AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 3173 of 2018

Chhatram S/o Ghasiya Bhardwaj Aged About 47 Years R/o Village Jarve ,up Tahsil Hassud , District : Janjgir-Champa, Chhattisgarh **--- Petitioner**

Versus

1. State of Chhattisgarh Through The Secretary ,panchayat and Rural Development Department Maghanadi Bhawan Mantralaya New Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. The Board of Revenue Chhattisgarh Bilaspur District : Bilaspur, Chhattisgarh
3. The Additional Commissioner Bilaspur Division Bilaspur , District : Bilaspur, Chhattisgarh
4. The Collector District Janjgir Champa Chhattisgarh.,
5. The Sub Divisional Officer(Revenue) Sakti , District : Janjgir-Champa, Chhattisgarh
6. The Additional Tahsildar Up Tahsil Hassaud , District : Janjgir-Champa, Chhattisgarh
7. Jageshwar S/o Kanhaiylal R/o Village Jarve ,Up Tahsil Hassaud, District : Janjgir-Champa, Chhattisgarh **--- Respondents**

For the Petitioner : Mr. Bharat Rajput, Advocate

For the State : Mr. Sudhir Sahu, Panel Lawyer

For respondent no.7 : Mr.Ishwar Jaiswal, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

26-09-2019

1. The present petition is against the order dated 05.09.2018 passed by the Board of Revenue, Bilaspur. The petitioner claims to be complainant against respondent No.7, who was a Kotwar. On a complaint made that respondent no.7 being Kotwar has failed to discharge his job and did not follow the directions of the villagers

and also Panchayat, as such, a resolution was passed that respondent no.7 be removed and in his place, new Kotwar be appointed. The further allegation is that that respondent no.7 has mortgaged 14 acres of Kotwari land and any question being asked to him threat is extended that the person would be inclupated in crime or he would be arrested. On different allegations, the complaint having been made the Tahsildar in exercise of the power u/s 230 of the Land Revenue Code of 1959 vide order dated 19.12.2011 (Annexure P-4) had suspended respondent No.7. The said order was subject of appeal before the SDO. The SDO vide order dated 11.05.2012 (Annexure P-5) had set aside the order and directed to reinstate respondent No.7. The petitioner herein being one of the complainant had preferred appeal u/s 44(2) of the Land Revenue Code, 1959. The Addl. Commissioner, Bilaspur, by order dated 10.12.2013 (Annexure P-6) allowed the appeal and held that the documents would reveal that respondent no.7 was suspended and set aside the order dated 11.05.2012 passed by the SDO and restored the original order dated 19.12.2011 passed by the Tahsildar and further directed that the departmental enquiry be commenced against respondent No.7, Kotwar. The said order was further subject of revision before the Revenue Board, Bilaspur. The Revenue Board by order dated 05.09.2018 (Annexure P-1) set aside the order of suspension dt. 19.12.2011 passed by the Tahsildar and the order dated 10.12.2013 passed by the Addl. Commissioner and with respect to the order dated 11.05.2012 passed by the SDO, the amendment was caused to the effect that instead of word “dismissal”, it would be read as “suspension”.

2. Learned counsel for the petitioner would submit that the

suspension order having been challenged by respondent no.7, no finality could have been attached and no departmental enquiry was commenced for the fault of respondent no.7, consequently the suspension continued. It is further submitted that the Order of Board of Revenue would be bad for the reason that despite the adverse finding was there, yet the departmental enquiry as was directed by the Addl. Commissioner was given a complete go-bye, consequently, respondent no.7 has not been allowed to join till date.

3. Per contra, learned counsel for respondent no.7 would submit that respondent no.7 is holding a civil post, as such, there is a relationship of master and servant relation between the State and respondent No.7, consequently the suspension could not have been continued for the time immemorial. Referring to the case law laid down in ***Ajay Kumar Choudhary v. Union of India through its Secretary*** *(2015) 7 SCC 291* learned counsel would submit that even if the suspension is made, it cannot be continued for a long indefinite period and respondent No.7 being the Civil Servant, the provisions of Chhattisgarh Civil Services (Classification Control and Appeal) Rules, 1966 would be applicable. Counsel for respondent no.7 would submit that since no charge sheet was submitted, the suspension could not have been continued beyond the period of 90 days.

4. Learned State Counsel is unable to make any submission as the file is not available. Reply of the State is also not filed despite many opportunities granted to him.

5. Perused the impugned order. The documents show that initially on 19.12.2011 respondent no.7 who was a Kotwar was suspended in

exercise of power under section 230 of the Land revenue Code. Sections 230 & 231 of the Land Revenue Code read as under:

"**230. Appointment of Kotwars and their duties.-**(1) For each village or group of villages, there shall be appointed, in accordance with rules made under section 258, one or more kotwars for the performance of such duties as may be prescribed:

Provided that in the Madhya Bharat region the duties of kotwars under this section shall be performed by the Police Chowkidars who shall, on the coming into force of this Code, be deemed to be kotwars under this section, and be subject in all respects to the control of Revenue Officers.

(2) Every person who at the coming into force of this Code holds the post of a village watchman in the Bhopal and Sironj regions or of a chowkidar in the Vindhya Pradesh region shall be deemed to be a kotwar under this section.

231. Remuneration of Kotwars.- The State Government may, by general order, subject to such restrictions, terms and conditions as may be mentioned therein, fix the remuneration of Kotwars either prospectively or retrospectively but such retrospective effect shall not be from a date earlier to the 1st March, 1982."

6. The Rules are made u/s 230 of the Code regarding appointment, punishment and removal of Kotwar and their duties. U/s 230, Rule 5 of it touches upon the power of appointing authority. For the sake of reference, Rule 5(1)(2) are reproduced here-in-below :

"**5.** (1) The appointment authority may fine, suspend or dismiss a Kotwar for -

(i) being of bad character, actually participating in any kind of undesirable activities or acting in any manner which, in the opinion of the appointing authority, is not in public interest ;

(ii) willful breach of rules;

Provided that the amount of fine imposed at any one time shall not exceed Rs.5/-

(2) Action should be taken on reports made by the Police against *Kotwars* and result thereof be intimated to the Police

forthwith.”

7. Reading of Rule 5(1) would show that it gives power to the appointing authority to fine, suspend or dismiss a Kotwar for the reasons stated in sub-sections (i) & (ii). Here in this case, the order dated 19.12.2011 shows that respondent no.7 was suspended and thereafter the case was filed. The same having been subject of appeal before the SDO, the SDO by order dated 11.05.2012 revoked the suspension by reading it to be a “dismissal”. Thereafter, the same was challenged before the Addl. Commissioner. The Addl. Commissioner by order dated 10.12.2013 observed that rule 5(1) is meant for dismissal but the suspension order was passed by the Tahsildar which are different and construed the order to be of suspension. Simultaneously it held that the departmental enquiry be conducted and the order of SDO, which substituted the word “suspension” by word “dismissal” was set aside. The same order having been subject of revision before the Revenue Board, the Revenue Board set aside the orders of Commissioner and the Tahsildar whereas maintained the order of SDO dated 11.05.2012, however, amended the word 'dismissal' with 'suspension'. As a consequence thereof, the order of suspension of respondent no.7 stands set aside.

8. Reading of Rules made under section 230 of the Land Revenue Code 1959 regarding appointment, punishment and dismissal of Kotwar and their duties, shows that different amendments were carried out at different points of time by the State, thereby the appointment, duties and remuneration of the Kotwars are governed by the Rules which has a statutory force under the Act. Sub-rule (5) of the Rules framed shows that the State has the power to dismiss and remove a Kotwar thereby, the relationship of

master and servant exists between the employer State and employee which extends the control over the work and conduct of Kotwars. It is obvious that the Kotwar cannot have his own Agenda of working other than the guidelines set out by the State. He holds an office and is a part of establishment of the State and the specific nature of job and duties under the Land Revenue Code are assigned.

9. The submission made by the counsel for respondent no.7 that he is working as Kotwar, as such, it can be analogously said that he holds a civil post and there exists a relationship of master and servant between the State and him finds substantial force in the arguments in view of the law laid down in ***State of Assam v. Kanak Chandra Dutta AIR 1967 S.C. 884*** wherein the following ratio was laid down by the Supreme Court.

> "**9.** The question is whether a Mauzadar is a person holding a civil post under the State within Art. 311 of the Constitution. There is no formal definition of "post" and "civil post". The sense in which they are used in the Services Chapter of Part XIV of the Constitution is indicated by their context and setting. A civil post is distinguished in Art. 310 from a post connected with defence; it is a post on the civil as distinguished from the defence side of the administration, an employment in a civil capacity under the Union or a State. See marginal note to of Art. 311. In Art. 311, a member of a civil service of the Union or an all-India service or a civil service of a State is mentioned separately, and a civil post means a post not connected with defence outside the regular civil services. A post is a service or employment. A person holding a post under a State is a person serving or employed under the State. See the marginal notes to Arts. 309, 310 and 311. <u>The heading and the sub-heading of Part XIV and Chapter I emphasise the element of service. There is a relationship of master and servant between the State and a person said to be holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post</u>.
>
> **10.** In the context of Arts. 309, 310 and 311, a post denotes an

office. A person who holds a civil post under a State holds "office" during the pleasure of the Governor of the State, except as expressly provided by the Constitution, see Art. 310. A post under the State is an office or a position to which duties in connection with the affairs of the State are attached, an office or a position to which a person is appointed and which may exist apart from and independently of the holder of the post. Art. 310(2) contemplates that a post may be abolished and a person holding a post may be required to vacate the post, and it emphasises the idea of a post existing apart from the holder of the post. A post may be created before the appointment or simultaneously with it. A post is an employment, but every employment is not a post. A casual labourer is not the holder of a post. A post under the State means a post under the administrative control of the State. The State may create or abolish the post and may regulate the conditions of service of persons appointed to the post.

11. Judged in this light, a Mauzadar in the Assam Valley is the holder of a civil post under the State. The State has the power and the right to select and appoint a Mauzadar and the power to suspend and dismiss him. He is a subordinate public servant working under the supervision and control of the Deputy Commissioner. He receives by way of remuneration a commission on his collections and sometimes a salary. There is a relationship of master and servant between the State and him. He holds an office on the revenue side of the administration to which specific and onerous duties in connection with the affairs of the State are attached, an office which falls vacant on the death or removal of the incumbent and which is filled up by successive appointments. He is s responsible officer exercising delegated powers of Government. Mauzadars in the Assam Valley are appointed Revenue Officers and ex-officio Assistant Settlement Officers. Originally, a Mauzadar may have been a revenue farmer and an independent contractor. But having regard to the existing system of his recruitment, employment and functions, he is a servant and a holder of a civil post under the State."

(Emphasis supplied)

10. The analogous provisions of *The Chhattisgarh Civil Services (Classification, Control and Appeal) Rules 1966* govern the service conditions of the Government Servant of the State. Rule 9 of Part IV deals with suspension. Sub-Rule (2-b) of Rule 9 which relates to suspension of the government servants shows that when the disciplinary authority fails to issue to the Govt. Servant, a copy of the charges and other documents within a period of 45 days, the disciplinary authority shall, before expiry of the said period, obtain orders in writing of the State Government for extension of the said period of suspension provided that the suspension period shall in

no case be enhanced beyond a period of 90 days.

11. It is also obvious that when certain rules govern the service conditions of the State Employees then a Kotwar cannot be foreign to such rules/principles and in any circumstance, it can not be held that once a Kotwar is suspended, he would be continued to be suspended for the time immemorial. The ratio of law laid down in ***Ajay Kumar Choudhary v. Union of India (Supra)*** *at para 21* shows that the Supreme Court while interpreting the period of suspension in the touch stone of Article 21 has held that the currency of the suspension order should not extend beyond three months if within this period, the memorandum of charges/charge sheet is not served on the delinquent officer/employer. In view of the above analogy of the Supreme Court, if the charge sheet is not served on the delinquent officer/employee within an outer limit of 90 days, the suspension cannot go for an indefinite period.

12. The appointment of Kotwars is made under the "Rules regarding Appointment, Punishment and Removal of Kotwars and their Duties" framed under section 230 of The Land Revenue Code. As per Rule 3, the appointment of Kotwar shall rest with the Revenue Officers i.e., Collector, Sub-Divisional Officer, Assistant Collector of the first grade, Assistant Collector of the second grade if specially empowered by the Collector in this behalf, Tahsildar or Naib Tahsildar who is empowered to exercise the powers of a Tahsildar under sub-section (2) of Section 24 of the M.P. Land Revenue Code, 1959 provided that the Collector may specially empower a Naib-Tahsildar who has not been invested with the powers of a Tahsildar under the said Code, to make appointments under this rule. The remuneration of the Kotwars is also paid by the State.

Sub-rule (1) of Rule 4 further purports that the Kotwar is appointed by the Revenue Officer who is empowered to make appointment after receiving a resolution duly passed by the Gram Sabha. Therefore, reading of Rules 3 & 4 clearly demonstrate that there exists a direct relation of 'master' and 'servant' between the State and the Kotwars as the post of "Kotwar" is almost controlled by the Revenue Officers and the salaries of the Kotwars is paid by the State. The Chhattisgarh Land Revenue Code is silent as to what procedure is to be followed after the suspension of the Kotwar. Considering the nature of job of Kotwar and the duties assigned to him, the relation of master and servant between the State and Kotwar exists. Therefore, "The Chhattisgarh Civil Services (CCA) Rules, 1966" would be applicable to the present case as after suspension of a government servant, it prescribes the procedure of enquiry, issuance of charge sheet etc. Hence it cannot be said that after suspension of a Kotwar, no further course is prescribed by any statute or there is any vacuum. Sub-rule (2-b) of Rule 9 of Rules 1966 is relevant here and quoted below :

> "(2-b) Where the disciplinary authority fails to issue to the Government servant, a copy of the charges and other documents referred to in sub-rule (2-a) within the period of 45 days, the disciplinary authority shall, before expiry of the said period, obtain orders in writing of the State Government for extension of the said period of suspension :
>
> Provided that the period of suspension shall in no case be enhanced beyond a period of 90 days from the date of the order of suspension."

13. When the conditions of service and the basis on which the Kotwars are appointed and removed under the Rules made u/s 230 of the

Code are construed in consonance with Chhattisgarh Civil Services (CCA) Rules, 1966 wherein after suspension of an employee certain procedure has been prescribed, it goes to point out that the suspension cannot be continued for a time immemorial as the proviso to sub-rule (2-b) of Rule 9 of Rules, 1966 stipulates that the period of suspension shall in no case be enhanced beyond a period of 90 days from the date of the order of suspension.

14. In the instant case, it is submitted that respondent No.7 has still not been allowed to join the duty. Under the circumstances, it is directed that the order of Board of revenue dated 05.09.2018 is modified to the extent that the suspension of the petitioner is revoked. However, the State Shall be at liberty to initiate any action, if so advised. 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.

15. With the above direction/observation, this writ petition is disposed of.

Sd/-
GOUTAM BHADURI
JUDGE

Rao