

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURWPS No. 537 of 2008

- Vishnu Chandrakar S/o Shri Bhuwanlal Chandrakar, Aged about 37 years, Panchayat Karmi, Gram Panchayat Pauha, Tahsil- Patan, Distt. - Durg C.G.

---- Petitioner

Versus

- State Govt. of Chhattisgarh, through:- The Secretary, Panchayat Department, D.K.S. Bhawan, Raipur, Chhattisgarh.
- Director Panchayat, D.K.S. Bhawan, Raipur (C.G.).
- Dy. Director, Panchayat & Social Welfare, Durg (C.G.).
- Umesh Chandrakar, S/o Shri Bisahat Chandrakar, R/o Village-Pauha, Tahsil – Patan, District-Durg (C.G.).
- Sarpanch Gram Panchayat Pauha Tahsil-Patan, District-Durg (C.G.).

---- Respondent

For Petitioner	:-	Shri Ajay Shrivastava, Advocate
For Respondent-State	:-	Shri R.S. Baghel, Dy. A.G.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****24/10/2019**

1. Heard.
2. Petitioner would challenge the order passed by the Director Panchayat whereby the appeal preferred by Respondent No.4, Umesh Chandrakar, challenging the petitioner's appointment on the post of Panchayat Secretary has been allowed.
3. Challenge is thrown on the ground that Director Panchayat has no jurisdiction neither the said Authority is empowered to hear any appeal against the order passed by Deputy Director of Panchayat. The second ground of challenge is that the appeal was barred by limitation, however, without there being any application for condonation of delay, the appeal under Section 91 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993, has been entertained by the Director Panchayat.
4. There is no dispute that on the date petitioner was appointed as Panchayat Karmi and on that basis notified as Panchayat Secretary his real brother Mahesh Chandrakar was a Panch of the same Gram Panchayat. Thus the petitioner was not qualified or eligible to be chosen as Panchayat Secretary in view of express bar provided under the second proviso to Section 69(1) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993. Which reads thus:-

“Provided further that a person shall not hold charge of a Secretary of Gram Panchayat, if such person happens to be relative of any office bearer of the concerned Gram Panchayat.

Explanation.- for the purpose of this sub-section the expression “relative” shall mean father, mother, brother, sister, husband, wife, son, daughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law”

5. It is apparent on plain reading of the provision that any person who happens to be a relative of any office bearer of the concerned Gram Panchayat shall not hold charge of the Secretary of Gram Panchayat. The explanation defining the word “relative” includes brother. Thus the bar under Section 69 would clearly operate against the petitioner.
6. It is now argued that the prohibition is only for holding charge of the Secretary and not for appointment, therefore, petitioner's brother having resigned subsequently, petitioner became eligible to hold charge. The argument is referred only to be rejected at the threshold. It may happen that a particular Panchayat Secretary is already in office but due to subsequent election of any of his relative there is conflict of

interest, therefore, to avoid the same the provision has been couched in the language which not only prohibits holding of charge by an existing Panchayat Secretary but in a case where the office bearer of the Panchayat is already holding a post and the Panchayat Secretary is appointed afresh, his very entry into the service upon resolution of the Gram Panchayat is not permissible as he cannot hold charge from the very first day of the office. The word “shall not hold charge” has to be read “ejusdem generis” and not in isolation. The provision has an object to achieve i.e. to prevent nepotism and partisan functioning of the Gram Panchayat. Prevention of nepotism is by prohibiting appointment of relatives of the office bearers of Panchayat and prevention of partisan functioning, is by way of denying the existing Panchayat Secretary to hold charge of the office as long as his relative continues in office by holding elected post in the Gram Panchayat.

7. The ground about non maintainability of the appeal before Director Panchayat urged by the petitioner does not impress this Court for the simple reason that writ jurisdiction cannot be invoked by a person who was ineligible to hold office. Issuance of a writ in favour of petitioner would tantamount to mechanical use of jurisdiction under Article 226 of the Constitution in favour of a person, who was not competent to

hold the office for which he has been appointed. Petitioner's appointment being void, if a petition would have been presented at the first instance a writ of *quo warranto* would have been issued against the petitioner, therefore, allowing the present writ petition would mean that the Writ Court would direct appointment of a candidate, who was ineligible on the date of his appointment. Such mechanical exercise of writ jurisdiction is not contemplated in law.

8. The writ petition *sans* substance deserves to be and is hereby dismissed.

Sd/-
(Prashant Kumar Mishra)
Judge

Ankit