

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 492 of 2019**

*{Arising out of Order dated 26/09/2019 passed in Writ Petition(C) No. 3173 of 2018 by
the learned Single Judge}*

- Chhatram S/o Ghasiya Bharadwaj, aged about 47 years, R/o Village- Jarve, Tahsil Hassuad, District Janjgir Champa C.G.

----Appellant**VERSUS**

1. State of Chhattisgarh through the Secretary, Panchayat & Rural Development Department, Mahanadi Bhawan Mantralaya, New Raipur, District Raipur C.G.
2. The Board of Revenue Chhattisgarh Bilaspur District- Bilaspur C.G.
3. The Additional Commissioner Bilaspur Division Bilaspur, District Bilaspur C.G.
4. The Collector Janjgir-Champa District Janjgir Champa, C.G.
5. The Sub-Divisional Officer (R) Sakti, District Janjgir Champa C.G.
6. The Additional Tahsildar, Up-Tahsil Hassud, District Janjgir Champa C.G.
7. Jageshwar S/o Kanhaiyalal R/o Village- Jarve, Up-Tahsil- Hassud, District Janjgir Champa C.G.

-----Respondents

For Appellant	:	Mr. Bharat Rajput, Advocate
For Respondent-State	:	Mr. Amit Buxy, P.L.
For Respondent No. 7	:	Mr. Ishwar Jaiswal, Advocate

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****Per Parth Prateem Sahu, Justice.****22/10/2019**

1. The appellant/petitioner has filed this appeal challenging the impugned order passed by the learned Single Judge, wherein learned Single Judge while disposing off the writ petition, granted direction to respondent No.7 (Jageshwar) to join his duties and also given direction that he would be entitled to get all consequential benefits as admissible under the law.

2. The facts of the case in brief are that the appellant/petitioner along with some other villagers made complaint before the appointing authority i.e. the Tehsildar against the act of respondent No.7, who was a Kotwar. Considering the complaint made by them, the Additional Tahsildar has passed an order for suspension of respondent No.7. The order of suspension passed by the Additional Tahsildar was challenged by respondent No.7 before the Sub-Divisional Officer (SDO) under the provisions of Section 44(1) of the Land Revenue Code, 1959. The Sub-Divisional Officer after hearing the parties has allowed the appeal, set aside the order of suspension and held that respondent No.7 may be appointed on the post of 'Kotwar'. In the said order of SDO (Revenue) the word 'termination' has been mentioned instead of 'suspension'.
3. Aggrieved by the order of the SDO, the petitioner preferred an appeal under the provisions of Section 44(2) of the Land Revenue Code, 1959 before the Additional Commissioner, Bilaspur. The Additional Commissioner after considering the findings recorded by SDO that the issue is of dismissal, allowed the appeal, remitted the matter to the first authority for passing order afresh after conducting enquiry against respondent No.7. The said order of the Additional Commissioner was challenged by respondent No.7 before the Board of Revenue, Bilaspur and the Board of Revenue allowed the revision preferred by respondent No.7, and while upholding the order passed by the SDO, had set aside the order of the Additional Commissioner. The Board of Revenue also made a further clarification that as the original order which was under challenge before the SDO is only with respect to the suspension of respondent No.7 and therefore, the word 'termination' used and forms part of the order of the SDO, is the typographical error, therefore, the Board of Revenue has held the order of the SDO to be reinstatement after setting aside the order of suspension, and affirmed the order of the SDO. The order passed by the Board of Revenue was challenged by the appellant/petitioner before

this Court by filing the writ petition as WPC No. 3173 of 2018.

4. The learned Single Judge while considering the facts and circumstances of the case as well as arguments placed on record by the learned counsel for the respective parties had not interfere with the order of Board of Revenue, but at the same time, further directed for giving joining to respondent no.7 on his duties forthwith and also held that respondent No.7 to be entitled for all consequential benefits in accordance with law.
5. The learned counsel for the petitioner submit that if at all the learned Single Judge has found that the petition is devoid of any substance, but then the learned Single Judge committed error in granting the relief, which was not sought for in the writ petition. He also submits that there was no prayer of joining or consequential benefit nor there was any petition filed on behalf of respondent No.7 seeking any relief from the writ court, therefore, the order impugned to that extent granting relief in favour of the respondent No.7 is liable to be set aside.
6. Learned counsel for the 7th respondent submits that as after setting aside the order of suspension by the SDO, the joining has not been permitted by the authorities only on the ground that the appellant/petitioner has frequently challenged the orders passed in favour of the 7th respondent, therefore, the learned Single Judge was justified in issuing the directions for his joining and also for his entitlement of all consequential benefits.
7. Learned counsel representing the State supports the order passed by the learned Single Judge.
8. We have heard learned counsel for the parties and perused the records.
9. The reason for starting the proceeding which reached up to this Court was only on the ground of suspension order passed by the Additional Tahsildar against the respondent No.7 which was further made to challenge before the other forums by way of appeal and revision. The order of SDO only to the

effect that the suspension order has been set aside and it had been directed the respondent No.7 to be again appointed on the post of Kotwar. The Board of Revenue only affirmed the order passed by the SDO by making a clarification to the effect that the word used in the order of SDO with respect to the "termination" which was due to some error. But the fact remains that the order of SDO was with respect to setting aside the order of the suspension only and Board of Revenue has allowed the revision filed by the respondent No. 7 and set-aside the order of the Additional Commissioner.

10. In view of the aforementioned facts and circumstances of the case when the challenge made before the learned Single Judge is only to the order of the Board of Revenue wherein the revision filed by the respondent No. 7 was allowed and the order of SDO has been upheld which was only with respect to the setting aside of the order of suspension, no further relief could have been granted to the respondent No.7 when there is no such prayer made in the writ petition by any of the parties, the learned Single Judge has passed the impugned order as if the petition filed by respondent No.7 was decided.

11. In view of above, the learned Single Judge erred in granting relief to the respondent No.7 in Paragraph No.14 of impugned order. The order passed by learned Single Judge to that effect is not sustainable.

12. In view of above, findings recorded in Paragraph No.14 of the impugned order to the extent of granting relief to respondent No.7 "It is further directed that respondent No. 7 shall be allowed to join his duties forth-with and he is entitled to receive the entire emoluments and other consequential benefits as admissible under the law." is deleted, that shall not be treated as part of the order dated 26.09.2019 passed by the learned Single Judge in WPC No.3173/2018. However, we make it clear that respondent No.7 will be entitled for relief which flows in his favour from the order passed by the Board of Revenue. We also make it clear that it will be open for the competent

authorities to take any further action on the complaint if the competent authorities find that the complaint made against the respondent No.7 with respect to any misconduct committed by him, attracting the provisions of Section 230 and the rules made thereunder of the Land Revenue Code. Appeal is allowed in part.

Sd/-

(P.R. Ramachandra Menon)

Chief Justice

Sd/-

(Parth Prateem Sahu)

Judge