

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 584 of 2016**

Nirmaldas S/o Sukhdas Panka, Aged About 29 Years R/o Village Pipardih, Tahsil
Bilaigarh, District Raipur, Chhattisgarh

---- Appellant**Versus**

1. Daya Das Panka S/o Piladas, Aged About 53 Years Kotwar, Working At And R/o Village Chorbhatti, Tahsil Bilaigarh, District Raipur, Chhattisgarh
2. State Of Chhattisgarh, Through The Collector, Raipur, District Raipur, Chhattisgarh
3. The Board Of Revenue Chhattisgarh Bilaspur Circuit Camp, Raipur, District Raipur, Chhattisgarh
4. The Naib Tahsildar At Bhatgaw, Tahsil Bilaigarh, District Raipur, Chhattisgarh
5. The Naib Tahsildar, Bilaigarh, Tahsil Bilaigarh, District Raipur, Chhattisgarh

---- Respondents

For Appellant	: Shri Parag Kotecha and Shri Salvik Tiwari, Advocates.
For Respondent No.1	: Shri Vinay Pandey, Advocate.
For Respondent/State	: Ms. Richa Shukla, Deputy Government Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****19/03/2019****Per Ajay Kumar Tripathi, Chief Justice**

1. Heard counsel for the parties.
2. The order passed by the learned Single Judge dated 08.11.2016 allowing the writ application of Respondent No.1, is the reason for the Appellant, who was private Respondent No.1, to file the present appeal.
3. Private Respondent No.1 was appointed as a permanent Kotwar of village Chorbhatti. Such appointment was done by the Naib Tahsildar, who is said to be the appointing authority. Appointment was made on 16.07.1997.
4. The present Appellant decided to assail the said decision by filing a so-called appeal before the Sub Divisional Officer. The Sub Divisional Officer

remanded the matter back on 30.04.1998 to the Naib Tahsildar to enquire into the matter where allegation was made that the private Respondent No.1 had been appointed on a mark sheet, which was said to be forged.

5. The Naib Tahsildar vide order dated 05.09.1998 did record that the certificate of Class-V pass of the private Respondent was forged and appeal against the said finding was again preferred before the Sub Divisional Officer Bilalgarh. The Sub Divisional Officer made an enquiry and recorded that the mark sheet of the private Respondent was genuine and finding of the Tahsildar was set aside.

6. The present Appellant preferred a revision before the Board of Revenue. The Board of Revenue set aside the order of the Sub Divisional Officer by recording many a things, but it directed holding of a fresh exercise for selection. So far as the private Respondent, the selected candidate was concerned, the Board of Revenue opined that since he lacked basic education, therefore, he was not required to be appointed. Certain adverse comments were also made with regard to the present Appellant, which formed the basis for the direction for fresh exercise of selection.

7. The learned Single Judge found infirmity in the order of Board of Revenue for the reasons that under Section 230 of the Chhattisgarh Land Revenue Code, 1959 (hereinafter referred to as the 'Code') read with Rules made therein, no educational qualification has been prescribed for selection or appointment on the post of a village Kotwar. Though there were some negative conditions which should not be present to declare a person ineligible for consideration. Those are that he should not be less than 21 years of age; in the opinion of the appointing authority, if he is not of a good character and antecedents or that he is otherwise unfit through infirmity of body or mind to perform the duties of the post.

8. The learned Single Judge was of the opinion that the Board of Revenue

could not read something more into the requirement of the Rules that is not permissible for the adjudicatory authority in revisional power. He only had powers to correct infirmity if there was one in the order of the appellate authority.

9. If a decision making was based on materials which was not relevant and contrary to the requirements laid down under any Statute or Rules reading more into it or ignoring those requirement surely makes an order vulnerable. We have also been through the order of the Board of Revenue as well as Section 230 of the Code read with the Rules. Educational requirements have not been provided for. So far as other parameters are concerned, the Sub Divisional Officer recorded his opinion with regard to the authenticity of the educational qualification of the private Respondent and in this regard, evidence was taken even from the Head Master of the school, therefore, all told the learned Single Judge rightly intervened with the order of the Board of Revenue and restored the finding of the Sub Divisional Officer.

10. Having given an anxious consideration to the whole issue and dispute, the time has come when the issue in relation to the selection on the post of village Kotwar which relates to the year 1997 must be put to rest. Even otherwise, it is evident that the private Respondent seems to be inching towards the evening of his life, therefore, he should be allowed to enjoy the fruit of his selection after protracted litigation, which has gone on for more than two decades now.

11. The appeal has no merit. It is dismissed.

Sd/-

(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-

(Parth Prateem Sahu)
JUDGE