

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 9856 of 2019

Smt. Mithilesh Dahire W/o Shri Tijaram Dahire Aged About 35 Years
R/o Village Dhangaon (Gosai), Tahsil Mungeli, District Mungeli,
Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Panchayat And Rural Development Department, Mantralaya Naya Raipur, District Raipur, Chhattisgarh.
2. Collector Mungeli, District Mungeli, Chhattisgarh.
3. Chief Executive Officer Zila Panchayat Mungeli, District Mungeli, Chhattisgarh.
4. Chief Executive Officer Janpad Panchayat Mungeli, District Mungeli, Chhattisgarh.

----Respondents

For petitioner – Shri S.S. Rajput, Advocate.
For State- Shri Kunal Das, PL.
For respondents No.3 & 4- Shri Akhilesh Kumar, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

16/01/2020

1. Grievance of the petitioner is that an advertisement was made on 2/06/2015 for appointment for the post of Panchayat Secretary. Pursuant thereto on application filed by different candidates a merit list was published on 7/01/2016 and on 11/01/2016 initially list of 49 selected candidates were published. It is not in dispute that out of 49 posts, 3 posts did not join and were vacant. Subsequently, after joining was given by 46 persons as 3 posts were vacant, the petitioner since was in the waiting list, she was asked to work as a Secretary by order dated 11/02/2016 (Annexure P-7) and was directed to discharge the job of Panchayat Secretary as she was already discharging the job of Rojgar Sahayak in gram panchayat. Document would reveal that she was given the financial

charges too that of Secretary and on 16/01/2017 (Annexure P-9) the petitioner was given additional charge of the post of Secretary Gram Panchayat, Lohadiya in addition to the charge at Dhangaon. Thereafter by order dated 24/05/2017 (Annexure P-10) petitioner's services were transferred from Lohadiya to Khujra and lastly on 18/08/2017 (Annexure P-11) the petitioner was transferred from Khujra to Chirhula. In all the places the petitioner was working as Panchayat Secretary. In the meanwhile, while she was discharging her job on 13/10/2016 by Annexure P-5 she had given an application to be appointed as Secretary Panchayat as she was already working as Panchayat Secretary and was in waiting list published. Subsequently similar application Annexure P-6 was given again on 5/12/2016. The said applications were given within one year before the expiration of waiting list and in the back ground that petitioner was also discharging the job of the Secretary Gram Panchayat from 11/02/2016 as per Annexure P-7. The document filed would show that subsequently few of the selected candidates left the job and lastly 12 seats fell vacant.

2. Learned counsel for the petitioner would submit that the petitioner had given application for appointment on 13/10/2016 within one year before the waiting list expired which was repeated on 5/12/2016 and she was allowed to work from 11/02/2016 even before such application having been filed as a Panchayat Secretary. It is stated that the document would show that the State has already availed the job of the Panchayat Secretary from the petitioner and as she was subjected to different transfer and was posted and was given the financial powers too and job was discharged without any stigma. He further submits that on 6/10/2017 on an information sought for communication was made that subsequently 12 persons have not joined the job of Panchayat Secretary, thereby out of 49 posts, 12 posts were lying vacant and the application of the petitioner

having been filed within time before the expiry and she was in the waiting list, therefore her case stand apart from the others as she was discharging her duties as a Secretary. Learned counsel places his reliance in case of **State of U.P. Vs. Ram Swarup Saroj** reported in **(2000) 3 SCC 699**. Para 10 of the said judgement is reproduced hereunder:-

“10. Similarly, the plea that a list of selected candidates for appointment to the State services remains valid for a period of one year only is primarily a question depending on facts and yet the plea was not raised before the High Court. Secondly, we find that the select list was finalised in the month of November, 1996 and the writ petition was filed by the respondent in the month of October, 1997, i.e., before the expiry of one year from the date of the list. Merely because a period of one year has elapsed during the pendency of litigation, we cannot decline to grant the relief to which the respondent has been found entitled to by the High Court. We may place on record that during the course of hearing of SLP before this Court, on 29.9.1999 we had directed the learned Additional Advocate General for the State of U.P. to bring on record on affidavit the status of present recruitment of the judicial officers and the present vacancy position in the subordinate judiciary. In the affidavit of Joint Secretary, Department of Appointment, State Government, Uttar Pradesh sworn in on 4.11.1999 and filed before this Court it is stated that as on 14.10.1999 there were 231 vacancies existing in the cadre of Munsif Magistrates (now Civil Judge, Junior Division/Judicial Magistrates). That being the factual position we see no reason why the direction made by the High Court should be upset in an appeal preferred by the State of Uttar Pradesh.”

3. Learned counsel for the respondent appeared along with Chief Executive Officer, Zila Panchayat, Mungeli namely Nupur Rashi Panna. It is however could not be disputed that petitioner had already filed application for issuance of appointment letter within a year by Annexure P-5 on 13/10/2016 and Annexure P-6 on 5/12/2016. It is also could not be rebutted petitioner was working as Secretary while such application was filed for issuance of order for Panchayat Secretary.

4. Heard learned counsel for the parties.

5. Primarily it appears that pursuant to the advertisement made on 2/06/2015 initially when merit list was published of 49 candidates, the petitioner was in the waiting list. Subsequently, 46 persons joined. Thereby 3 posts remained vacant. Consequently, since the petitioner was in the waiting list and was already working as Rojgar Sahayak she was given the charge to discharge the job of Panchayat Secretary on 11/02/2016 by order of the CEO, Janpad Panchayat, Mungeli. Subsequently she was subjected to transfer to the different place with financial power meaning thereby she was discharging the job of a Panchayat Secretary. In the meanwhile after 8 months on 13/10/2016 by Annexure P-5 and 5/12/2016, the petitioner filed application with prayer that her appointment may be made to the post of Panchayat Secretary i.e. within a year of publication of waiting list.

6. Therefore, it appears that the petitioner had made the application within a reasonable period that is even within one year from the date of publication of the original waiting list and more so the petitioner was working and discharging the job of a Secretary from 11/02/2016. It was immediately on 10/02/2016 when three posts were vacant after initial appointee did not join and the petitioner was given the job to discharge the work of Panchayat Secretary. In view of peculiar facts, since the petitioner has already filed two applications before the expiration of the waiting list for appointment to the post of Panchayat Secretary and it is not been disputed that the petitioner was discharging the job of Secretary by the order of CEO, Janpad Panchayat, Mungeli in terms of the relief claimed, it is directed that candidature of the petitioner be considered for the post of Panchayat Secretary and accordingly suitable order may be issued within outer limit of 30 days from the date of presentation of this order. It is clarified that this order will not be treated as a precedent for the others and is passed in term of fact that petitioner had applied for issuance of order

for appointment to the post of Secretary coupled with the fact the job already rendered by her in terms of order by CEO, Janpad Panchayat, Mungeli.

7. With such observation, the petition stands disposed of.

Sd/-
(Goutam Bhaduri)
JUDGE