No.2 has wrongly considered the petitioners for promotion from the post of Peon to the post of Process Server, as the order Annexure P/3 shows the petitioners to have been promoted on the post of Process Server.

11. During the course of arguments, it has been revealed that the petitioners have subsequently been regularized in service in the year 2014 on the post of Peon. The very fact that the petitioners have been regularized in the year 2014 would further establish that at the time of issuance of the order Annexure P/3 dated 05.06.2007, the petitioners were not regular employees of the District Establishment. The promotion in the usual course is always given to a regular employee. Since the petitioners were not at all the regular employees of the District Establishment, though the Rules not permit, even then the petitioners could not have been considered for promotion at that point of time i.e. in the year 2007. The order of promotion dated 05.06.2007, therefore on this ground also, would not be sustainable.
12. However, at this juncture it would be relevant to mention that rightly or wrongly, there was an order in favour of the petitioners on 05.06.2007 promoting the petitioners to the post of Process Server in the scale of Rs. 2550-55-2660-60-3200/-. The petitioners assumed their duties and have discharged the work till Annexure P/1 was passed on 13.10.2009. There is no dispute on the part of the respondents, that the petitioners have in fact worked as a Process Server during the said intervening period. The reason that the petitioners have worked as a Process Server for the intervening period and they have also been paid the salary for the same. The said

payment can not be recovered by the respondents, on their finding the order of promotion dated 05.06.2007 to be bad. The said recovery, all the more, could not have been made for the reason that it is not the case of the respondents that the petitioners were responsible in any manner or they have made any misrepresentation for the purpose of being promoted.

13. In view of the same, the action on the part of the respondents in initiating recovery proceedings is held to be bad in law and the impugned order to that extent stands set-aside/quashed. However, the order of cancellation of the order of promotion dated 05.06.2007 stands affirmed.
14. The writ petitions accordingly stand allowed in part.

Sd/-
(P. Sam Koshy)
Judge