

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 367 of 2020**

*{Arising out of order dated 23.03.2020 passed by the learned Single Judge in
Writ Petition (227) No.2811 of 2011}*

Smt. Yugal Kumari D/o Bhavdas Manikpuri, Aged About 39 Years R/o
Village Kosmarra, Chhuikhadan, District Rajnandgaon (Chhattisgarh)

---- **Appellant**

Versus

1. Smt. Rekha Yadav W/o Jitendra Yadav, R/o Village Kosmarra, Chhuikhadan, District Rajnandgaon Chhattisgarh.
2. Chief Executive Officer, Janpad Panchayat, Chhuikhadan, District Rajnandgaon Chhattisgarh.
3. Project Officer (Pariyozana Adhikari), Integrated Child Welfare Project (Ekikrit Balvikas Pariyozana), Chhuikhadan, District Rajnandgaon Chhattisgarh.

---- **Respondents**

For Appellant	:	Shri Goutam Khetrapal, Advocate.
For Respondent No.1	:	Shri A.S. Rajput, Advocate.
For Respondents No.2 & 3	:	None

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

Judgment on Board

Per P. R. Ramachandra Menon, Chief Justice

09.12.2020

1. Appointment to the post of 'Aganbadi Karyakarta' in the Gram Panchayat, Kosmarra is the subject matter of challenge. The crux of the factual matrix is that, pursuant to the notification issued, four candidates including the Appellant and the 1st Respondent applied for the post. Candidature of two candidates was rejected, which is not under challenge. Between the Appellant and the 1st Respondent, the 3rd Respondent selected the 1st Respondent and issued the appointment order, pursuant to which, she joined the service on 01.08.2009. The said proceedings were subjected to challenge by the Appellant in an appeal filed before the Additional Collector, Rajnandgaon mainly contending that, the Appellant was not given the 'bonus marks' awardable under different heads, particularly, she being a 'person below the poverty line'

and also some other heads. The Additional Collector, Rajnandgaon after considering the matter held that as per the relevant guidelines/circular dated 02.04.2008, a comparative chart had to be prepared and in the said circumstance directed the 3rd Respondent to have the matter finalized afresh, as directed in Annexure P/3 order dated 29.07.2020. This was sought to be challenged by the 1st Respondent before the Commissioner Raipur, Raipur Division by filing revision petition, which did not yield any positive result and the same came to be dismissed as per Annexure P/5 dated 18.03.2011. This made the 1st Respondent to challenge Annexure P/3 and Annexure P/5 orders by filing Writ Petition (227) No.2811 of 2011 stated as preferred under Article 227 of the Constitution of India.

2. The matter was contested by the Appellant. After hearing both the sides, the learned Single Judge observed that the Appellant who was the 1st Respondent in the writ petition had not produced the relevant documents before the competent Authority at the relevant time, but for producing at later stage and as such, it was not liable to be looked into, besides making such other observations with regard to the course and events. It was accordingly held that the Appellate Authority as well the Revisional Authority had gone wrong and acted against the guidelines. In the said circumstances, Annexure P/3 and Annexure P/5 orders passed by the Additional District Collector and the Commissioner were set aside and the original order passed by the 3rd Respondent appointing the Writ Petitioner (1st Respondent herein) to the post of 'Aganbadi Karyakarta' in the Gram Panchayat, Kosmarra was confirmed, which is sought to be challenged in this appeal.
3. We heard Shri Goutam Khetrapal, the learned counsel appearing for the Appellant and Shri A.S. Rajput, the learned counsel representing the 1st Respondent/Writ Petitioner.

4. The learned counsel for the Appellant submits that the writ petition styled as a petition under 'Article 227' of the Constitution of India itself is wrong and the learned Single Judge has exercised jurisdiction under Article 226 of the Constitution of India, it being a 'service matter'. We find considerable force in the said submission and are aware that no appeal is maintainable against the verdict passed by the learned Single Judge in exercise of supervisory jurisdiction under Article 227 of the Constitution of India by virtue of the statutory bar under proviso to Section 2(1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006.
5. Before going to the merits of the case, this Court wanted to ascertain the facts and figures from the Authorities of the State who have passed the impugned orders - Annexure P/3 and Annexure P/5 and turned to Shri Chandresh Shrivastava, the learned Deputy Advocate General who was present in the Court. But obviously, name of the Advocate General or any other State counsel was not shown in the cause-list, which made this Court to make a further probe as to the relevant aspects.
6. As mentioned already, Annexure P/3 order was passed by the Additional District Collector, Rajnandgaon; whereas Annexure P/5 order was passed by the Commissioner Raipur, Raipur Division. Still, they have not been impleaded in the party array and were not represented in the proceedings before the learned Single Judge. If at all any order passed by the departmental Authorities were to be challenged by way of writ of certiorari or otherwise, it was obligatory for the Writ Petitioner to have impleaded the Authorities concerned, who had passed the impugned orders, in the party array and an opportunity of hearing ought to have been given to the learned counsel representing the State.
7. It is seen that this vital aspect was omitted to be brought to the notice of the learned Single Judge when the matter was argued and finalized by the learned counsel for the parties on either side. It was without

considering this crucial fact, that the proceedings were finalized and the orders passed by the Additional District Collector and Commissioner Raipur, Raipur Division vide Annexure P/3 and Annexure P/5 were set aside by the learned Single Judge, as held in 'paragraph-13' of the judgment under challenge; virtually without hearing the Authorities concerned, having not been impleaded in the party array. Thus, there is denial of opportunity of hearing to the State and it is to the possible contend that substantial prejudice has been caused in this regard. On this short ground itself, the verdict passed by the learned Single Judge is liable to be set aside and it is ordered accordingly.

8. In the above facts and circumstances, the writ petition stands restored to the file. The Registry is directed to list the writ petition before the appropriate Bench as per roster to deal with the merit of the case. It is made clear that we have not expressed anything with regard to the merit of the case. It is open for the 1st Respondent/Writ Petitioner to implead the Authorities concerned who have passed Annexure P/3 and Annexure P/5 orders; upon which event an opportunity of hearing is to be given to the learned counsel representing the State/Authorities concerned and the matter could be finalized accordingly.

The appeal is allowed to the limited extent as above.

Sd/-
(P. R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge