

NAFR

**HIGH COURT OF CHHATTISGARH BILASPUR****Judgment Reserved on : 29.11.2019****Judgment Delivered on : 05.02.2020****Writ Appeal No. 384 of 2018***(Arising out of order dated 07.02.2018 passed in Writ Petition (S) No.6980 of 2007 by the learned Single Judge)*

1. Suresh Kumar Choubey (Suresha Choubey now), D/o Shri Ayodhya Nath Choubey, aged about 35 years, R/o-46/131, Rajasva Colony, Sarkanda, Bilaspur, District Bilaspur, Chhattisgarh

**---- Appellant****Versus**

1. State of Chhattisgarh, through Secretary, Ministry of Home Affairs, Police Department, Mantralaya, DKS Bhawan, Raipur, Chhattisgarh
2. The Chairman, Chhattisgarh Public Service Commission, District Raipur, Chhattisgarh
3. The Director General of Police, Chhattisgarh, Police Headquarters, District Raipur, Chhattisgarh
4. The Director, Directorate of Health Services, Chhattisgarh, District Raipur, Chhattisgarh
5. The Sports Officer, Government Arts and Science College, District Bilaspur
6. Tahsildar Bilaspur, Tehsil and District Bilaspur, Chhattisgarh, District Bilaspur, Chhattisgarh
7. Mrs. Vanshika Rohit Dalmia D/o Shri Bajrang Lal Bhojasia, aged about 36 years, R/o Akaltara, District Janjgir-Champa, Chhattisgarh

**---- Respondents****Writ Appeal No. 694 of 2018***(Arising out of order dated 07.02.2018 passed in Writ Petition (S) No.6980 of 2007 by the learned Single Judge)*

1. State of Chhattisgarh through the Secretary, Government of Chhattisgarh, Department of Home Affairs, Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh
2. The Director General of Police, Police Headquarters, Naya Raipur, District Raipur, Chhattisgarh

3. The Director, Directorate of Health Services, Chhattisgarh, District Raipur, Chhattisgarh
4. The Sports Officer, Government Arts and Science College, District Bilaspur, Chhattisgarh
5. Tahsildar, Bilaspur, Tahsil and District Bilaspur, Chhattisgarh

**---- Appellants**

**Versus**

1. Mrs. Vanshika Rohit Dalmia D/o Shri Bajrang Lal Bhojasia, aged about 25 years, R/o Akaltara, District Janjgir-Champa, Chhattisgarh
2. Suresh Kumar Choubey S/o Shri Ayodhya Nath Choubey, R/o 46/131 Rajasva Colony, Sarkanda, Bilaspur, District Bilaspur, Chhattisgarh
3. The Chairman, Chhattisgarh Public Service Commission, District Raipur, Chhattisgarh

**---- Respondents**

**Writ Appeal No.384 of 2018**

|                      |                                            |
|----------------------|--------------------------------------------|
| For Appellant        | : Shri Saurabh Dangi, Advocate             |
| For Respondent/State | : Shri Gagan Tiwari, Deputy Govt. Advocate |
| For Respondent No.2  | : Shri B.D. Guru, Advocate                 |
| For Respondent No.7  | : Shri Rohit Dalmia, Advocate              |

**Writ Appeal No.694 of 2018**

|                      |                                            |
|----------------------|--------------------------------------------|
| For Appellants/State | : Shri Gagan Tiwari, Deputy Govt. Advocate |
| For Respondent No.1  | : Shri Rohit Dalmia, Advocate              |
| For Respondent No.2  | : Shri Saurabh Dangi, Advocate             |
| For Respondent No.3  | : Shri B.D. Guru, Advocate                 |

**Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**  
**Hon'ble Shri Parth Prateem Sahu, Judge**

**C A V Judgment**

**Parth Prateem Sahu, Judge**

1. Both the writ appeals arise out of impugned order dated 07.02.2018 passed by learned Single Judge in Writ Petition (S) No.6980 of 2007, therefore, both the writ appeals are being decided by this common judgment.

2. For the sake of convenience, Writ Appeal No.694 of 2018 is taken as lead case.
3. Facts of the case in nutshell are that, respondent-Chhattisgarh Public Service Commission (hereinafter referred to as 'CGPSC') issued an advertisement on 24.05.2006 inviting applications from eligible candidates for appointment to various posts in the State Civil Services, including 44 posts of Deputy Superintendent of Police (hereinafter referred to as 'DSP'). In pursuance to said advertisement, respondent No.1, namely, Mrs. Vanshika Rohit Dalmia as well as respondent No.2, namely, Suresh Kumar Choubey, (appellant in Writ Appeal No.384 of 2018) submitted their application forms and their candidature was considered for selection to the post of DSP. Name of respondent No.2 came in the merit list at Sl.No.4 and name of respondent No.1 came in wait list at Sl.No.2. Out of 44 posts, 24 posts were marked for unreserved category candidates.
4. Respondent No.1-Mrs. Vanshika Rohit Dalmia filed Writ Petition (S) No.6980 of 2007 on the ground that respondent No.2 has been shown as male candidate in most of the documents submitted by respondent No.2, in which, name of the candidate is mentioned as "Suresh Kumar Choubey", whereas respondent No.2 was selected on the post of DSP as female candidate. Only because of respondent No.2 was treated as female candidate, she succeeded in getting place in merit list of unreserved female category post.

5. The contention of the writ petitioner is that respondent No.2 being a male candidate, but had been appointed on the post of DSP as female candidate. The other ground of writ petitioner was that domicile certificate (Annexure P/5) submitted by Suresh Kumar Choubey is forged/fabricated as revenue case mentioned in the said domicile certificate on an enquiry revealed that, said proceeding was the proceeding for issuance of domicile certificate to one Sundari Bai. Initially, she filed a writ petition with the following reliefs :

“7.1 That this Hon'ble Court may kindly be pleased to issue a writ in the nature of mandamus commanding the respondent No.2 to produce the entire record including the medical/physical report of the respondent No.5 for kind perusal of this Hon'ble Court;

7.2 That this Hon'ble Court may kindly be pleased to declare the selection and appointment of the respondent No.5 (Annexure P-7) on the post of DSP in female category as null and void;

7.3 That this Hon'ble Court may kindly be pleased to issue a writ in the nature of mandamus commanding the respondent No.2 to initiate inquiry against the respondent No.5;

7.4 That this Hon'ble Court may kindly be pleased to impose heavy cost upon the respondent No.5;

7.5 Any other relief which this Hon'ble Court

may deem fit and proper may also be passed in favour of the petitioner.”

6. Relief No.7.3(a) has been sought for by the writ petitioner/respondent No.1 only by way of filing of amendment application on 03.03.2017, which was allowed by the Court on 25.04.2017 and in that amended relief, writ petitioner/respondent No.1 asked for relief of her appointment on the post of DSP. Amended relief 3(a) sought for by respondent No.1 is as under :-

“3(a) That this Hon'ble Court may kindly be pleased to consider the candidature of the petitioner for appointment on the post of Deputy Superintendent of Police in place of the respondent No.5, namely Suresh Kumar Choubey or in an alternative direct the respondent State to consider and give appointment to the petitioner from waiting-list on the post of Deputy Superintendent of Police w.e.f. 17.05.2007 with all consequential benefits.”

7. Respondent No.2-Suresh Kumar Choubey submitted reply to writ petition and denied all the adverse pleadings made against her and pleaded that on objections filed by the writ petitioner/respondent No.1 vide Annexures P/9 and P/10, respondents-State cancelled the medical examination conducted earlier and directed for re-medical examination by Medical Board. The Medical Board after examination of respondent No.2, issued a report in her favour. It was further

pleaded that mentioning of “Shri” in front of name of respondent No.2, is a typographical error and only on account of typographical error, status of respondent No.2 will not be changed.

8. Respondent-CGPSC submitted its reply and pleaded that respondent No.2 has shown herself to be a female candidate in application form, accordingly, she has been treated to be a female candidate and her selection has been done on the basis of her merit. It was further pleaded that on receiving some complaints, CGPSC requested the Department to conduct detailed medical examination of respondent No.2. In medical report dated 16.10.2007, the Divisional Medical Board, Raipur has approved the candidature of respondent No.2 as female candidate and the said report was issued by experts in the field. It was also pleaded that as the domicile certificate has been issued and approved by the competent authority, therefore, the said ground cannot be a ground to suspect the veracity of document i.e. domicile certificate.
9. Respondents-State also submitted their reply mentioning therein that in the application form of respondent No.2, she mentioned her candidature to be a female candidate and after medical examination by the Medical Board, respondent No.2 was found fit for appointment as female candidate, thereafter, she was given appointment on the recommendation by CGPSC on the post of DSP and prayed for dismissal of the writ petition.

- 10.** After considering the pleadings and submissions made by learned counsel appearing for the respective parties, learned Single Judge allowed the writ petition and issued following directions :

“22. In the result, this petition is partly allowed. As far as challenge to selection of respondent No.5 on the ground of allegation of she having falsely stated her gender to be female is rejected.

An enquiry, however is required to be made whether respondent No.5 procured public employment by submitting a false/fabricated domicile certificate. The enquiry will be required to be made in accordance with law after affording an opportunity of hearing to respondent No.5 and depending upon results of enquiry, appropriate order may be passed.

23. Subject to petitioner fulfilling required medical and fitness standards prescribed for appointment to the post of DSP, the petitioner shall be offered appointment against one available vacancy of DSP in the State Police Service.”

- 11.** The aforementioned directions issued by learned Single Judge were challenged by respondent No.2-Suresh Kumar Choubey as well as respondents-State by filing two separate writ appeals bearing Writ Appeal Nos.384 of 2018 and 694 of 2018.

- 12.** Writ Appeal No.694 of 2018 is filed by the State challenging the directions issued by learned Single Judge for offering appointment to petitioner/respondent No.1-Mrs. Vanshika Rohit Dalmia against one available vacancy of DSP and Writ Appeal No.384 of 2018 has been filed by Suresh Kumar Choubey challenging the direction issued by learned Single Judge directing an enquiry whether the document submitted by her i.e. domicile certificate is forged/fabricated or not.
- 13.** Shri Gagan Tiwari, learned Deputy Government Advocate appearing on behalf of the appellants/State in Writ Appeal No.694 of 2018 submits that learned Single Judge directed for issuance of appointment order in favour of respondent No.1 against one available vacancy without ascertaining the fact whether any vacancy of DSP was available or not to offer appointment on the date of passing of impugned order. He further submits that on the date of passing of impugned order, there was no vacant post available of DSP. He further submits that one Richa Mishra had filed Writ Petition (S) No.3809 of 2007 challenging her non-selection on the post of DSP, which was out of the same selection process and an interim order has been passed in her favour on 07.05.2008 wherein it was directed to keep one post vacant. Grievance raised by Richa Mishra was finally decided by Hon'ble Supreme Court vide Civil Appeal No.274 of 2016, which came to be decided in her favour on 08.02.2016, and by virtue of order passed by Hon'ble Supreme Court, Richa Mishra was offered appointment on 22.03.2016 on the post of DSP and the said

vacant post was filled up accordingly. The impugned order, subject matter of this appeal was passed on 07.02.2018 and at that time, there was no vacant post available to offer appointment. Initially respondent No.1 has not sought any relief for herself in the nature of giving appointment to her on the post of DSP, but the said relief has been sought by her only by way of filing of an amendment application, which was filed on 03.03.2017 and the said application was allowed on 25.04.2017. He submits that amendment application itself has been filed after 10 years of filing of the writ petition and till that date, all the proceedings of appointments were over and even one post which became vacant due to cancellation of appointment of Roktima Roy was also filled up much prior to moving of an application for amendment by giving appointment to Richa Mishra. Post of one Roktima Roy became vacant due to her non-joining and cancellation of her appointment vide order dated 23.06.2008. He lastly submits that after cancellation of the appointment of Roktima Roy, names from wait list was called from the CGPSC and while forwarding the names of the wait list candidate to appoint candidates of other backward class, scheduled tribe and unreserved, the names of Sukhnandan, Anima Minj and Akash Maghariya was forwarded. In the said letter, it was pointed out that the High Court in Writ Petition (S) No.3809 of 2007, directed to keep one post vacant in petition of Richa Mishra and compliance of it is necessary. The procedure to appoint from the wait list candidate was initiated, but on account of

interim order of the High Court to keep one post vacant in petition of Richa Mishra who is unreserved category candidate, no appointment order was issued to the unreserved wait list candidate.

14. Shri Rohit Dalmia, learned counsel appearing for respondent No.1 in Writ Appeal No.694 of 2018 submits that respondent No.1 in Writ Appeal No. 694 of 2018, namely, Mrs. Vanshika Rohit Dalmia, finds place at Sl. No.2 in the wait list. One Roktima Roy was selected and appointment order was also issued to her, but she did not joined, and ultimately, her appointment was cancelled. He further submits that on account of non-joining of Roktima Roy (appointed candidate) on her place of posting, one post became vacant. Roktima Roy being a candidate of general category (unreserved), therefore, the post of unreserved category became vacant, for which, respondent authorities are required to initiate proceedings of appointment from the wait list candidate. In wait list, one Akash Magharia finds place at Sl. No. 1, who joined the services of IPS, therefore, respondent No.1 (Mrs. Vanshika Rohit Dalmia) accrued her right to be considered for appointment being wait list candidate No.2, but respondent authorities have not initiated any proceedings for issuing appointment order to the wait list candidates. The action of the respondent authorities in not initiating any proceedings for giving appointment to the candidates of wait list on a vacant post is an arbitrary action, therefore, learned Single Judge has not committed any error in passing the impugned order directing respondent authorities to offer

appointment on an available vacancy of DSP in the State Police Services subject to fulfilling required medical and fitness standards. He further submits that though a relief for appointing her on the post of DSP has not been sought initially, but the recruitment proceedings and appointment of one Suresh Kumar Choubey has been challenged by way of filing writ petition promptly. When the writ petition has already been filed challenging appointment of Suresh Kumar Choubey within time, delay in seeking relief by private respondent herself will not affect her rights particularly when order of allowing amendment application was not challenged.

15. Shri Saurabh Dangi, learned counsel appearing for respondent No.2 in Writ Appeal No.694 of 2018 and appellant in Writ Appeal No.384 of 2018 submits that the direction issued by learned Single Judge for enquiring into the domicile certificate of the appellant is bad in law, because the private person i.e. respondent No.7/petitioner do not have any locus to challenge the certificate issued by the competent authority. He further submits that this exercise of verification/enquiry into certificate submitted is not warranted because respondent No.7/petitioner has not claimed any relief of her appointment on the post in the original relief and particularly against appointment of appellant, but the said relief has been claimed only after lapse of 10 years of filing of the writ petition. He also submits that respondent No.7/petitioner has not accrued her right to be appointed on the post of DSP (unreserved) because the wait list candidate No.1, namely,

Akash Magharia has not given up post of DSP. The petitioner submitted wrong facts before the Court and no relief as such as directed by learned Single Judge was sought for by her in the writ petition, therefore, the direction issued by learned Single Judge against the appellant is not sustainable. Reliance is sought to be placed in the matters of **M/s. Ganesh Trading Co. v. Moji Ram**<sup>1</sup>, **Satyadhyan Ghosal and others v. Smt. Deorajin Debi and another**<sup>2</sup>, **Nagar Mahapalika, Kanpur v. Vinod Kumar Srivastava and others**<sup>3</sup>, **The State of Haryana v. Subash Chander Marwaha and Others**<sup>4</sup>, **Bharat Amratlal Kothari and another v. Dosukhan Samadkhan Sindhi and others**<sup>5</sup> and **State of Himachal Pradesh and others v. Himachal Pradesh Nizi Vyavsayik Prishikshan Kendra Sangh**<sup>6</sup> to buttress his submissions.

16. We have perused the records of the writ petition, writ appeal as well as records of appointment proceedings placed before us.
17. Perusal of the records and documents enclosed along with it, would show that one post of DSP became vacant from the selected candidates on account of non-joining of Roktima Roy (at Sl.No.12 in select list). The State Government passed an order on 23.06.2008 cancelling the order of appointment issued in favour of Roktima Roy on the post of DSP on account of her non-joining, and therefore, one

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<sup>1</sup> (1978) 2 SCC 91

<sup>2</sup> AIR 1960 SC 941

<sup>3</sup> (1987) 1 SCC 602

<sup>4</sup> (1974) 3 SCC 220

<sup>5</sup> (2010) 1 SCC 234

<sup>6</sup> (2011) 6 SCC 597

post of unreserved category became vacant, but in writ petition filed by Richa Mishra bearing Writ Petition (S) No.3809 of 2007, in which also, same recruitment proceedings of DSP was under challenge, the Division Bench of this Court passed an interim order on 07.05.2008 in favour of Richa Mishra for keeping one post vacant and subsequently, Civil Appeal No.274 of 2016 was decided in her favour by Hon'ble Supreme Court on 08.02.2016, in which, Hon'ble Supreme Court has held thus :

“32. Thus, in ultimate analysis, we hold that the Appellant was entitled to age relaxation as per Rule 4 of the Rules, 1997 read with State Services Examination, 2003. She was, therefore, eligible to be considered for the post of Dy. S. P. The facts narrated above reveal that she participated in the selection process and in the merit list prepared, she was placed at Serial No.54. Persons below her in the merit list have been appointed. She was excluded only because of alleged age bar since we find that this impediment would not come in her way, the present appeal warrants to be allowed. The direction is issued to the Respondents to appoint the Appellant as Dy. S. P. w.e.f. the date her juniors in the merit list, namely, Tarkeshwar Patel and Ranu Sahu are appointed. Her seniority and pay shall be fixed on that basis. However, she will not be allowed to make any claim for salary for the intervening period otherwise the intervening period shall count for all other purposes.

This appeal is allowed with costs, in aforesaid terms.”

18. In pursuance to the order passed by Hon'ble Supreme Court dated 08.02.2016, one post which was lying vacant on account of non-joining of Roktima Roy was filled up by issuing appointment order dated 22.03.2016 in favour of Richa Mishra.
19. Undisputedly, the claim of appointment by respondent No.1 has been made only by way of amendment, for which, the application for amendment was filed only on 03.03.2017, which was allowed on 25.04.2017. The claim made by respondent No.1 for her appointment was only on account of the post became vacant due to non-joining of Roktima Roy was not filled up from wait list candidate by drawing proceeding towards it at any time. It is also her claim that candidate at Sl. No.1 in wait list was selected for IPS and she being at Sl. No.2 in wait list accrued her right for her consideration for appointment on the post of DSP which became vacant on account of cancellation of appointment of Roktima Roy due to her non-joining the post. It is not the case of respondent No.1 that any less meritorious candidate was appointed, but she has been left over, nor she made any of the appointed candidates as party respondents except respondent No.2, against whom, she can be given appointment. Respondent No.2 has been selected by securing 4<sup>th</sup> position in the merit list of unreserved category candidate. The complaint was considered by the authorities and the medical examination of respondent No.2 was conducted, in

which, she was found to be a female candidate. The authorities after recording their satisfaction on the complaint of “sex” of respondent No.2 has appointed her.

20. From the aforementioned facts available on record, it is apparent that one post became vacant on account of non-joining of Roktima Roy and on account of interim order passed by Division Bench of this Hon'ble Court vide order dated 07.05.2008 in Writ Petition (S) No.3809 of 2007 (of Richa Mishra) for keeping one post vacant and the said vacant post was filled up by issuing appointment order in favour of Richa Mishra in pursuance to the order passed by Hon'ble Supreme Court in Civil Appeal No.274 of 2016 dated 08.02.2016.
21. Perusal of the original records placed before this court would show that vide order dated 23.06.2008, Gaya Prasad Lilhare (other backward class category) was found medically unfit and his candidature was put to end. Similarly Samrat Rathi (schedule tribe category) did not appear for medical examination/testimonial verification in time, his candidature was put to end and the order of appointment of Roktima Roy was cancelled on account of her non-joining to the post. Three posts become vacant from select list one each of other backward class, scheduled tribe and unreserved category candidate.
22. Record would also show that on the requisition from the State Government, CGPSC forwarded three names of each category i.e.

other backward class, scheduled tribe and unreserved from wait list/supplementary list candidates to give appointment on the above vacant post vide letter dated 04.07.2008. Perusal of the letter dated 04.07.2008 reflects that there is mention of interim order of High court in Writ Petition (S) No.3809 of 2007 (dated 07.05.2008) to keep one post vacant for the petitioner therein Richa Mishra. It also shows that name of Akash Maghariya was forwarded by the CGPSC for unreserved category candidate whose name was at Sl.No.1 in wait list/supplementary list of unreserved category candidates.

23. The letter dated 14.07.2008 written by the CGPSC clearly shows that the proceedings were initiated by the respondent for appointment on the vacant post from wait list candidate, but on the ground of interim order passed by High Court for keeping one post vacant, the post of unreserved category could not be filled up. Even no claim is made by the petitioner/respondent No.1 till 2017. It is even not a case of the petitioner that Richa Mishra is less meritorious than her.
24. One of the important things, which is to be taken note of is that respondent No.1/petitioner though filed writ petition in the year 2007, has not sought for any relief for her appointment till the appointment of Richa Mishra is made. Relief for her appointment was sought for only by way of filing amendment application on 03.03.2017.
25. In view of the facts and figures available on record, what is undisputed fact is that respondent No.2 was selected in select list at

Sl. No.4. Respondent No.1 was a candidate at Sl. No. 2 in wait list. One post of unreserved category became vacant on account of non-joining of Roktima Roy. Petitioner filed writ petition challenging the recruitment of respondent No.2, but has not sought for any relief for her appointment till 2017 when she made application for amendment in relief clause of the writ petition. One Richa Mishra also filed separate writ petition challenging the same recruitment proceedings and succeeded to get interim relief in her favour for keeping one post vacant. The writ petition filed by her was allowed on 16.11.2009 and finally, Supreme Court decided the case in favour of Richa Mishra on 08.02.2016. In pursuance to the order of the Supreme Court, she was appointed on 22.03.2016. Amendment application was filed by respondent No.1/petitioner on 03.03.2017 which was allowed on 25.04.2017.

- 26.** From the facts narrated in preceding paragraphs, particularly, the appointment of Richa Mishra on 22.03.2016 in pursuant to the order passed by Hon'ble Supreme Court dated 08.02.2016, on the date of passing of the impugned order dated 07.02.2018, there was no vacant post of DSP available from the post advertised, which is subject matter of this appeal. It appears that before the learned Single Judge, the appointment of Richa Mishra on 22.03.2016 could not be brought to the notice of learned Single Judge. From perusal of paragraph-18 onwards of the impugned order, it appears that learned Single Judge passed the impugned order on the precise that one

post of DSP, which became vacant on account of non-joining of Roktima Roy, remained vacant and the State Government has not initiated any proceeding to appoint wait list candidates on the vacant post.

27. As discussed in preceding paragraphs, the State Government had processed for appointment on the post, which became vacant due to non-joining of candidate from select list or became ineligible to join the post of DSP. The State Government by sending requisition letter to CGPSC sought names of candidates of wait list from respective categories i.e. other backward class, scheduled tribe and unreserved. The CGPSC also sent a letter providing three names from wait list candidates of three categories and in the said letter dated 04.07.2008 mentioned about the interim order passed by Division Bench of this Court in Writ Petition (S) No.3809 of 2007 (filed by Richa Mishra). In the said letter, the CGPSC had forwarded the name of Akash Maghariya for appointment of vacant post of unreserved category, but looking to the interim order passed by this Court and note made by CGPSC, the vacant post of unreserved category has not been filled up, whereas two other vacant posts have been filled up by wait list candidates of other backward class and scheduled tribe category. The direction of appointment to a wait list candidate can be issued subject to availability of vacant post on account of non-joining of selected candidate. In this case, no vacant post was available of the post advertised, on the date of passing of

impugned order.

- 28.** In the instant case, due to interim order passed by Division Bench of this Court, the request of the State Government for appointing the vacant post of unreserved category from wait list candidate could not be concluded in a fruitful manner and subsequently, the said post was filled up by the order of the Supreme Court dated 08.02.2016 by appointing Richa Mishra, who appears to be more meritorious candidate than the petitioner as appearing from the order passed by Hon'ble Supreme Court which mentions that Tarkeshwar Patel and Ranu Sahu were junior to Richa Mishra in merit list.
- 29.** From the above discussion, it is clear that for the post which become vacant on account of cancellation of appointment of Roktima Roy due to her non-joining, respondent-State has initiated proceeding for calling names of wait list candidate from the CGPSC. In turn CGPSC forwarded list of candidates from wait list with a note that in writ petition filed by Richa Mishra, the High Court passed an interim order for keeping one post vacant. The vacant post was filled up by giving appointment to Richa Mishra in pursuance to the order passed in her favour by the Hon'ble Supreme Court. Till 2017, there was no claim by the petitioner to give appointment to her. After appointment of Richa Mishra, no post of DSP was vacant from the post advertised, which is subject matter of this appeal. Nor it is a claim of the petitioner that she is meritorious than Richa Mishra who was the last

candidate given appointment by the respondent-State in 2016 nor that any candidate less meritorious than the petitioner was appointed.

30. In view of above facts and events of the case in the considered opinion of this Court, part of the impugned order dated 07.02.2018 passed by learned Single Judge issuing direction for offering appointment to respondent No.1-Mrs. Vanshika Rohit Dalmia, being not sustainable, is hereby set aside.
31. So far as Writ Appeal No.384 of 2018 filed by Suresh Kumar Choubey wherein she has challenged the direction issued by learned Single Judge for holding an enquiry with respect to domicile certificate submitted by her is concerned, it is the case of appellant-Suresh Kumar Choubey herself that she had submitted domicile certificate after obtaining the same from competent authority i.e Tahsildar and further that, information sought for by the appellant is with respect to Revenue Case No.1049-B-121/2001-2002 whereas the number of revenue case of appellant's certificate is as Revenue Case No.49 and not 1049. The learned Single Judge has taken note of the fact that though the complaint was made before issuing of appointment order in favour of the appellant, but complaint was not considered and domicile certificate was not got verified by competent authority, which could have been done at that relevant point of time, and even respondents-State have not satisfied the Court by placing

details of proceedings for issuing domicile certificate by competent authority.

- 32.** So far as the ground raised by Shri Dangi in Writ Appeal No. 384 of 2018 that no relief of enquiry on the domicile certificate of the appellant was sought for by petitioner/respondent No.7 is concerned, perusal of the writ petition would show that the petitioner therein has pleaded in very specific term in her writ petition that the domicile certificate (Annexure P/5) is fake and forged because it relates to one Sundari Bai and not of respondent No.5/appellant. Even in the ground of challenge in the writ petition, it has been pleaded in very categorical term that Annexure P/5 i.e. domicile certificate is a fake and forged document and sought a relief that the appointment of respondent No.5 to be declared illegal and void. In relief No.2 of paragraph No.7, it has been prayed for declaring appointment of respondent No.5 on the post of DSP in female category as null and void and further, in paragraph 7.3, relief has been sought for issuing a writ in the nature of mandamus commanding the respondent No.2 to initiate enquiry against respondent No.5. From the pleadings made in the writ petition, it is amply clear that the petitioner/respondent No.7 also sought for a relief of enquiry against respondent No.5.
- 33.** In view of above submissions made by learned counsel for the appellant that the relief which is not claimed cannot be granted, is not sustainable. The judgements relied upon by the learned counsel for

the appellant is on different facts and will not come to the rescue of the appellant-Suresh Kumar Choubey in any manner.

34. Even otherwise, the Courts under Article 226 of the Constitution of India are having wide jurisdiction for moulding relief so as to grant justice to the litigants.
35. In the facts and circumstances of the case, when the domicile certificate of appellant was questioned at the very beginning, complaint was also made and Tahsildar was impleaded as one of the party respondents in writ petition, one of the grounds for challenging appointment of appellant was the submission of forged/fabricated domicile certificate by her, the State or Tahsildar had not submitted any specific reply except general reply to that very ground. The State as well as Tahsildar could have very well have produced the record of issuing of domicile certificate issued in favour of Suresh Kumar Choubey, but they kept quiet and did not satisfy the allegation of submission of forged/fabricated document i.e. domicile certificate. As none of the authorities, who are supposed to submit the requisite proceedings/documents in their support to prove that on an application being filed by the appellant, Tahsildar after initiating due proceeding, had issued domicile certificate, but they have not filed any such document in writ proceedings.
36. For the foregoing reasons, we do not find any infirmity in issuing direction for holding enquiry with regard to genuineness of domicile

certificate submitted by the appellant in Writ Appeal No.384 of 2018.

37. In view of the above, Writ Appeal No.384 of 2018 filed by Suresh Kumar Choubey is dismissed being devoid of merit. Writ Appeal No.694 of 2018 filed by the State is allowed and direction issued by learned Single Judge for offering appointment against one available vacancy of DSP is set aside.

Sd/-

**(P.R. Ramachandra Menon)**  
**Chief Justice**

Sd/-

**(Parth Prateem Sahu)**  
**Judge**

Yogesh